Setting the framework for the relations between the Commonwealth and the European Union

María Mut Bosque

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THESIS: “SETTING THE FRAMEWORK FOR THE RELATIONS BETWEEN THE COMMONWEALTH AND THE EUROPEAN UNION”

EUROPEAN MENTION

Ph D Candidate: **Maria Mut Bosque**

Supervisor: **Dr. Carlos Espaliú Berdud**

Tutor: **Dr. Philip Murphy**

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Universitat Internacional de Catalunya

University of London

To my family, for their unconditional support.

“To the many students and academics (…)

I would conclude by making an appeal. Please make the effort to study and write about the Commonwealth, not just one or two member countries (…).

The Commonwealth of today is not just the Queen or the Commonwealth Games.

It deserves your critical, youthful attention.

It almost certainly deserves, as you will give it, some kicking.

But do please look carefully and below the surface (…)

Make suggestions and please get stuck in”[1]

Richard Bourne

[1] Richard Bourne is former Head of the Commonwealth Policy Studies Unit and senior fellow of the Institute of Commonwealth Studies.

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LIST OF MAIN ACRONYMS USED IN THIS THESIS

ABC Countries – Australia, Britain, Canada Countries.

ACP- African, Caribbean and Pacific Group of States.

AD- Alternattiva Demokratika.

APF- Asia Pacific Forum.

ASEAN- Association of Southeast Asian Nations.

AUS- Australia.

BOT- British Overseas Territories.

CAP- Common Agriculture Policy.

CARIFORUM- The Caribbean Forum.

CCEM- Conference of Commonwealth Education Ministers.

CCGE- Commonwealth Consultative Group on Environment.

CCM- Committee on Commonwealth Membership.

CDMA - Commonwealth Disaster Management Agency.

CET - Common External Tariff.

CFTA- Commonwealth Free Trade Area.

CFTC- Commonwealth Fund for Technical Co-operation.

CHOGM- Commonwealth´s Heads of Government Meetings.

CHRI- Commonwealth Human Rights Initiative.

CIO- Commonwealth Chairman-in-Office.

CMAG- Commonwealth Ministerial Action Group.

CMW- Commonwealth.

COL- Commonwealth of Learning.

CPA- Common Partnership Agreement.

CPMM- Commonwealth Prime Minister's Meetings.

CS- Commonwealth Secretariat.

CSAT – Commonwealth Secretariat Arbitral Tribunal.

LIST OF MAIN ACRONYMS USED IN THIS THESIS

CSFP- Common Foreign and Security Policy.

CSP- Country Strategy Paper.

CYP- Commonwealth Youth Programme.

EAEC- European Atomic Energy Community.

EC- European Community.

ECB- European Central Bank.

ECHO- European Community Humanitarian aid Office.

ECJ- European Court of Justice.

ECOFIN- Economic and Financial Committee.

ECSC- European Coal and Steel Community.

EEA- European Economic Area.

EEC- European Economic Community.

EFA- Education For All.

EFTA- European Free Trade Area.

EMS- European Monetary System.

EMU- European Monetary Union.

EP- European Parliament.

EPA – European Partnership Agreement.

EPA- European Partnership Agreement.

ERM- Exchange Rate Mechanism.

ESDP - European Security and Defence Policy.

Est. – Estimation.

EU- European Union.

EUR- Euro.

EURATOM- European Atomic Energy Community.

FCO- Foreign and Commonwealth Office.

LIST OF MAIN ACRONYMS USED IN THIS THESIS

FTA- Free Trade Area.

GDP- Gross Domestic Product.

GNI- Gross National Incomme.

GSP- Generalised System of Preferences.

HM- Her Majesty.

ICT- Information and Communications Technology.

JHA- Justice and Home Affairs Police.

LDC- Least Developed Countries.

MEP- Member of the European Parliament.

MFN – Most Favoured Nation.

MLP- Malta Labour Party.

MOU- Memorandum of Understanding.

MRA- Mutual Recognition Agreement.

NAFTA- North American Free Trade Agreement.

NATO- North Atlantic Treaty Organisation.

NZ- New Zealand.

OCT- Overseas Countries and Territories.

OECD- Organisation for Economic Co-operation and Development.

OEEC- Organisation for European Economic Co-operation.

OHCHR- Office of the High Commissioner for Human Rights.

OSCE- Organisation for Security and Co-operation in Europe.

PCA- Partnership Cooperation Agreement.

PJC- European Police and Judicial Cooperation in criminal matters.

PTA- Preferential Trade Area.

SEA- Single European Act.

TEC- Treaty on the European Community.

LIST OF MAIN ACRONYMS USED IN THIS THESIS

TEU- Treaty on the European Union.

TFEU- Treaty on the Functioning of the European Union.

TOR- Traditional own resources.

TRIPS- Agreement on Trade Related Aspects of Intellectual Property Rights.

TRNC- Turkish Republic of Northern Cyprus.

UDI- Unilateral Declaration of Independence.

UK- United Kingdom.

UKIP – United Kingdom Independence Party.

UN- United Nations.

UNFICYP- United Nations Peacekeeping Force in Cyprus.

USA- United States of America.

VAT- Value Added Tax.

WHO- World Health Organisation.

WTO- World Trade Organisation.

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INTRODUCTION

INTRODUCTION

The main pursuit of this thesis is to analyse the type of relations between the Commonwealth and the European Union (EU). In the minor thesis we developed a rigorous comparative analysis between the two international organisations. Therefore, I consider it useful to incorporate the main conclusions of the above-mentioned comparative analysis in this thesis, in as a starting point to formulate concrete proposals. Thus, throughout these pages, I examine the existing links between Commonwealth and the European Union, using different variables, such as the areas of activity they engage in, the method they use, the functions and competences they develop, the agreements they share, and the member states they have in common. Finally, we put forward a general framework for the relations between the Commonwealth and the European Union.

Furthermore, we consider appropriate to include a brief study framework of the Commonwealth, since this international organization has not received the attention it deserves, particularly of late and especially in Spain. It comes as little surprise therefore that David McIntyre describes the Commonwealth as “the world’s oldest and least understood political association of sovereign states”. Such ignorance has led to many a misunderstanding. Peter Lyon says, “People tend to confuse the Commonwealth with the old Empire but it's not the same at all. It's not a colonial club and you don't have to be one to belong to it”. For example, Mozambique and Rwanda, although not former British colonies, have Commonwealth membership. Furthermore, as mentioned in the minor thesis, the Commonwealth is an institution that is far-removed from the continental legal tradition, so a key pursuit of this thesis is to bring it closer.

On the other hand, we have decided not to include an analysis of the European Union, for two main reasons, firstly because it has been and continues to be the subject of numerous studies, thus to describe this international organization would neither have scientific value nor contribute anything of value to a work of this nature. Secondly, we already carried out an in-depth analysis of the European Union in the minor thesis.

The reasons that have led me to write this thesis are diverse. The first one is focused on the lack of studies linking the Commonwealth with the European Union. Thus, the EU in particular and the Commonwealth to a lesser extent have been separately studied by various authors; however there are few works that link them and analyse their common interests, with a view to proposing a common cooperative framework for those areas or activities of mutual interest. In this sense, this thesis bridges the gap that exists regarding the relations between both international organisations and their common interests.

Secondly, the reflexion process, or even the uncertainty that both are currently experiencing justifies our interest when it comes to analysing the evolution and potential transformation of the two. Therefore, as a novelty, this thesis is centred on the analysis of the characteristics they both share, beyond those that set them apart. Then, the main pursuit is to design a system based on the compatibility and linkages between the Commonwealth and the European Union, through a common framework of activities and relations, which brings them added value and contributes to solve part of this uncertainty. This proposal was already studied as early as 1943, when General Smuts outlined ideas of how the Commonwealth, through association with the free peoples of the western European seaboard, could contribute to European and world stability. Smuts presaged an association of like-minded western European and Commonwealth states which would together form a third great Power balancing between the Soviet Union in the east and the United States in the west, whereas the grouping that eventually emerged was regional, thereby automatically excluding the overseas members of the Commonwealth from membership of it and diminishing its potential in the scales of power. The form in which he presented these ideas was never realised.

Thirdly, another main reason that brought me to choose the relationship between the Commonwealth and the European Union as a thesis area of research is to make known the Commonwealth. As we mentioned, the Commonwealth is an organisation that plays no part in the Spanish historical, political and legal context, but it could have a great potential if it is well channelled. In this sense, at a very timely moment, in 2011 the Committee of the Eminent Persons was constituted with the aim of debating the Commonwealth's future[2]. Thus, the Committee wrote a report urging the Commonwealth to undertake a comprehensive reform of itself, in order to take advantage of the immense opportunities that an organisation as such can offer, which in recent years has received the merit it deserves.

> "Global integration brings us closer together, and such proximity can heighten stresses as well as open up fresh opportunities. In a spirit of solidarity and shared purpose, and of exploiting opportunities for joint action, we need to find imaginative ways of using the potential of Commonwealth meetings and networks to enlarge and enrich our common ground. Although the Commonwealth was created in the last century it appears to have been designed for the present one. By adopting a pragmatic and responsive approach rather than a prescriptive or rigid one it is able to adapt to the rapidly changing context in which it operates. Such flexibility gives resilience[3]."

Furthermore, as this thesis aims to lend greater clarity to the current Commonwealth, we decided to link it with the European Union, since the latter is more familiar to Spain's reality, and a familiar comparative parameter may help us to understand the highly complex system of relations that the Commonwealth represents, which is the result of the evolution of the former British imperial model.

Fourthly, we chose to incorporate in a transversal way the role that the United Kingdom has played in the relations between the Commonwealth and the European Union, the UK's role has been (and still is) key to understanding the evolution of these relations.

However, most importantly, this thesis aims to demonstrate that the UK can develop a fundamental role, as a link or bridge between both organisations. In this line, this thesis tries to understand, from an impartial vantage point, the reasons that make the UK adopt certain stances that frequently have been understood as disinterested in or uncommitted to both projects by both the members of the Commonwealth and of the European Union. Likewise, this thesis will prove that the United Kingdom always has had (and still has) a big interest in making the two models compatible, in order to achieve more influence and reach a wider common market with which to trade. Therefore, this work offers alternative proposals to make these two different models of organisations more compatible, taking into account that traditionally these models have been presented as antagonistic, and to establish a framework for their mutual relations. The reconciliation between Europe and the relations with former British colonies has been a constant concern for both the United Kingdom and the member states of the Commonwealth themselves. The strategic commitments into which the United Kingdom entered in Western Europe after the Second World War, notably the Five-Power Brussels Pact of March 1948, were generally welcome to the governments of the former dominions on grounds of a common interest in the military security of the treaty area. It was indeed the political, rather than the military or still less the economic side, that there were signs of dominions' misgivings about the possible and progressive absorption of the United

[2] Commonwealth Eminent Group, "A Commonwealth of the People: Time for Urgent Reform", The Report of the Eminent Persons Group to Commonwealth Heads of Government, Perth, published by the Commonwealth Secretariat, October 2011.

[3] Ibidem.

Kingdom in a purely European grouping. In Australia and New Zealand especially, it was felt, even at that early date, that the closer Britain drew to Europe, the further it must necessarily draw away from the Commonwealth. It was to allay these misgivings that Attlee emphasised in May 1948 that:

> "In respect of every development in Western Europe the United Kingdom government had kept in the closest touch with the other Commonwealth countries... and we take very full account of their views... I was disturbed with the suggestion... that we might somehow get closer to Europe than to our Commonwealth. The Commonwealth nations are our closest friends. While I want to get as close as we can with the other nations, we have to bear in mind that we are not solely a European Power but a member of a great Commonwealth and Empire (...)[4]"

For the Commonwealth overseas these were reassuring words and at the meeting of Commonwealth foreign ministers in Colombo in 1950 it was formally accepted that:

> "There need to be no inconsistency between the policy followed by the UK government in relation to Western Europe and the maintenance of the traditional links between the UK and the rest of the Commonwealth (...)[5]"

Historically, at the time of the constitution of the current new economic order, such as the World Bank, the negotiations on the Geneva Agreement on Trade and Tariffs and the shaping of the Common Market, Britain generally, and especially in the last case, tended to remain semi-detached. By so doing she deprived herself of opportunities to influence developments in the formative stage from within so that they might be in conformity with her existing ties with the Commonwealth overseas. With regard to Western Europe, observers send a parting of the ways when, with the coming into existence in 1953 of the first Western European institution, the European Coal and Steel Community stemming from the Schuman Plan (1950), there was a British association, but – by deliberate decision at an early stage by Attlee, and at a later stage by the Churchill government - no British commitment to this experiment in supranationalism. As we will see throughout these pages, this decision was in large measure taken because the United Kingdom was unable to make compatible the commercial and monetary commitments agreed with the Commonwealth and the new ones that the European Communities requested from every candidate that wanted to join them.

Fifthly, likewise the United Kingdom was again gripped by a time of reflection regarding the path to take in the scope of its international relations. Already in 1975, the UK's own accession to the European Communities was questioned by the holding of a referendum. Nowadays, once again the UK's different actors, such as academic forums, the media, and government representatives are reconsidering UK's permanence in the European Union, and at the same time are studying other international possibilities, such as a deeper commitment to the Commonwealth. It is worth noting that very recently, in December 2012, the House of Commons of the UK Parliament adopted two Reports, one on the UK Government's role in the future of the European Union's[6] and the other the UK Government's role in the future of the Commonwealth[7]. In the first report, they discussed the possibility of the UK leaving the EU and

[4] Parl Deb. (Commons), vol. 450, coll. 1315-9, reprinted in MANSERGH, N., *Documents and Speeches on British Commonwealth Affairs: 1931-1952*, London, published by the Council on Foreign Affairs, vol.2, 1953.
[5] Ibidem.
[6] UK Parliament, "The future of the European Union: UK Government Policy", Transcript of Oral Evidences, published by the UK Parliament: House of Commons, 2012.
[7] Foreign Affairs Committee - Fourth Report: "The role and future of the Commonwealth", London, published by the House of Commons, 2012, p.109.

only keeping an external trade agreement with the EU, such as the one that Switzerland has with the EU.

> "Britain could look closely at a free trade agreement, or a relationship similar to that of Switzerland or other countries that have access to markets – okay, they may have less say in how those markets are formulated, but they have access to them – but do not have to sign up to this general, ever-closer political union that can also have an impact on economic regulation? I ask this question because those countries seem to thrive[8]."

Furthermore the report questions the possibility of approaching an organisation founded by the UK, and now is again attracting UK's interest, the European Free Trade Agreement (EFTA), whose model was and still is compatible with the Commonwealth's interests, since this organisation created the Free Trade Area, without obliging its members to adopt a common external tariff. Moreover, the EFTA and its members have a special status in the European Union, and they constitute the European Economic Area (EEA). So, the report includes the question whether if it is possible "that Britain could acquire the status of almost being like a member of the EEA or EFTA[9] "

In the conference I attended on the future of the UK in the European Union, on 14 December 2012, organized by the UK Federal Trust[10], which is chaired by Brendan Donnelly, a former member of the European Parliament, the Head of Media of the European Commission Representation in the United Kingdom, Mark English, focused on the latest publications and remarked on the influential role of the press and the media with regard to the British Euroscepticism. He insisted in the article in the Economist, published on 8th of December. The headline of the Economist was categorical:

> "Britain's future: Goodbye Europe. A British exit from the European Union looks increasingly possible[11]".

This article quotes Margaret Thatcher in 1988 "BRITAIN does not dream of some cosy, isolated existence on the fringes of the European Community[12]". Now, increasingly, it does. The article adds:

> "Opinion polls show that most Britons are in favour of leaving the European Union (…) The United Kingdom Independence Party (UKIP), which wants to leave the EU, has abruptly moved from the political margins to the mainstream. A referendum on Britain's membership of the EU now seems a matter of timing[13]".

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[8] Ibidem, Question 27, Mr. Baron.
[9] Ibidem, Question 29, Mark Hendrick.
[10] The Federal Trust is a prestigious Research Institute, which has a particular interest in the European Union and Britain's place in it. The Federal Trust has no allegiance to any political party, "The Federal Trust", source: <http://www.fedtrust.co.uk/>, (accessed 22/12/12).
[11] The Economist, "Britain's future: Goodbye Europe", The Economist, 8 December 2012.
[12] Ibidem.
[13] Ibidem.

Furthermore, The Guardian newspaper has adopted the same stance as the Economist. In an article published on 17 of November of 2012[14] , it reported on a survey published by the same newspaper, in which 56% of Britons would vote to leave the EU in a referendum. Nevertheless, there has been no formal statement from the British government about the referendum yet and even less an official announcement of leaving the European Union. In fact, there are important voices that advocate for UK's permanence in the EU. Returning to the report on the EU's future, Sir Howard Davies[15], who was one of the experts in charge of responding to the questions addressed by the different representatives of the UK Parliament, remarks that the decision to pull out of the EU would be negative for two main reasons: first, the UK will lose the possibility of playing an active role in the common market and it will lose influence in the areas of security and defence[16]. In short, the debate is more animated than ever and remains unresolved.

Regarding the second report on the future role of the Commonwealth, it is interesting to note that the UK has recognised that although it has distanced itself from the organisation, Britain is aware of the potentiality and opportunities that the Commonwealth has to offer. Hence, the Committee in charge of adopting this report proposes the following recommendations to both the UK Government and the Commonwealth in order to channel the huge opportunities that this organisation can offer to the international arena.

The Committee recommends that the UK should make its commitment to the Commonwealth a "cornerstone of our foreign policy[17]", but says that the Government does not appear to have a clear and co-ordinated strategy to this end. It urges the Government to develop a strategy for engagement with the Commonwealth, aimed at ensuring that the UK makes the most of the opportunities it presents.

The Committee also says that it is not convinced that member states are making the most of the economic and trading opportunities offered by the Commonwealth. The report welcomes the fact that the Commonwealth continues to attract interest from potential new members, and says that there are advantages of greater diversity and an extended global reach for the Commonwealth. However it also insists that the application process should be rigorous and that any new members should be appropriate additions to the Commonwealth "family", "closely adhering at all times to its principles and values[18]".

Furthermore, the Queen and Head of the Commonwealth has explained that the Commonwealth is of key importance to the future of the UK's international relations. The Queen refers to this association as a "family of Nations" whose ties reach beyond politics, religion or economic circumstances. These words prove the strong ties roots that the Commonwealth has with the UK, and the deep affection that it inspires. The Commonwealth is qualified as a "family of Nations", while no such reference exists as per the EU, given that, in my opinion, it does not evoke the same degree of affection amongst the British.

Queen Elisabeth II recently underscored the importance of the Commonwealth on the occasion of the opening ceremony of the 20th CHOGM meeting in 2009[19], coinciding with the 60th anniversary of the founding of the modern Commonwealth. The Queen spoke of the

[14] BOFFEY, M., HELM, T., "56% of Britons would vote to quit EU in referendum, poll finds", The Guardian, 17 December 2012.
[15] Sir Howard Davies, Professor of Political Sciences, Paris Institute of Political Studies.
[16] Foreign Affairs Committee - Fourth Report: "The role and future of the Commonwealth", op. cit., Question 13.
[17] Ibidem.
[18] Ibidem.
[19] Port of Spain, Trinidad and Tobago, 27 November 2009.

Commonwealth's flexibility and how it has learnt to adapt to the new exigencies without losing its essence and its origins, differentiating it from other entities. This is in part due to its members, which have remained united and committed to respect a number of common goals and values, such as peace , liberty, progress, freedom, democracy and development. The Queen insisted that after six decades the Commonwealth must be able to continue to respond to new challenges and demands, although, as we have observed, some of these challenges are not new for the organization. The monarch underlined three main challenges that must be especially protected: the environment, small and vulnerable states and youth. Regarding the challenge of youth, it should be underscored that the future of this association lies with the one billion young people who are under 25 years of age. So the "Commonwealth must show that it is relevant to and supportive of our young people who need to be convinced that the Commonwealth can help them to realise their ambitions[20]". Finally, the Queen emphasises the idea that the Commonwealth must move further and prove its relevance beyond its own borders in order to develop a truly global perspective.

Likewise, in the Queen's Christmas message in 2009, she focused on the Commonwealth, which she qualified as a "strong and practical force of good". In her speech, the monarch argued that the importance of this organisation rests on two main areas, aid and support for development, especially regarding young people and the way it works. This approach allows people to work together to achieve practical solutions to problems.

Moreover, Queen Elisabeth II has referred to the Commonwealth on more than one occasion as "our family of nations" and in this sense, highlights the solidarity of its members with those that are suffering more directly the effects of the global economic downturn. In short, according to Queen Elizabeth II, "the Commonwealth is in many ways the face of the future[21]".

The current UK conservative government, is aware of the Commonwealth's huge potential. William Hague, First Secretary of State and Foreign Secretary, in his speech to the Royal Commonwealth Society in February 2009 as shadow foreign secretary, pledged an energetic approach to the Commonwealth. Hague believes that the Commonwealth can become a leading player on the international scene, acting above all as a bridge across different religions, ethnicities, cultures and wealth, to the benefit of common humanity, as well as a priority for UK foreign policy. In this regard, Hague recalls that the Commonwealth is made up of approximately 800 million Hindus, 500 million Muslims and 400 million Christians, so this means that it could become the perfect conduit for reform in the Arab world, while it should take a greater role in addressing state failure. He also argues that the UK should have a key role in the development of the modern Commonwealth, which until now has not, especially during the Labour government term. Hague reiterates that the Commonwealth has 53 states, that trade and investment within the Commonwealth now accounts for over 20% of the world total and that there is the potential to increase this share further, hence there are huge economic benefits to be gained and Britain must capitalise on these opportunities. In addition, it has been estimated that the advantages of commonalities in language, education, professional training and legal and financial institutions create a 15% cost advantage over business with countries outside the Commonwealth. Hague insists that the British government should be aware of all these benefits and adopt an energetic and enthusiastic attitude towards the Commonwealth to unlock its vast potential. Lastly, he argues that "the Commonwealth should take on more members to increase its influence[22]."

[20] The British Monarchy, "The Queen's speech at the opening of CHOGM", UK Government, 27 November 2009.
[21] Ibidem.
[22] The British Monarchy, "Commonwealth Day message from HM Queen Elizabeth II, Head of the Commonwealth", The Commonwealth, 10 March 2014.

The last reason for choosing this research area is linked to the type of thesis that I present, since it is framed in the European Doctoral Programme, which, amongst other conditions, requires a research stay of more than three months at another European university, the use of another European official language, other than the national one. The present thesis meets all these criteria.

The purpose of this thesis is twofold, firstly it attempts to demonstrate the important common undertakings that both organisations could develop together, especially in the commercial and humanitarian areas, since both share trading networks and provide humanitarian aid to the same states; moreover they share common interests and values, as well as a similar way of working.

The second aim of this thesis is to highlight the need to enhance mutual relations, taking into account the current context of globalization, in which the establishment of trans-regional interconnected networks is of vital importance. Accordingly, this is a constructive thesis that strives to formulate a common framework of relations between the Commonwealth and the European Union.

Regarding the structure, this thesis is divided into three parts and five chapters. The first part is of an introductory nature, in which we analyse the Commonwealth and include the conclusions of the comparative analysis that we developed in the minor thesis, for the purposes already mentioned. In the second part we conduct an analysis of EU-Commonwealth relations and in the third part, by way of a conclusion, we propose a framework for their future relations.

Because the relations between both international organisations are of a sui generis nature, in the sense that their historical evolution, the transformation that both have experienced over time and their legal nature generate an interesting doctrinal debate, we have decided to incorporate a transversal methodology centred on international relations, but which includes four main approaches: historical, economic, legal and political, since these are the areas that generate greater academic interest and allow us to obtain more information.

Regarding format and bibliography, given that this thesis and my doctoral studies have been completed in a Spanish university, and the doctoral candidate as well as the main supervisor are trained in the Spanish legal tradition, we thought it would be more apposite to follow the Spanish style rules and base the bibliography on the Spanish Journal of International Law (REDI). We should note that for those sources that were not specified in the REDI rules, such as the citation of web pages, documents, reports and newspaper articles, we have chosen one of the leading, oldest and most widely used citation styles, the Chicago Manual of Style (CMS).

Finally, the compilation of the bibliographic resources as well as documentation and reports for this thesis has been a complex task, as most of the resources are located outside my country and, furthermore, a large amount of it is old and, therefore, difficult to access. To this end, I have spent several periods in the UK, which would not have been possible without the generous help and hospitality of the Institute of Commonwealth Studies.

CHAPTER I: THE COMMONWEALTH

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This Chapter which has an introductory character is focused on the explanation and definition of the Commonwealth. As we have noted in the introduction of this thesis, the very nature of the Commonwealth makes difficult to offer a definition of this organisation in a few lines and even more, it prevents from the utilisation of a single approach in order to analyse it, so we will use more than one approaches and only those that will let us inderstand this sui generis organisation as a whole.

So we will use a historic approach that will clarify how an imperial structure has became an interregional association of states, a political approach that will help us to understand the curious institutional structure that the Commonwealth has and the founding principles of this network of states, essentially oriented towards the international relations; a commercial approach that will explain what happened whith the imperial preferential trade area and with the sterling area, and finally a legal approach, the most complex approach, that will let us analyse different controversial issues of a legal nature, such as the international subjectivity and the international legal personality.

Undoubtedly, the Commonwealth was a pragmatic response towards the transition that the British Empire was experiencing. So, it can be understood as a formula designed to guiding the different self-determination processes that had place during the 19th and the 20th Century, in order to accommodate the new created sovereign states in a new era of interrelationships, where the former imperial structures were no longer acceptable. Nevertheless, and here rest the geniality of the system, the transition towards the achievement of sovereignty by the former British colonies, had to be developed as painless as possible for the interests of both actors, the former colonies and the former metropolis. This entailed, except in some cases such as the India's one, neither use coercive methods, nor retained these territories under the threat or use of armed force, since the self-determination process as well as the achievement of self-sovereignty was an undeniable and unstoppable reality. Therefore, instead of embarking on never ending and unsuccessful battles campaigns, the idea was to design a new framework that assured the continuity of the relations between both parties, in order to obtain the gratest possible benefeits.

The historical element of the Commonwealth is undeniable, since the Commonwealth is the result of a concrete evolutionary process, the Commonwealth has been through different historical periods that have shape what it is at the present time. The evolution it is also present in the changes of their own designation. Thus, initially it was known as the British Commonwealth, later as the Commonwealth of Nations, and nowadays just simply as the Commonwealth. In keeping with this line, David McIntyre[23] points out that the word Commonwealth, in its modern usage, is best rendered as a 'family of nations' from within the former British Empire. He explains that the term Commonwealth understood as a family of nations was firstly used before the American Revolution in relation to the early colonies. However, there were also maverick uses in Victorian times. Lord Carnarvon referred in 1868 to the 'Imperial Commonwealth', and Lord Rosebery in 1884 called the Empire a 'Commonwealth of Nations'[24]. If we undertake a brief historical review, we can differenciate the following stages:

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[23] David McIntyre is Emeritus Professor of History of the University of Canterbury, New Zealand. MCINTYRE, D., *A Guide to the Contemporary Commonwealth*, London, Palgrave Macmillan, 2001, p.2.

[24] MEHROTA, S.H., "On the use of the term 'Commonwealth'", *Journal of Commonwealth Political Studies*, Vol. 2, 1963, Num. 1, pp. 1-16.

CHAPTER I: THE COMMONWEALTH

1. HISTORIC APPROACH: FROM THE BRITISH EMPIRE TO THE MODERN COMMONWEALTH

1st stage: The British Commonwealth: the Empire and the status of Dominion

By the early years of the twentieth century, the labels 'Colony', 'Empire', and 'Imperial' were felt to be too harsh, authoritarian and old-fashioned for those groups of self-governing colonies, which had coalesced into 'nations' in Australia, Canada, New Zealand and South Africa. Commonwealth, in the sense of family felt better. Alternative suggestions, 'Britanic Alliance or Partnership', very apt for the time, did not catch on'[25].

The other label which came into use at this time was 'Dominion'. Originally this term meant subordination. So, the earliest colonies in the New World were the King's 'Dominion beyond the Seas'. Later, dominion came to signify complete self-government, and then independence. The pioneers in this transition were Canadians. In 1867, the British North America Act authorised the confederation of the North America Colonies – originally comprising Canada (divided into Ontario and Quebec), Nova Scotia and New Brunswick- as 'one dominion under the name of Canada'. The intended title 'Kingdom of Canada' was dropped to avoid offending the great republic to the south. But the new synonym for kingdom did not alter Canada's legal subordination as part of the 'Dominions beyond the Seas'. According to Mansergh[26], the final stages in the transformation of the British Empire into a Commonwealth of Nations was the product partly of conviction and partly of experience and perhaps, most of all, of circumstances.

In 1907 a formula was sought to mark the distinction between Canada, a vast, self-governing and federal place, and little places like Trinidad and Barbados. This formula entailed giving another meaning to the term 'Dominion'. So, finally, 'Dominion' became the label for the self-governing colonies – a meaning which, in spirit, was the opposite of that in the original designation 'Dominions beyond the Seas'. The Dominions became the core of the 'Commonwealth'. The original 'Dominions in order of 'seniority' were: Canada, Australia, New Zealand, Newfoundland, Cape Colony, Natal and Transvaal. The last three came together in 1910, along with the Orange Free State, and in 1922, the Irish Free State that became the sixth Dominion. Thus, the seeds of complete transition were sown.

Dominion status**, which was a halfway house between colonial status and independence**, proved short-lived because the six Dominions could not agree about the meaning of their status. Australia and the smallest, most remote, Dominions (New Zealand and Newfoundland) were happy with it and cherished the British Empire. Canada, South Africa and the Irish Free State had their reasons for pressing self-government to its logical conclusion. Canada, with its Francophone population, and South Africa, with the Afrikaners, had domestic reasons for muting the 'Britishness' of the connection. The Irish Free State government fought a civil war with those Irish Nationalists who resented partition of the Ulster counties and wanted an all-Ireland republic. A resolution of the Imperial War Conference of 1917 gave the 'restless' Dominions some hope that the constitution of the Commonwealth of Nations would be ironed out, once and for all, after the war. However, this never happened.

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[25] JEBB, R., *Studies in Colonial Nationalism*, London, E. Arnold Pbl., 1905, p.9.

[26] MANSERGH, N., *The Commonwealth Experience*, London, MacMillan Press Ltd., Vol. II: *From British to Muti-racial Commonwealth,* 1982, p.17.

2nd stage: Britain and the "Six", and the Balfour Declaration

In 1926 a committee on inter-imperial relations, chaired by Lord Balfour, considered the 'position and mutual relations' of Britain and the Six[27]. In what Leo Amery called the 'defining sentence' or 'status formula'[28], the first principle of the modern Commonwealth was declared:

> *"They are autonomous Countries within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations".*

In the above paragraph we can identify four important characteristics that a territory had to meet in order to be considered a "Dominion":

1- Autonomous communities,
2- Within the British Empire,
3- Freely associated as members of the British Commonwealth of Nations,
4- United by a common allegiance to the Crown[29].

This 1926 formula is often called 'Balfour Declaration' and was only a description of a situation which had evolved over an 80-year period and it embodied some glaring ambiguities. The parties, Britain and the Dominions, were described as 'within the British Empire', but they were freely associated as members of the 'British Commonwealth of Nations'. In McIntyre's opinion, the ambiguity was deliberate, but what it was significant, were the four- fold doctrines of: *autonomy, equality, common allegiance and free association*[30]. These had real political and emotional force at the time. They were embodied in the preamble of the Statute of Westminster in 1931, by which the dominions became as independent as they wished.

3rd stage: The Commonwealth of Nations and the Westminster Act of 1931

The Westminster Act ended the power of the British Parliament over the Dominions unless they made a specific request and consented to it, that is, as a matter of law, the Parliament of the United Kingdom was thereafter precluded from legislating for a dominion without the request and consent of its government or Parliament.

The constitutional instruments of Canada, Australia and New Zealand were exempted from the Act and the operative clauses did not apply to Australia, New Zealand or Newfoundland until 'adopted' by their own parliaments. Australia delayed until 1942; New Zealand until 1947; Newfoundland gave up Dominion status during the depression in 1933 and joined Canada in 1949. Today the 1931 Act is given as the reason for a little oddity to be found in the Secretariat lists of Commonwealth members, which have Australia, Britain, Canada, New Zealand and South Africa 'joining' the Commonwealth in 1931. A footnote explains that **the Statute of Westminster is 'for convenience regarded as the beginning of the Commonwealth'**[31]

[27] The drafts are reproduced in Government of Autralia, Founding Documents of Australia, "Balfour Declaration", Imperial Conference of British Empire, 15 November 1926, from: <http://www.foundingdocs.gov.au/scan.asp?sID=13>, (accessed 22 November 2010).
[28] AMERY, L.S., *My Political Life: The Unforgiving Years. 1929–1940*, London, Hutchinson, 1955, p.28.
[29] MANSERGH, N., *The Commonwealth Experience*, London, MacMillan Press Ltd., Vol. II: *From British to Muti-racial Commonwealth*, 1982, p.32.
[30] MCINTYRE, D., *The Commonwealth of Nations: Origins and Impact*, Minnesota, University of Minnesota Press, Vol. IX: Europe and the World in the Age of Expansion, 1977, p.30.
[31] The Commonwealth, "The Commonwealth at the Summit: Communiques of Commonwealth Heads of Government Meetings 1944-86", London, Commonwealth Secretariat, 1987.

However, McIntyre points out that this explanation is **quite inaccurate** because, as we have seen, the beginnings of the idea of 'Commonwealth-as-family' go back at least to Victorian times, if not to the American Colonies. Even the formal usage **pre-dates 1931**. However, as McIntyre notes, by the end of the Second World War, Ireland's position had shown that Dominion status was, in effect, redundant. Moreover, Canada, New Zealand and South Africa had each made separate decisions to enter the Second World War. Only in Australia did the Prime Minister take it that Britain's declaration applied to this country. All four old Dominions joined the UN as independent members.

Clement Atlee, who became Britain's prime minister in 1945, hoped that Eire would return to Commonwealth conclaves, and de Valera was interested, but only if partition could be discussed. On 7 September 1948, during a press conference in Ottawa, Prime Minister John A. Costello was asked if Ireland would leave the Commonwealth, he spoke somewhat ambiguously, about continued 'association' with Britain and Commonwealth countries, but admitted that Ireland would quit[32]. At midnight on 17/18 April 1949 the Republic of Ireland left the Commonwealth and on Easter Monday the new republic was celebrated.

Five days later Nehru announced that India would stay in as a republic. Fifty years on, as Irish leaders on both sides of the partition line seek a cooperative future for Ireland, hopes are expressed that Ireland will come back into the Commonwealth it once did so much to shape.[33] India was the counterpart to Ireland. The 22nd of January of 1947, the Constituent Assembly of India took the resolution that India would become a sovereign, independent republic. Indian Republicanism was less deeply embedded in the national consciousness, the pull of its continental environment in the years after the war was the more pronounced. "Strong winds are blowing all over Asia" declared Nehru at the opening of the Inter Asian Conference at New Dehli in March 1947[34]. Thus, Mansergh points out that republican sentiment in India did not possess the doctrinaire; uncompromising character of Irish republicanism after the Easter Rising of 1916, Indian leaders and their followers felt that republicanism was the only form of government appropriate to their circumstances. Monarchical institutions were associated with the British and, before them, the Mughal emperors. A republic was moreover, the only form of government which made clear beyond question that India was an independent nation.

Thus, as McIntyre explains, by this time, it was realised in London that the ambiguities which had persisted over the previous 20 years could not go on. It was agreed that 'Dominion' should be dropped in favour of 'Commonwealth country'; instead of 'Dominion status' the new formula would be 'fully independent member of the Commonwealth'. The Dominions Office became the Commonwealth Relations Office, into which the India Office was soon merged.

'British' was dropped in front of Commonwealth of Nations' in the overall title.[35] In short, the story of Dominion status should not be discounted. It is unique in the history of decolonisation and represents the Commonwealth's contribution to one of the great transitions of the twentieth century.

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[32] Professor Nichols Mansergh was told that the affirmative answer about leaving the Commonwealth was elicted by the Tass correspondent.KNOWLAN, K.B., WILLIAMS, T.D., *Irish Foreign Policy*, 1945-51 in *Ireland in the War Years and After 1939-51*, Dublin, Gill and Macmillan, 1969, p.15.

[33] In this 1948 press conference in Ottawa, Costello was quoted as implying that: "Once partition was ended, the way would be clear for complete and friendly association of the republic of Ireland with Britain in a Commonwealth of Nations". Winnipeg, Winnipeg Free Press, col.7, 1948.

[34] A report of the proceedings of the conference was published under the title "Asian Relations", Dehli, 1948. The author was one of the United Kingdom observers at the conference. MANSERGH, N., *Documents and Speeches on British Commonwealth Affairs*, op. cit., p. 33.

[35] MCINTYRE, D., "The Strange Death of Dominion Status", *Journal of Imperial and Commonwealth History*, Vol. 27, 1999, Num. 2, pp. 193-212.

4 stage: Just the Commonwealth: Towards a contemporary and multi-racial Commonwealth

This stage is marked by a number of events that have contributed to shaping the Commonwealth as we know it today. The Commonwealth would gradually become known simply as the Commonwealth. The former names it has been known by, such as the British Commonwealth or the Commonwealth of Nations, would disappear. The events that led to this international body's change of name and of course would can be summed up as the outbreak and course of the Second World War, the independence of Ireland and its decision to abandon the Commonwealth, the independence of India and its aspiration to become a republic, yet without renouncing its membership of the Commonwealth, and the stream of former colonial territories that while beginning the process of decolonialization expressed their intention to maintain special relationships with their former colonial power. Lastly, the reformulation of the status of the British Crown within the Commonwealth was also a key factor.

For all parts of the Commonwealth, World War II was a major watershed. The developments during the war loosened old ties and cemented new ones, accelerating the decline of British hegemony and the growth of nationalism, stimulating local social changes, and transforming the world balance of power. Thus, the survival of the Commonwealth can be explained in considerable degree by the sense of community and distinctiveness which it gave to the member countries. At the highest level the periodic Commonwealth Conferences were still valued as seminars for national leaders, and they had become the largest regular meetings of heads of government in the world. The Commonwealth had ceased to be a power, but it remained "*something to belong to, to deal with unfinished colonial business … and to serve as a link with history*.[36]" In keeping with this same line, Mansergh explains that the wartime trend towards decentralisation continued with increasing momentum after the war. It was implicit in Commonwealth attitudes towards the new international organisation, and explicit in Commonwealth reconsideration of constitutional forms, more especially those of citizenship and Crown.

In this respect, in September 1945 the Canadian government advised the United Kingdom government that it found it desirable to introduce legislation laying down the conditions of Canadian citizenship. As defined in the succeeding Canadian Citizenship Act 1946, these conditions were at variance with the traditional concepts of the status of British subjects. It had hitherto been regarded as a fundamental part of the Empire and Commonwealth that there should be a common nationality and that the common law rule, by which all persons born within the king's dominions were British subjects, should remain unimpaired. It is true that while the status was common, the privileges that flowed from it were particular, each self-governing member of the Commonwealth deciding for itself its own electoral and immigration laws, and while such legislation ordinary took the fact of common status into account, it was not determined by its existence- as dominion immigration laws abundantly testified. The Canadian legislation, taking account of the objections to it, transformed the basis of citizenship and then providing that all Canadian citizens were British subjects. The British Nationality Act 1948 adopted this new principle. It established a local citizenship, that of the 'United Kingdom and Colonies', from which the common status of British subject or Commonwealth citizen, a term introduced for the first time, derived. The other member states of the Commonwealth for the most part enacted legislation on the same pattern, making local citizenship the

[36] The latest (most diluted) definition is given in MILLER, J.D.B., *Survey of Commonwealth Affairs: Problems of Expansion and Attrition 1953-1969*, Oxford, Oxford University Press, 1974, p.525.
MCINTYRE, D*., The Commonwealth of Nations: Origins and Impact*, Minnesota, University of Minnesota Press, Vol. IX: *Europe and the World in the Age of Expansion*, 1977, p. 41.

fundamental status and determining the privileges of the common status of British Subject or Commonwealth Citizen generally on a reciprocal basis.

Thus, it is interesting to remark that the post-war world circumstances explain the shift of the Commonwealth. That world was dominated by two great Powers, the USA and USSR both of them were anti-colonial. Moreover, at least in the United States, a distinction was increasingly drawn between the British Commonwealth and the British Empire. After all, the northern neighbour of the USA was the oldest of the dominions and a founder member with Britain of the Commonwealth of Nations. But, more significant was the fact that one of the world's leading anti-colonial powers, India, was also of its own choice, a leading member of the Commonwealth. In the abstract, therefore, the external circumstances deriving from the new balance of world power tended to encourage the advance of Commonwealth, in much the same measure as they pressed for the dissolution of empire. In this sense, the Commonwealth was in no sense self-sufficing; its member states had to deal with their own post-war problems. Britain and Canada had to determine their relations with Europe and the emerging Atlantic Community; Australia and New Zealand to decide, in the light of their wartime experiences, upon the future of their relationship with the United States; Asian members had to formulate for the first time regional and international policies, acceptable to the nationalist anticolonialist sentiments of their peoples, and at the same time consistent with their national political and more especially economic interests. The pursuit of such varied and at times conflicting purposes within the framework of Commonwealth was evidence of the flexibility of its decentralised system of cooperation through consultation. Hence, in the earlier years of this new Commonwealth, the idea of social, economic and educational cooperation acquired content and substance, such as it had not hitherto possessed. However, the abovementioned author points out that in the immediate post-war years Commonwealth thinking was dominated by problems of regional security, international alliances and the Cold War[37].

Regarding Ireland's self-determination process and the subsequent withdrawal of the Commonwealth, **the main concern was if the Irish model of leaving the Commonwealth could produce a domino effect in India and other Dominions. Moreover, other concern was if the King might be recognised as the 'Head of the Commonwealth.[38]**

The nature of the Irish association with the Commonwealth remained ambivalent when the Second World War ended. The Irish government had, however, repudiated allegiance and the Irish view, as expressed by the Valera on many occasions, was that Eire could not be a member, but that it was, after 1937, a state outside the Commonwealth, associated externally with it, not owing allegiance to the Crown, and a republic in fact even though not specifically so described in the constitution. Irish association, therefore, continued, despite divergent and conflicting interpretations of its nature, because of mutual self-interest and on a presumably unspoken official understanding. However, Irish interests were interpreted increasingly in European terms. In those terms, Irish relations with Britain remained fundamental, but its relations with the Commonwealth, despite ties of kinship with the old dominions which accounted in large measure for their "friendliness", appeared an artificially imposed superstructure. The counterpart to Irish secession from the Commonwealth was accordingly her rapprochement with Europe through Irish association with the European Recovery Programme and her foundation membership of the Council of Europe in the 1940s, its negotiation in the 1960s of the Anglo-Irish Free Trade Agreement, the Irish application,

[37] MANSERGH, N., *The Commonwealth Experience*, London, MacMillan Press Ltd., Vol. II: *From British to Muti-racial Commonwealth*, 1982, p.42.

[38] These concerns were expressly pointed out by Malcolm MacDonald, a pre-war Colonial Secretary and Governor-General of Malaya in 1947. MCINTYRE, D., "Governor-General of Malaya to Secretary of State for the Colonies 27 June 1947", *Commonwealth Review*, Vol. 47, 15 September 1947, Num. 3., p.72.

without reservation or qualification, to subscribe to the Treaty of Rome and her subsequent membership of the EEC, approved in a referendum in 1972 by 84 per cent of the electorate. In the broadest sense all these developments may be taken to reflect a shift of Irish interests from countries overseas, where many Irish emigrants had settled, to the geographical area of which Ireland was a part[39].

India was the counterpart to Ireland. India wanted to become a republic, owed no allegiance to the Crown but, at the same time, it wanted to remain a member of the Commonwealth. Thus, the British Prime Minister Attlee submitted a paper to the king in which he allowed that he had always found it difficult to discover any satisfactory nexus for the Commonwealth other than allegiance to the Crown and in consequence to see "how a republic can be included". He was at the same time impressed with India's desire to remain a member and with the strong expression of view, especially from Australia and New Zealand, that it should be enabled to do so. Moreover, were India's request to be rejected, the likelihood was that she would become the leader of an anti-European Asiatic movement whereas if she remained "there is a great possibility of building up in south-east Asia something analogous to Western Union". As for the constitutional issue, the prime minister thought it an open question whether the admission of a republic would lead to the spread of republicanism or weather insistence on allegiance, as an essential nexus, might not lead the secession of other Commonwealth states. Only a Commonwealth Conference, he concluded, could decide and it was impossible to forecast "what conclusion will be reached by the Conference members". But a few days later the prime minister had himself decided that **the political advantages of Indian membership were so great as to justify adapting the Commonwealth to include a republican state, owing no allegiance to the Crown. The cabinet agreed with this conclusion on 3 March**.[40]

It was in this respect that the settlement involved a break with the doctrine enshrined in the Preamble to the Statute of Westminster in which the members of the Commonwealth were declared to be "united by a common allegiance to the Crown". Republicanism, in the past was understood as synonymous with secession. We cannot forget that in the dominions, and particularly in the older dominions which were predominantly British in extraction, loyalty to the Crown had been a strong unifying force. For them all the constitutional position remained unchanged. But the different traditions, the very different history, of India required that she should have another symbolism. So, the agreement of all India's Commonwealth partners in April 1949 allowed accepting an Indian Republic as compatible with membership of the Commonwealth. Therefore, the Indian constitutional settlement was important because it went far to reconcile constitutional forms with political realities. When India's first general elections were held in 1951-2, Nehru explained:

> "We join the Commonwealth (he told the Constituent Assembly) obviously because we think it is beneficial to us and to certain causes in the world that we wish to advance. The other countries of the Commonwealth want us to remain, because they think it is beneficial to them … In the world today were there are so many disruptive forces at work, where we are often at
>
> the verge of war, I think it is not a safe thing to encourage the breaking up of any association that one has… it is better to keep a co-operative association going which may do good in this world rather than break it"[41]

The 1949 settlement modified the position of the Crown in the Commonwealth, so after 1949 the Crown could no longer be spoken as the "only link"[42]. There was no longer common

[39] MANSERGH, N., *The Commonwealth Experience*, op. cit., p.52.
[40] WHEELER-BENNETT, J. W., *King George VI: His Life and Reign*, London, St. Martin's Press, 1958., p.33.
[41] MANSERGH, N., *Documents and Speeches on British Commonwealth Affairs: 1931-1952*, op. cit., p.37.

allegiance, as a condition of membership, but only, so to speak, as an option. The result of free constitutional choice was a variety of constitutional relationships, reflected in 1953 in the variety of titles, with which Queen Elizabeth II was invested at her coronation. It was the newest, "Head of the Commonwealth", that alone was common to all. In time, for the majority of Commonwealth states, it became only formal acknowledgement of the position of the Crown. This was chiefly because a direct relationship, in terms of allegiance, appeared inappropriate to independent states with non-British populations, but also because the monarchical system on the British model presupposed an executive responsible to Parliament. Since, in subsequent years, the practice continued in Africa and elsewhere.

Undoubtedly, it can be noted that developments in international relations had their counterpart in developments within the Commonwealth. The use of the term dominion was increasingly discouraged before being discarded; the Dominions Office was renamed the Commonwealth Relations Office; Commonwealth citizen was approved as an acceptable alternative to British subject; and, more important, the basis of citizenship was changed. The initiative in this last instance came from Canada.

The political transformation of the continent of Africa dominated Commonwealth, and indeed world affairs in the decade 1957-67. Unquestionably the Indian struggle for independence eased the way for independence in Africa without protracted struggle in many cases and without struggle at all in some. **Ghana became the first African member of the Commonwealth**, on achieving independence in 1957. **Nigeria** followed after a three year interlude in 1960 and then in quickening succession came **Sierra Leone and Tanganyika** in 1961, **Uganda** in 1962, **Kenya, and Zanzibar** (later to form with Tanganyika the Union of **Tanzania**) in 1963, **Nyasaland** (renamed Malawi) and Northern Rhodesia (named Zambia) in 1964 the **Gambia** in 1965 and two of the high commission territories in southern Africa, **Basutoland as Lesotho and Bechuanaland as Botswana**, in 1966, with **Swaziland** following in 1968. The transformation seems the more remarkable when stated in broader terms. On 1 January 1957 there had been no African member-state, by the close of 1967 there were no less than twelve, [43] all of whom had freely opted for membership and none of whom by that time, even under the strains of the Rhodesian question, had renounced membership. Mensergh offers two reasons that explain this transformation. Firstly, the nationalism of many of these African states, varying in intensity. The second reason was the pressures of anti-colonial powers at the United Nations and anti-colonial opinion in the world at large. Here the report of the UN Committee on Trusteeship in 1959 had been one landmark: the passing of a resolution in the General Assembly of the UN by 97 votes to none for the speedy ending of colonialism. As a result of this resolution, **Jamaica**, and **Trinidad and Tobago** became independent states in 1962 with **Barbados and mainland Guyana** following in 1966; in south-east Asia, with **Malaysan** independence dating from 1957 and that of secessionist **Singapore** from 1965 in the Mediterranean, with independence for **Cyprus** after a four year state of emergency in 1960 and for **Malta** in 1967; and elsewhere, ultimately even in islands such as **Mauritius**; scattered arround the oceans, irrespective of whether or not there was any strong indigenous pressure for that sovereign status[44].

Finally, the enlarged multi-racial Commonwealth association, which was required to ensure effective existence or even survival, had first to demonstrate its capacity to hold together, despite the conflicting pulls and pressures of an external world upon its membership, even its

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[42] MARSERGH, N., *The Commonwealth Experience*, op cit, p.160.

[43] One former colonial territory, British Somaliland, on independence became part of the larger independent state of Somalia, which united British with Italian Somaliland in the Somali Republic, a state outside the Commonwealth. See, MARSERGH, N., *The Commonwealth Experience*, op cit, p.268.

[44] Ibidem.

member states were seeking to come to terms with the realities of their own relationship. Time was what needed most to ease national sensitivities and to work out an acceptable pattern of association founded on equality and recognising interdependence.

5th stage: Crisis in the Commonwealth

There is no doubt that the crises that affected the Commonwealth have left an important mark on the current makeup of the organisation. Today, the Commonwealth is distinguished by stands out as a multi-racial organisation whose core values, largely as a result of the struggle against apartheid in South Africa, are the defence of democracy, the rule of law and the promotion of and respect for human rights. In this sense, the Commonwealth embraced the most persistent opponents of apartheid. India's opposition to South Africa´s racial laws had been taken to the United Nations as early as the 1940s. Canada took up the cause in the 1950s. From the 1960s, the new states of Africa and the Caribbean were in the forefront of the campaign against apartheid. In this sense, Chief Anyaoku, the third Commonwealth Secretary-General, said that 'the Commonwealth´s role in the ending of apartheid 'was the association's greatest achievement'.[45]

The Commonwealth had two remarkable crisis: the first one was Rhodesia´s matter and the second one was the apartheid issue in South Africa.[46] McIntyre explains that the first three decades (from the 60's to the 80's) of the "New Commonwealth", these were overshadowed by Britain's disenchantment with the association. Although fears that the organisation would develop simply into an African pressure group were not realised, Commonwealth meetings were, indeed, dominated by African issues. One African historian, Ali Mazrui, called this the "**Third Commonwealth**"[47]. **The first had comprised Britain and the six Dominions and the second followed South Asian independence. These events show how the Commonwealth's centre of gravity shifted towards Africa and how the rest of the former colonies, converted in Member States of the Commonwealth, kept in step with United Kingdom's position.** The British now found themselves perpetually on the back foot, especially on matters relating the Southern Africa.

The first main crisis of the Commonwealth was about UDI, the Rhodesia´s unilateral declaration of independence in 1965. This became the most dramatic breach in the process of orderly, negotiated transfers of power to democratically elected governments. (The others were in Palestine, Cyprus and Aden). In 1963 the Federation of the Rhodesias and Nyasaland was dismantled, Northern Rhodesia as Zambia and Nyasaland as Malawi, became independent member-states of the Commonwealth. Southern Rhodesia (the origin of Zimbabwe) did not; So, it became apparent for white settlers of Southern Rhodesia could not secure independence on their terms by constitutional means, they threatened to seize it unconstitutionally and by an unilateral declaration of the independence. The white Rhodesians led by Ian Smith declared on 11 November 1965, independence unilaterally, the first settler revolt against British imperial authority since the American War of Independence. UDI was interpreted in Africa as a challenge to the new Africanism, a test of British and Commonwealth good faith, and an expression of settler intention to disregard fundamental African rights[48].

South Africa's position within the Commonwealth was effectively doomed when the organisation's character began to change as decolonisation gathered pace in the late 1950s

[45] MCINTYRE, D., *The Commonwealth of Nations: Origins and Impact 1869-1971*, op cit., p.31.
[46] Ibidem.
[47] MAZRUI, A. A., *The Anglo-African Commonwealth: Political Friction and Cultural Fusion*, Oxford, Pergamon Press, 1967, p.7.
[48] MANSERGH, N., *The Commonwealth Experience*, op. cit., p. 188.

and early 1960s (in 1960, only 16 African colonies gained their independence). James Hamill[49] explains that in 1960, three specific factors were both complicating South Africa's relations with the Commonwealth and placing a question mark over its continuing presence within the organisation.

- First, the growing African and Asian membership felt that the white regime's apartheid policies were an affront not only to black South Africans but also to their own dignity and were, in addition, wholly incompatible with the principle of racial equality which was central to a now multiracial organisation.

- Second, the opinion within the 'old Commonwealth' was now divided on the South Africa question and the Pretoria government could no longer count upon the automatic solidarity of the white states. The Macmillan government in Britain certainly wished to see South Africa remain within the organisation. He was seeking to preserve the unity of the Commonwealth whilst discreetly coaxing South Africa towards an accommodation with its opponents at home and abroad. Canada, however, under Prime Minister John Diefenbaker, was less concerned with Afrikaner sensibilities and wished to see South Africa leave the organisation at the earliest possible date. In Diefenbaker's view, opposition to racial discrimination was the 'foundation stone' upon which the Commonwealth was built. By definition, therefore, there could be no place for any regime extolling the virtues of apartheid.

- The third problem was the evident lack of enthusiasm on the part of the South African government, now under the leadership of the 'high priest' of apartheid, Dr. Hendrik Verwoerd, for continued Commonwealth membership and its refusal to modify its internal racial policies in accordance with the organisation's wishes. This attitude flowed, at least in part, from a belief amongst Afrikaner nationalists that the Commonwealth was a hangover from colonialism - a continuation of the British Empire by other means - to which they had no particular emotional attachment.

The first tangible indication of this lack of enthusiasm for continued membership came in January 1960 with Verwoerd's decision to hold a referendum - for whites only - to determine whether or not the country should become a Republic. Afrikaner nationalists viewed this as a necessary step to demonstrate the country's growing maturity, to sever the imperial connection with the United Kingdom and, finally, to assert white South Africa's right to determine its own destiny free from unsolicited external interference.

The narrow victory for republican status in October 1960 (850,458 or 52 per cent for; 775,878 or 48 per cent against)[50] brought this issue to a head at the subsequent Commonwealth meeting in London in March 1961 where South Africa's application for readmission was duly considered. Verwoerd's approach was unyielding. He stressed that South Africa had no desire to leave the organisation but was only prepared to remain if it was explicitly accepted that its domestic political system was not a proper subject for wider Commonwealth discussion (a stance vigorously supported by Prime Minister Menzies of Australia). Indeed, the stress on non-interference in the internal affairs of a sovereign state became the South African mantra over the next three decades in the face of concerted international opposition to apartheid. While Macmillan attempted to play a conciliatory role, this dispute assumed all the classic features of 'zero-sum game' politics and the Afro-Asian bloc (with the strong support of

[49] HAMILL, J., "South Africa and the Commonwealth part one: the years of acrimony", *The Contemporary Review*, vol. 267, 1995., p. 17.
[50] Ibidem.

Canada) remained unwilling to separate the question of South Africa's membership from that state's apartheid policies.

The backdrop to the Commonwealth's 1961 discussions on South Africa was the police shootings at Sharpeville on 21 March 1960, (resulting in 69 deaths), the declaration of a state of emergency on 31 March, and the banning of the opposition African National Congress (ANC) and Pan-Africanist Congress (PAC) on 8 April 1960. These events were hardly likely to foster goodwill towards South Africa or a desire to accommodate Verwoerd's concerns. Consequently, after assessing the hostile mood of the gathering, Verwoerd withdrew South Africa's application for membership rather than face expulsion. South Africa left the Commonwealth when it officially became a Republic on 31 May 1961. Regarding this issue, Hamill asks an interesting open question: '*Did South Africa jump or was it pushed?*[51]'

The South African Prime Minister Verwoerd spoke of 'the triumph of Commonwealth expulsion' and of a 'happy day for South Africa'. Indeed, on the occasion of that return, Verwoerd was greeted by white South African, and especially Afrikaner, opinion as something of a conquering hero. Even the traditionally more liberal - although by no means radical - English-speaking press praised him for resisting unacceptable international demands. Not surprisingly, therefore, after 1961 little or nothing was heard in white political debate about the possibility of re-entering the Commonwealth. This issue only returned to the agenda in the early 1990s by which time the major actors in South African politics were marching to the beat of a different drummer. The apartheid's issue in South Africa periodically rose to the top of the Commonwealth agenda between 1965 and 1980. During this period, the organisation's energies were absorbed by the rapid changes to its own membership and, after 1965, by the Rhodesian issue.[52]

It is interesting to remark the British attitude towards apartheid, which gave the Commonwealth such a stormy passage through the 1980s. Britain´s viewpoint of South Africa was rarely accorded serious assessment. Successive British governments had always deplored apartheid, but were not prepared to jeopardise commercial relations with, and investments in South Africa. Thatcher´s government genuinely differed from most of its Commonwealth partners on the tactics for dealing with apartheid[53]. In this line Hamill explains that for all Commonwealth's member states - except Britain - sanctions were regarded as essential to drive home to Pretoria the costs of main-mining apartheid, to demonstrate solidarity with the disenfranchised majority, and to provide an alternative to violence. It was argued that without sanctions there appeared to be no policy options between a wholly laissez-faire approach on one hand and full-blooded support for violent insurrection on the other. Prime Minister Thatcher rejected this arguing that sanctions were unworkable and, far from producing the desired result, would only propel South Africa down the road to anarchy. Therefore, the battle lines were drawn and in the heated exchanges which ensued each side tended to caricature the other's position. Thatcher accused the Commonwealth of empty posturing; she, in turn, was accused of being an 'accomplice in apartheid'[54]. Finally, in April **1994, South Africa returned to the Commonwealth after a 33 year absence**. Hence, for Britain, 1994 marked the end of 30 years of Southern African embarrassments.

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[51] HAMILL, J., "South Africa and the Commonwealth part one: the years of acrimony", *The Contemporary Review*, vol. 267, 1995., p.18.
[52] Ibidem.
[53] MCINTYRE, D., *The Commonwealth of Nations: Origins and Impact*, op. cit., p.74.
[54] HAMILL, J., "South Africa and the Commonwealth part one: the years of acrimony", op. cit., p. 18.

Denis Austin once quipped that South Africa ´***helped rescue the Commonwealth from boredom but at the cost of rather too much excitement***´[55]. McIntyre explains that it is ironical that a state which had quit the Commonwealth in 1961 was the continuing focus of attention and source[56]

2. POLITICAL APPROACH: THE COMMONWEALTH AS A POLITICAL NETWORK

We have already discussed the controversy surrounding the legal nature of the Commonwealth. There are doubts over its legal personality and international subjectivity, its status as an international organisation and it relations with other subjects of international law, not least over powers, such as ius contrahendi or ius legationis. However, there is no doubt, politically, that the Commonwealth constitutes one of the international community's most relevant inter-state networks, as it covers about a quarter of the world's land mass, is home to nearly a third of the global population and has a collective GDP amounting to some $10 trillion.[57]

The historical evolution and transformation of the British Empire resulted in the articulation of a complex trans-regional network between "natural allies"[58], in the words of the current British Foreign Secretary, William Hague. Thus, it is essential to adopt a political approach in the present analysis that will allow us to be more specific and provide further clarity regarding the definition of the Commonwealth.

The lack of consensus regarding the question of the international subjectivity of the Commonwealth from a legal perspective, conflicts with the unanimous agreement between the doctrine when understanding it from the perspective of international relations, since the legal nature of the Commonwealth has been refuted many times. Hence, Muller points out that, rather than an international organization, the Commonwealth is seen as being more of an intergovernmental meeting of states[59], and White[60] explains that the Commonwealth is a good example of a body which, though clearly an organisation, does not appear to enjoy the level of autonomy characteristic of international legal persons[61]. Nevertheless, the Commonwealth plays a role in the international stage, although in legal terms, this is better characterised as the co-ordination of Member States´ actions.

The absence of a clear legal dimension and, on the other hand, the prominent political perspective or the Commonwealth's international relations is reflected in the Singapore Declaration of 1971, the Commonwealth described itself 'as a voluntary association of independent sovereign States, each responsible for its own policies, consulting and cooperating in the common interests of their peoples and in the promotion of international understanding and world peace'[62]. The Commonwealth's common principles are developed in

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[55] AUSTIN, D., "The Commonwealth and Britain", London, *Chatham House Papers*, 1988, p. 7.
[56] MCINTYRE, D., *The significance of the Commonwealth 1965-90*, Christchurch, Canterbury University Press, 1991, p.56.
[57] The Telegraph, "William Hague: Commonwealth offers enormous opportunities", The Telegraph, 9 October 2012, from:
<http://www.telegraph.co.uk/news/politics/conservative/9596880/William-Hague-Commonwealth-offers-enormous-opportunities.html#>, (accessed: 26 November 2012).
[58] Ibidem.
[59] MULLER, A. S., *International organisations and their host States,* Leiden, Martinus Nijhoff Publishers, 1995., p.79.
[60] WHITE, N.D., *The Law of international organisation*, in SCHILL, M., Studies in International law, Manchester, Manchester University Press, 2005, p.127.
[61] DALE, W., "Is the Commonwealth an International Organisation?", *International & Comparative Law Quarterly*, *Cambridge Journals*, 1982, Num.31, pp. 451-473.
[62] The Commonwealth, "The Singapore Declaration of 1971", The Commonwealth Secretariat, from:
<http://www.thecommonwealth.org/document/181889/34293/35468/35775/singapore.htm> (accessed: 29

a series of Declarations adopted at Commonwealth Heads of Government summits. The Singapore and Harare Declarations of 1971 and 1991 respectively established the basic principles governing the activities of the organisation and their member States, namely democracy, the rule of law, respect for human rights and sustainable development. There is no formal constitution and most business in the field of international relations is carried out at biennial Heads of Government meetings. These summits have adopted a series of declaration such as the 1977 Gleneagles Agreement to prevent sporting contacts with South Africa so long as that country continued with its apartheid policies. Thus though it has an active and permanent Secretariat; it does not have any permanent executive or plenary organs. It is doubtful whether the presence of a permanent Secretariat, by itself, is sufficient to meet one of the criteria of personality, though in the UN, for instance, the Secretariat is recognised as one of the 'principal organs' of the UN[63] .

Constitutional Principles of the Commonwealth

According to the historical dimension, it is important to recall that the Commonwealth's foundations rest upon an imperial or State-like-authority structure that has gradually been transformed into an association of more than fifty sovereign states with a political dimension; while the Commonwealth is currently based on the construction of a vast network of inter-state relations. This affords it a number of principles that are considered to be constitutional, since they stem from the rules, such as the Balfour Declaration, the Statute of Westminster or London Declaration, that are recognized by its members as constitutive of the Commonwealth. These principles have been unanimously accepted by its members and currently give meaning to everything this structure represents. Wheare[64] recognises them as the fundamental principles of the organisation.

1– EQUALITY: "Equality of status", said the Imperial Conference of 1926, "so far as Britain and the Dominions are concerned, is then the root principle governing our Inter-Imperial Relations"[65]. According to Wheare[66], although "Dominions" and "Inter- Imperial may now be dated words, the principle of equality of status remains as an essential characteristic of Members of the Commonwealth. Equality has to be understood as equality of status, not equality of stature. Members differ in power and potential. Equality means also no subordination. Members are "in no way subordinate one to another in any aspect of their domestic or external affairs". It means no dependence. At first, Members were so reluctant to use the word "independence". It was not until twenty years after the declaration of equality of status in 1926 that "independence" was officially used.

The application of the principle of equality to Commonwealth countries in regard to their relations with other states has two aspects. It requires the renunciation by the United Kingdom of its right to conduct the external relations of a Commonwealth country and it requires also the recognition by foreign countries of the right of the Commonwealth country to conduct its own external relations[67]. It involves, therefore, questions of international law and relations.

A non-self-governing Commonwealth country has its relations with other states conducted on its behalf by the Queen acting upon the advice of her Majesty´s government in the United

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November 2010).

[63] Art. 7(1), United Nations, "Charter of the United Nations", San Francisco, 26 of June 1945.

[64] WHEARE, K., *The Constitutional Structure of the Commonwealth*, Oxford, Clarendon Press, 1960.

[65] Cmd. 2768, p.15.

[66] WHEARE, K., *The Constitutional Structure of the Commonwealth*, op. cit., p.76.

[67] SACK, A. N., "Treaty Relations of the British Commonwealth of Nations by Robert B. Stewart", *University of Pennsylvania Law Review and American Law Register*, Vol. 88, 1940, Num. 5., pp. 637-640.

Kingdom. The Queen appoints and receives diplomatic representatives, appoints plenipotentiaries for the conduct of negotiations, and ratifies treaties. The documents which authorise these actions all require the participation of a minister of the United Kingdom if they are to be of legal effect.

Moreover, concerning those Members of the Commonwealth of which the Queen is the head of the state, the conduct of external relations is carried through by instruments issued on the authority of or in the name of the Queen or her representative in the Member concerned and upon the advice of her ministers in that Member. However, in Holland's[68] opinion, today there is no sense that, say, Britain, Canada, New Zealand or Australia 'share' the same foreign policy, and that recognition has gone parallel with the overall reduction of the role of monarchy. The current Queen of the United Kingdom happens also to be Queen of Australia and Canada, but it is accepted that these roles on her part are wholly separate and distinct from each other. Finally, the Members of the Commonwealth of which the Queen is not the Head of the state do not conduct their external affairs through the Queen, but through their own head of state.

2. – AUTONOMY: "They are autonomous communities", this is the way in which the founder Members of the Commonwealth described themselves in the report of the Imperial Conference of 1926. Wheare explains that the very essence of autonomy is the capacity to adopt and adapt your own constitution, regulating and amending the framework of your government as you think necessary.

The principle of Autonomy, which has to be granted by the parliament of the United Kingdom, a previous step before reaching the status of independence. That is, once the prospect of independence rises, the communities concerned firstly they gain autonomy. That is, they must consider carefully what form of government they wish to live under, what checks or safeguards, if any, they wish to impose upon their political institutions, and in particular upon their parliaments.

In short, this principle allows enjoying a system of government which is no way subordinate to the government of the United Kingdom.

3. – AUTOCHTONY: for some of the members of the Commonwealth is not enough to have autonomy, they wish to be able to say that their constitution has force of law and, if necessary, of supreme law within their territory through its own native authority and not because it was enacted or authorised by the parliament of the United Kingdom. So, they assert not the principle of autonomy only, they assert also a principle of something stronger, self-sufficiency or a principle of constitutional autochthony.

The working out of these ideas produced some radical changes in the constitutional structure of the Commonwealth. Thus, when the constitution for the Irish Free State came to be drafted in Dublin in 1922[69] the principles which its founders asserted, though rejected by other Members of the Commonwealth at the time, came to have a strong influence on the course of the development of the constitutional structure of the Commonwealth, particularly after 1945. As Delany[70] explains, the Irishmen who framed the constitution had the belief that they were acting on behalf of the people of an independent republic and that the constitution which they

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[68] Professor Holland has been for several years Professor of Imperial and Commonwealth History, Institute of Commonwealth Studies at the University of London.

[69] The Republic of Ireland, the successor to the Irish Free State, ceased to be a member of the Commonwealth in 1949.

[70] DELANY, H., "The Constitution of Ireland: Its Origin and Development", *The University of Toronto Law Journal*, Vol. 12, 1957, Num. 1, pp. 1-26.

drew up obtained force of law through the approval of the representatives of those people. They described themselves as the Third Dáil Eirann. This view is expressed in the preamble tthe Constitution of the Irish Free State (Saorsat Eireann) Act, on 25 October 1922, and referred to as No 1 of 1922.[71]

However, the view of the government and parliament of the United Kingdom was that the power to establish the Irish Free State and to give it a constitution with force of law lay with the parliament of the UK alone. They did not recognise Ireland as an independent country but as a part of the United Kingdom whose parliament alone could grant self-government.

4. - CO-OPERATION: the members of the Commonwealth declared in the Report of the Imperial Conference in 1926 that "free co-operation is its instrument". Wheare explains that this statement is true today as it was in 1926. However, co-operation is a vague concept.

It is customary, in the discussions of the Commonwealth affairs, to use along with it "communication" and "consultation"[72]. About the meaning of these words, Wheare points out that "co-operate" is the widest concept, it means working or acting together. In the case of the Members of the Commonwealth this co-operation is usually thought of as a voluntary co-operation. However, acting or working together can occur at various stages. It is possible to agree that you will work together to the extent of exchanging information which each other on matters of common concern. This may well be described as "communication". Or you may go further than this an agree not merely to tell each other what you know and what you are doing or proposing to do but also to ask each other´s opinion about it. This may well be described as "consultation". It is clear that "consultation" involves some degree of "communication", but that communication may well occur without consultation following upon it. Finally there may be an agreement to go further than the exchange of information and consultation about it; it may be agreed that the parties may take action in common. It is always implied in this that the parties have voluntarily agreed to administer or negotiate together and that they are free at any time to withdraw and that they are not bound by the outcome of their co-operative action any further than they have agreed in advance to be bound. So, in Wheare´s opinion, co-operation may then be used to cover a wide range of action taken together by the parties concerned. Communication and consultation are examples of co-operation; they are not different from it. So, in this dissertation co-operation will be used to cover all examples of working together by Members of the Commonwealth, including especially communication and consultation. So, when the Members of the Commonwealth in 1926 chose free co-operation as their instrument, they were rejecting two methods of achieving co-ordination or common action which were conceivable. Neither alternative was acceptable, for it conflicted with the decision of determination of each Member to be independent and sovereign and to carry out its decision through its own government and parliament.

Another issue which is important to analyse is whether there is an obligation to co-operate between members of the Commonwealth, and if that obligation does exist, how deep it is. If we start with communication or the exchange of information, it was laid down in 1926 that members of the Commonwealth would exchange information with each other on any matter of common concern. And, secondly, it was agreed that Members would consult each other on matters of common concern, and that each Member had a right to be consulted. Specific

[71] The preamble runs as follows, "Dáil Eireann sitting as a Constituent Assembly in this Provisional Parliament, acknowledging that all lawful authority comes from God to the people and in confidence that the National life and unity of Ireland shall thus be resorted, hereby proclaims the establishment of the Irish Free State".

[72] See, HARVEY, H.J., *Consultation and Co-operation in the British Commonwealth: A Handbook on the Methods and Practice of Communication and Consultation Between the Members of the British Commonwealth of Nations*, Oxford, Oxford University Press, 1952, p. 257.

reference was made to certain spheres in which communication or consultation would be necessary. For instance, in 1930 the Imperial Conference discussed the need for uniformity in regard to such matters as merchant shipping or nationality.

In the field of foreign affairs, similarly, the obligation to communicate and consult was accepted[73]. One example of communication and consultation in the field of foreign affairs was the United Kingdom decision of joining the European Communities. The UK communicated and consultated all members of the Commonwealth.

Moreover, the Members of the Commonwealth resolved that no alteration should be made in the law without the assent of the parliaments of all the members. However, in this case, it is to be noted that this was a declaration established in the Preamble to the Statute of Westminster, so it was not a legal obligation. Thus, it does not prevent a Member of the Commonwealth from altering the law on these matters and any such alteration would not fail to be of full legal effect because the assent of other parliaments had not been obtained. This, however, is just one illustration of the basis upon which the obligation to co-operate in the Commonwealth exists, although, it is voluntary, it is not legally required or enforceable, it is a convention to co-operate to the extent and by the methods which each Member has voluntarily accepted for itself.

In short, the principle of co-operation in the Commonwealth involves the **obligation to communicate and consult, but there is no obligation beyond that, so there is no obligation to agree, or to refrain from action if others disagree and there is no veto**.

Hence, there is communication and consultation between governments in the Commonwealth, developed by:

- ✓ The departments of external affairs in each of the overseas Members.
- ✓ A second method of communication and consultation is through the High Commissioners, the representatives in each Commonwealth Member of the other Commonwealth Members.
- ✓ In addition to communication and consultation through these permanent institutions, there is the contact between ministers including Prime Ministers, when they visit other Commonwealth Members. These are frequently held and discussions range from one or two specific topics to a wide variety of general problems. The meetings of Prime Ministers, **which have replaced what was called the Imperial Conference, occur at irregular intervals**.
- ✓ Moreover, there are ministers meetings and specialised conferences occur frequently.

Finally, it is extremely hard to assess how far the conventions of co-operation which are reaffirmed in successive meetings of Commonwealth Prime Ministers are obeyed in practice. The extension of the membership of the Commonwealth to Asian and African nations, so that

[73] "It was agreed in 1923, said the Report of 1926, that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments and should take steps to inform Governments likely to be interested of its intention. This rule should be understood as applying to any negotiations which any Government intends to conduct, so as to leave it to the other Governments to say whether they are likely to be interested".
UK Government, "Imperial Conference 1926: Report", UK Government, 1930, Cmd. 2768, p.22 and Cmd. 3717, p.28. Malta.

the Commonwealth is no longer British in any real sense but predominantly an Afro-Asian Commonwealth. So, it is clear than in a world-wide Commonwealth with Members whose vital interests are affected by different forces in different parts of the world and whose policies consequently are extremely difficult to harmonize, co-operation must be expected to be difficult and to get more difficult before it gets easier.

Commonwealth's Policies: Areas of Activity

Commonwealth deals with the following areas[74]:

- Democracy and Consensus Building: the main objective of this activity area is to build stronger democratic institutions and processes across the Commonwealth. Amitav Banerji, Director of Political Affairs, Commonwealth Secretariat, notes that a "dozen Commonwealth countries have moved from one-party or military rule, to multi-party democracy since 1991. Since 1990, Commonwealth has deployed 87 election observation missions to 29 member countries."[75] In order to achieve the mentioned objective, the organisation advocates on its fundamental values as well as on a practical action, through the promotion of and support for democracy in member countries to make them a reality on the ground. The basis of Commonwealth's engagement on the protection and promotion of democracy is to ensure that it is based on substance, not merely the adoption of democratic forms or a facade democracy. Thus, Commonwealth's work in this area includes managing electoral bodies and parliaments, to provide training and technical assistance, to send teams of observers to countries' elections following an invitation and to give confidence in and to boost the integrity of elections as well as democratic institutions and processes.

- Economic Development: the association aims to strengthen policies and systems that support economic growth in Commonwealth's member countries. Commonwealth's work is mandated by Commonwealth Heads of Governments and Ministerial meetings, which set the broad priorities. The organisation's tasks in this area, include to help Commonwealth countries take advantage of opportunities for economic growth, to improve their ability to manage their economic development in the long-term, to respond to demand for assistance in the mandated areas, to provide cost-effective assistance, in this line Commonwealth's role as an honest broker in delivering policy analysis and advice are highly valued across the Commonwealth, particularly by small states and least developed countries. The organisation has a track record of brokering policy and negotiating positions among Commonwealth countries on international economic and financial issues. For instance promoting successive stages of debt relief in the international system.

- Education: the main goal of this area of activity is to achieve a world in which every individual has access to high quality universal education regardless of their gender, age, socio-economic status, or ethnicity. In this sense, the Commonwealth Ministers of Education and Commonwealth Heads of Government (CMAG) mandate the work of the association in this area. This work focuses on the EFA (Education for All)[76] Six action areas which are:

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[74] The Commonwealth, "What we do", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/>, (accessed: 3 March2010).

[75] BANERJI, A., "Amitav Banerji's Speech: 'The Commonwealth: A Force for Democracy'", at Cambridge University, Commonwealth Society, 2 March 2010, pp. 1-3.

[76] EFA is an international initiative first launched in Jomtien, Thailand, in 1990 to bring the benefits of education to "every citizen in every society." In order to realise this aim, a broad coalition of national governments, civil society groups, and development agencies such as UNESCO and the World Bank Committeed to achieving six specific education goals.

i. To accelerate the achievement of Universal Primary Education;
ii. Elimination of gender disparities in education;
iii. Improvement of quality in education;
iv. Use of Distance Learning to overcome barriers;
v. Support to education in difficult circumstances; and
vi. The mitigation of the impact of HIV & AIDS on education.

Commonwealth's education action focus specially on disadvantaged groups, such as girls, children in rural and urban poor areas, the disabled, those that are nomadic and those who may be learning in environments suffering conflicts, natural disasters and other emergencies.

- Environmentally Sustainable Development: the Commonwealth's objective is to promote and support economic and social development within Commonwealth countries, especially the small and least developed. In doing this Commonwealth's priority is to ensure that all development is environmentally sustainable and that the benefits of growth are distributed equitably. So, the organisation helps these countries to: prepare for and manage risks, such as natural disasters, to sustainably utilise their natural resources and to develop their ability to deal with threats posed by environmental shocks such as climate change. Partners on this activity include: the Caribbean Community Climate Change Centre; University of Guyana; the United Nations Development Programme; and the United Nations Environment Programme.

- Gender: the objective is to ensure that gender equality and gender mainstreaming become legitimate, non-controversial and integral parts of the structure, systems, laws and culture of governments. Since 1995 the Commonwealth has led the way in pioneering analysis, influencing policy work and developing frameworks which promote gender equality and mainstreaming. The organisation has developed a 'Gender Management System' (GMS) which provides a practical framework for applying gender analysis to sectors such as finance, education, trade and industry as well as handling cross-cutting development issues such as poverty, the Millennium Development Goals, and HIV/AIDS.

The Commonwealth has developed a gender equality programme which is defined by the Commonwealth Plan of Action for Gender Equality 2005–2015 (PoA). This programme provides the framework within which the Commonwealth will advance its commitment to gender equality and equity. Based on current and emerging challenges, the Plan of Action identifies four critical areas:

- Gender, democracy, peace and conflict.
- Gender, human rights and law.
- Gender, poverty eradication and economic empowerment.
- Gender and HIV/AIDS.

-Good offices for peace: I would like to remark Commonwealth's motto on this issue: "**Engagement, not interference**". The Commonwealth's objective is to prevent and resolve conflict, while also strengthening the ability of member countries to promote our fundamental values. These Commonwealth values, laid down in the 1971 Declaration of Commonwealth Principles and the 1991 Harare Declaration, include equal rights, independence of the judiciary, freedom of expression and just and honest government.

'Good Offices' work in Commonwealth countries always follows an invitation from a member government. At their meeting in Australia in 2002, Commonwealth Heads of Government agreed on a general procedure to deal with situations where a complete derogation of democracy and constitutional rule by military intervention or otherwise had not occurred, but where serious or persistent violations of the Harare Principles had taken place.

Where a member government or the Commonwealth Chairperson-in-Office is concerned that such a situation has arisen, or may be about to arise, these concerns are generally brought to the attention of the Secretary-General highlighting if action may be required. The Secretary-General would then share any such concerns with the country in which problems have been reported, and allow the government an opportunity to respond to the issues raised. Should the Secretary-General decide it necessary, she/he would then apply his/her 'Good Offices', in collaboration with the Commonwealth Chairperson-in-Office, where warranted, to encourage the country concerned to return to full compliance with the Harare Principles. If such Good Offices engagements do not resolve the dispute, then the situation in question may be referred to the Commonwealth Ministerial Action Group

- Health: the main objective on this field is to strengthen the delivery of health care in Commonwealth countries by supporting the development and implementation of national and regional policies and strategies. The Commonwealth helps to build consensus between the developed and developing countries that make up the Commonwealth and to collect and articulate the issues of relevance to small states enabling them to play an active role in the global debate on health.

- The Commonwealth implements programmes in five areas:

- e-Health[77],
- Health worker migration,
- HIV/AIDS,
- Maternal and child health,
- Non-communicable diseases.

-Human development: Commonwealth's human development work focuses on education, gender, health and youth which all of them have been already explained.

- Human Rights: Commonwealth's objective on this issue is to increase awareness of and respect for human rights in the Commonwealth. Commonwealth's work on Human Rights is focused on:

- Assisting in the adoption of international standards on human rights and the implementation of major international human rights instruments.

- Capacity building for the preparation of reports and effective participation in the Universal Periodic Review process.

- Enhancing capacity and strengthening of police and national human rights institutions.

[77] Commonwealth defines e-health as the use of ICTs, locally and at a distance, to strengthen health systems and address public health priorities.

- Mainstreaming human rights into the work of the Secretariat across other units and divisions.

- Developing documentation on best practices and manuals for training purposes.

- Rule of Law: Commonwealth's objective is to support Commonwealth countries in upholding the rule of law. In this line, the Commonwealth helps its countries to develop legal, judicial and constitutional reform and strengthen both legal and regulatory frameworks which protect and promote the rule of law. It also assists in the negotiation of international and regional agreements which impact on specific areas including human and economic and development.

- Public Sector Development: Commonwealth's work in public sector development aims to help governments improve their ability to run public services and work with public institutions to strengthen their delivery of key responsibilities. In this line, many of the Commonwealth member countries are grappling with weak public service institutions as well as human resource and knowledge constraints limiting their capacity to sustain development, reduce poverty and achieve the Millennium Development Goals[78]. In order to achieve these challenges, the Commonwealth's helps advancing good governance and building institutional capacity, assists governments to enhance the ability of the Public Service to function effectively and efficiently and improve the quality of their services delivered to the general population.

- Sport: is a key part of the Commonwealth's identity. Commonwealth works to extend the benefits of physical activity and the importance of sport as an effective instrument for social and economic development.

- Youth: Commonwealth works in order to give young people an opportunity, or access to achieve their aims and ambitions. For over 30 years the Commonwealth Youth Programme (CYP) has worked to champion the rights of young people, ensuring their engagement in the development process so they play an active part in reversing marginalisation, poverty, illiteracy, unemployment and disease. Commonwealth push for young people to be represented at all levels of decision making, including a seat and voice at the table when Commonwealth Ministers for Youth Affairs meet.

The Commonwealth's way of working[79]

As discussed in the section on the legal analysis, the Commonwealth is an organisation based upon the cooperation of its members. In this connection, its decisions, which are adopted by consensus, are not legally binding. The internal workings are of a flexible nature, based on the political will of its members. The working method used meets the objective of facilitating relations between its members, provides instruments to improve any aspects for which the State in question believes need improvement. Thus, these are generally political recommendations or guidelines which, although not compulsory, involve other commitments that are political or even ethical. As a result of this flexibility, the Commonwealth, mainly through its Secretariat, works in three basic ways:

[78]The Millennium Development Goals are a set of targets to reduce global poverty and improve living standards by 2015.
[79] The Commonwealth, "Policy Development", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/Internal/190945/191153/policy_development/>, (accessed:26/11/2012)

- **Policy development**: the Commonwealth Heads of Government Meetings as well as ministerial meetings are effective ways in which members collectively seek solutions and develop policies on issues of global importance. The Secretariat then implements programmes which respond to the requests of leaders and ministers.

- **Technical assistance**: Commonwealth's technical assistance work ranges from sending both long and short term experts to work in governments and national or regional organisations to setting up projects and programmes which boost the ability of a country or region in a particular field, from trade to education. In 1971, was established the Commonwealth Fund for Technical Co-operation (CFTC) which is the principal means for providing technical assistance to Commonwealth countries. It is a mutual and voluntary fund and members contribute resources according to their ability and draw on them according to their needs.

- **Advisory services**: the organisation provides expert advice to member governments as well as national and regional organisations in a broad range of areas where they face capacity constraints and request our assistance.

To conclude this section, we will analyse one of the Commonwealth's more intriguing aspects that few organisations provide for, which is the possibility of suspending and, in the most serious cases, expelling any of its members, in the event of a systematic and generalized violation of the organisation's core values. The manner in which this possibility is formulated entails a number of questions that are difficult to understand. Given that the decisions made in Commonwealth do not involve obligations per se. These decisions are political in nature, and much of the doctrine, as well as the staff that work at the Secretariat, whom I interviewed on many occasions, insist on the voluntary character thereof. However to my mind, it seems difficult to decide the suspension or even the expulsion of a member in the event of a serious and repeated breach if the Commonwealth and its member states cannot adopt binding obligations. So I wonder how it is possible to expel a member that has not fulfilled with a non binding decision.

The decision to suspend and ultimately expel a member is made unanimously by the other members. Such as decision might prove the existence of a number of binding commitments, which in the case of a breach is penalised by the suspension or expulsion. Indeed, if these commitments adopted by its members were not binding, it would prove difficult, in the case of non compliance, to punish an offending member with suspension or expulsion from the organisation. However, doubts arise when we examine the nature of the fulfilment of obligations, for it is unclear whether said obligations are of a legal nature or political commitments, as the line separating the political from the legal component seems rather vague.

Before examining the nature of this type of decision, we should distinguish between three different categories: withdrawal, suspension and expulsion. Regarding the termination of membership of the Commonwealth, as membership status is purely a voluntary status, member states can choose at any time to leave the organisation. The situation varies when a member breaches the Commonwealth's fundamental values, mainly, but not exclusively, codified in the Harare Declaration of 1991. Then, the measures that the organisation will adopt are listed on the article 3 of the Millbrook Commonwealth Action Programme on the Harare Declaration, adopted in 1995. It provides a wide range of measures ranging from the public condemnation of the offending member state till its suspension. This will depend on the nature of the infringement as well as their responsiveness and compliance with the principle of good faith. If the member is suspended, there are two kinds of suspension: it can be

suspended from the Councils of the Commonwealth or be fully suspended from the Commonwealth. In addition to this, only for the most serious breaches, members can be expelled from the organisation. If a member is suspended from the Councils, this excludes government representatives attending intergovernmental Commonwealth meetings or activities and prohibits any new technical assistance being provided. However, during this time a country may receive support directed to the restoration of democracy. Although suspension does restrict the Commonwealth working with a member government, the action is not meant to punish the country's citizens. That is why ongoing projects and activities in a member country can be completed. A suspension from the Councils also acts as a public declaration from the Commonwealth to the government in question and the international community, condemning the abuses of the Commonwealth's fundamental political values. There are currently no countries suspended only from the Councils of the Commonwealth.

Fully suspension of a country means, a part from the application of the above measures, the suspension of all emblematic representation of the country at the Commonwealth Secretariat, Commonwealth meetings and all other official Commonwealth events will cease. Commonwealth member states are encouraged to take appropriate bilateral measures, such as limiting government-to-government contacts in order to further reinforce the need for change. Fiji Islands is currently fully suspended from the Commonwealth. (The Commonwealth Ministerial Action Group has the authority to suspend a member state either from the Councils of the Commonwealth or fully.)

Regarding expulsion, although there is no reference in this regard and the mentioned measure has never been taken, according to Commonwealth sources, continued breaches of the political values can lead to expulsion from the Commonwealth.

On a case by case basis, we can highlight the following examples, the Commonwealth's dealings with South Africa and its attempts to end the system are good examples of one of the more significant Commonwealth actions of this type. It first agreed a package of sanctions against South Africa in August 1986, but without that agreement forming a treaty or resisting on a mandatory treaty power, the sanctions, as with all Commonwealth 'measures', were not binding. They were 'lifted' at the 28th biennial Commonwealth Heads of Government meeting in October 1991 when the process of reform in South Africa seemed to be irrevocably underway[80]. The Commonwealth has no power to impose sanctions on a member State. In White's opinion, the fact that the Commonwealth is recommending their imposition is not sufficient by itself to explain the legal basis of the adoption of sanctions y member States. The legal basis rests on each Member State's right to take non-forcible countermeasures against a State in breach of a fundamental principle of international law.[81] The Commonwealth clearly lacks a legal basis to take non-forcible action per se; it is dependent on the member States each having the right. Generally, a State's right to take non-forcible countermeasures only arises if it is the victim of a breach of international law. Non-victim States only have a right to take such measures in the case of breaches of fundamental international norms such as those prohibiting massive human rights violations, or those prohibiting non-defensive uses of force. Therefore, in Millbank Declaration of 1995, the Commonwealth stated that it would take actions such as suspension or restriction of trade in the case of an 'unconstitutional overthrow of a democratically elected government'. This power must rest on the assumption that denial of democracy, like other significant human right abuses, gives any State the right to take non-

[80] WHITE, N. D., *The law of international organizations*, Manchester, Manchester University Press, 2005, p.63.
[81] WHITE, N.D., ABASS A., *Countermeasures and Sanctions*, in EVANS M. (ed.), *International Law*, Oxford, Oxford University Press, 2003, pp.509- 532.

forcible countermeasures (including the suspension of diplomatic relations) on an individual basis[82].

It could be argued that when the Commonwealth 'suspends' a member State, as it did for Nigeria in 1995 for human rights abuses, Pakistan in 1999 for the overthrow of democracy, and Zimbabwe in 2002 for pre-election violence and intimidation, it is a collective effect of the members' Individual actions in suspending certain diplomatic relations with the target State that is the basis of this action. In effect, if this view is taken, it is a collective decision to exercise certain rights existing in international law. A similar problem faced the EU (with doubts about its personality at that time) when it 'suspended' Austria in 2000 following elections when the extreme right –wing Freedom Party was included in the government. It was unclear whether the EU was taking this action as an international organisation or, more likely, that it was the product of certain synchronised acts of non-recognition by EU member States.[83]

On the other hand, White[84] explains that while the imposition of more coercive measures is a right possessed by only some organisations, it could be argued that the suspension of members is an institutional, internal matter of membership, which can be exercised by most organisations, even one lacking personality. One can contrast the Commonwealth's purely institutional response of suspending Zimbabwe from membership in 2002 with the EU's response to the same situation, which was to impose a travel ban, freeze financial assets, and impose an arm embargo.

3. LEGAL APPROACH: THE CONTROVERSIAL LEGAL NATURE OF THE COMMONWEALTH

This section focuses on a long-standing legal controversy of the legal nature of the Commonwealth, which Sir William Dale[85] already addressed, but which I regard has not been satisfactorily answered.

Throughout the different approaches, we have explained that the Commonwealth is a chameleonic model that has continuously reinvented itself, in order to successfully face the challenges of each era. Hence, the flexibility of its structure and its adaptive capacity are key to its survival. However, its legal nature remains vague, imprecise and controversial. I aim to demonstrate that this vagueness is hardly to its benefit in the age of globalisation and of interconnectedness in which we find ourselves, for it prevents the Commonwealth from playing an active role as a genuine subject of international law, rather than a mere actor. In this regard, the report by the Commonwealth Eminent Group,[86] which I mentioned above sets out this idea in the same way and recommends that the Commonwealth should clarify its legal nature.

> **Recommendation 64**: The Secretary-General should be mandated to consult with member governments on the desirability of establishing a legal personality for the Commonwealth as an intergovernmental organisation, so that its members may have greater ownership of the organisation, including appropriate rights and responsibilities towards it.

[82] Ibidem.

[83] HAPPOLD, M., "'Fourteen against One: the EU Member States' Response to Freedom Party Participation in the Austrian Government", *The International and Comparative Law Quarterly*, 2000, Num. 49, p. 959.

[84] WHITE, N. D., *The law of international organizations*, op. cit., p.65.

[85] DALE, W., "Is the Commonwealth an International Organisation?", op. cit., pp. 451-473.

[86] Commonwealth Eminent Group, "A Commonwealth of the People: Time for Urgent Reform", Report of the Eminent Persons Group, Commonwealth Heads of Government, Perth, October 2011.

In this regard, it seems no less paradoxical that it would not establish its legal nature, especially if we take into account the pragmatism and capacity of adaptation to which we refer, both of which are unmistakable features of said organisation, for historically the Commonwealth was a pragmatic response to the transition that the British Empire was experiencing. To my mind, the organisation is currently failing to adapt itself to the challenges of the present. It is in denial of the need to develop itself as a genuine subject of international law, therefore it is missing out on an opportunity to influence and interact on the international stage on an equal footing with other organisations that are subject to international law, implying that the decisions and responses that it makes are far less satisfactory than they might be, and, naturally, this lack of legal definition means a huge loss of influence in international relations in various areas, such as trade and humanitarian aid.

As we have observed, the Commonwealth currently finds itself immersed in the process of reflection. We have referred to the task of the Eminent Persons Group, which was commissioned to examine options to reform the Commonwealth to meet today's new challenges, and whose findings were published in its report in 2009.

Before entering into the legal analysis of the Commonwealth, I wish to briefly draw attention to the fact that the organisation's lack of definition is a question that, from the legal standpoint, is easy to solve, given that it rests on the internal decision of its own members. However, it is also a political question and, as such, is difficult to solve, as it's depends on the political will of all its members.

After presenting this legal aspect and the initial obstacles involved in an analysis of this type, we should specify the controversial questions and those related to the lack of definition regarding the legal nature of the Commonwealth which will now address. First, I will return to the long-standing and entirely unresolved controversy referring to whether or not the Commonwealth can be classified as an International organisation or a mere an internationalised structure, and the second question, related to the first, regarding its legal personality or legal capacity.

In response to the first of the two questions, traditionally two forms have been used to define the Commonwealth. According to Muller[87], the Commonwealth is not considered to be an international organisation, but more of an intergovernmental meeting of states. Starke, taking a more radical position, supports the view that it is not an organisation[88]. In his view, the Commonwealth is an informal grouping of states with some common historical and cultural ties, primarily used for consultation among its members. White[89] explains that the Commonwealth is a good example of a body which, though clearly an organisation, does not appear to possess the level of autonomy characteristic of international legal persons[90]. Nevertheless, it appears to take action on the international stage, although in legal terms, this is better characterised as the co-ordination of member States actions. Schermers and Blokker[91] note that different views have been defended on whether the Commonwealth is an international organisation, but in their opinion it is.

Referring to the Commonwealth as a "political network", "voluntary association of states" or even "informal grouping of states", instead of an "international organisation", suggests clear

[87] MULLER, A. S., *International organisations and their host States*, Leiden, Martinus Nijhoff Publishers, 1995, p. 217.
[88] STARKE J. G., *Introduction to International Law*, London, Butterworth-Heinemann, 1989, p.32.
[89] WHITE, N. D., *The law of international organizations*, op. cit., p.68.
[90] DALE, W., "Is the Commonwealth an International Organisation?", op. cit., p.460.
[91] SCHEMERS, H.G., BLOKKER, M. N., *International Institutional Law*, Leiden, Martinus Nijhoff Publishers, 1997, p.349.

legal implications when assessing its international subjectivity. Generally speaking, the minority of people who currently reject its international subjectivity base their justification, erroneously to my mind, on criteria of flexibility and informality, which are consistent with the philosophy that governs the Commonwealth. I say erroneously because its status as an international organisation is not at odds with being a flexible association of states, which is governed by the rule of unanimity. In fact, there are many international organisations that have these characteristics, such as the Council of Europe, which is based on cooperation and the rule unanimity. Indeed, in the various meetings I had, between 2009 and 2012, with a number of members of the Commonwealth Secretariat, they all agreed on its flexible and informal spirit, stressing that it was a group of states which voluntarily establish relations on a cooperative basis, with working mechanisms quite unlike, for example, those that the European Union could have. The answer to these explanations is simple: not all international organisations are analogous to the European Union; some have models in which no powers are ceded to the benefit of the organisation.

Let us now delve deeper into the concept of international organisation. Schermers and Boker[92] explain that while the term international organisation was probably used for the first time in the 19th century[93], it is only since the Second World War that the term "intergovernmental organisation began to receive wide acceptance". These authors point out that there is no universally accepted definition of what constitutes an international organisation. Nevertheless, General agreement seems to exist regarding most of the defining elements of public international organisations, and it is precisely in these characteristics that we seek to define said concept. Hence, for the purposes of this thesis, we will use the classical definition of international organisation in order to study its characteristics. Thus, we will understand it as **a form of cooperation developed by an association of sovereign states, founded on an international agreement that creates, at least, one permanent organ with a will of its own, established under international law.**

a) First element: Voluntary association of states; there is no doubt that one of the ideas insisted upon in the literature, by academics, and by certain Commonwealth Secretariat personnel whom I interviewed, is the Commonwealth is currently a voluntary association of 53 sovereign states. The former imperial framework has completely disappeared, and the notion that it is a club of former British colonies is entirely false. Indeed, the personnel to whom I referred are in full agreement in recognising that United Kingdom is no longer central to the Commonwealth. Its very history, as explained in previous pages, indicates that the British lost interest in the Commonwealth when it became a group of multi-racial states, in which Britain no longer held a central role. In this context, the Commonwealth Secretariat personnel I interviewed likewise insist that all the states, irrespective of their size and GDP, carry the same weight, namely, each one has equal voting rights.

> Thus it is demonstrated that the Heads of Government of the Commonwealth: "We reaffirm our belief in the Commonwealth as a voluntary association of sovereign independent states whose pursuit of common principles continues to influence international society to the benefit of all[94]."

b) Second element: Regarding form of cooperation, it is also clear that the 53 states that make up the Commonwealth maintain relations on a cooperative basis. The decisions they make are not legally binding and are based on the rule unanimity, exactly as other international

[92] Ibidem.

[93] By the Scottish jurist James Lorimer. See POTTER, P. B., "Origin of the term international organisation", *American Journal of International Law*, Vol. 39, 1945, p. 804.

[94] Report of the Commonwealth Eminent Group of Persons, Port-of-Spain, November 2009.

organisations operate such as the Council of Europe. The member states of the Commonwealth cooperate towards the fulfilment of objectives they share, which they undertake though the articulation of series of polices that are developed in different areas, which we referred in the political approach and which broadly speaking are: Democracy and Consensus Building, Economic Development, Education, Environmentally Sustainable Development, Gender, Good offices for peace, Health, Human Development, Human Rights, the Rule of Law, Sport and Youth.

> This is borne out in the report by the Commonwealth Eminent Persons Group: "for 62 years, the member states of the Commonwealth have cooperated in pursuit of their collective goals. Overall, they have done so with considerable success. It is adherence to these goals, and the collective actions of Commonwealth member states to demonstrate disapproval of their peers who deviate from Commonwealth values, that have distinguished the Commonwealth in the world[95]".

c) Third element: set by international agreement: this element is more difficult to corroborate. International organisations usually come into being by an international agreement. The most usual form of the agreement creating an organisation is a treaty; the vast majority of international organisations are based on a multilateral treaty. But these agreements can also be expressed in other ways. The main reason why an international agreement is needed is to establish the separate legal personality of the new organisation, and thus distinguish it from mere organs of organisations. This separate legal identity generally gives organisations a degree of independence that organs usually lack. Moreover, an international agreement is important because it contains a mutual commitment by the participating states, requiring a certain amount of cooperation within, and with the organisation.

This is a difficult element to corroborate because the Commonwealth has no written constitution or founding treaty and therefore Peter Slinn[96] explains that the Commonwealth may be seen as an example of a 'system of normative conduct' rather than a rules-based institution. Other authors, such as Dale or Schermers and Blokker, take the view that a written constitution is not a necessary requirement and that the agreement to establish an organisation may also be expressed in other ways, such as, in the case of the Commonwealth, the Declaration of Commonwealth Principles. In agreement with the latter view, I consider that the adoption of a written founding treaty is not the only possibility of establishing an international organisation; there are other types of instruments and acts of a constituent nature. In fact, in the case of the states (we should remember that these together with international organisations are currently not the sole subjects to be recognised by International law) the written or codified Constitution is not one of the requirements that International law indicates as a basic element when considering a state as such. Hence, we observe how the United Kingdom, which is certainly a state, has no codified constitution in a single document, which is consistent with the tradition of common law, a system that is not clearly defined and is based chiefly on sources such as custom or court judgements. In this connection, Wheare[97], in his book entitled "The Constitutional Structure of the Commonwealth", wrote that the Constitution of the Commonwealth, as the British Constitution, has to be understood as the set of rules, understandings and practices by which the position and mutual relations of the countries, and, more particularly, the Members of the Commonwealth, are regulated and described. But in almost [all] other countries of the world, and certainly in all other Commonwealth countries, "constitution" means a specific legal

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[95] Ibidem.

[96] SLINN, P., *The Commonwealth and the Law* in MAYLL, J., *The Contemporary Commonwealth 1965-2009*, London, Routledge, 2009.,p.126.

[97] WHEARE, K., *The Constitutional Structure of the Commonwealth*, Oxford, Clarendon Press, 1960, p. 174.

document which contains a selection of the most important legal rules that govern the government and usually has some priority over other legal rules. Hence, the Commonwealth as the United Kingdom has no constitution in this sense.

> "The British constitution has evolved over many centuries. Unlike the constitutions of America, France and many Commonwealth countries, the British constitution has not been assembled at any time into a single, consolidated document. Instead it is made up of common law, statute law and convention.
>
> Although it does not have a single document codifying the way its political institutions function and setting out the basic rights and duties of its citizens, Britain does have certain important constitutional documents. These include the Magna Carta (1215) which protects the rights of the community against the Crown; the Bill of Rights (1689) which extended the powers of Parliament; and the Reform Act (1832) which reformed the system of parliamentary representation.
>
> Common law has never been precisely defined – it is deduced from custom or legal precedents and interpreted in court cases by judges. Conventions are rules and practices which are not legally enforceable, but which are regarded as indispensable to the working of the government. Many conventions are derived from the historical events through which the British system of government has evolved. One convention is that Government Ministers are responsible and can be held accountable for what happens in their departments.
>
> The flexibility of the British constitution helps to explain why it has developed so fully over the years. However, since Britain joined the European Community in 1973, the rulings of the European Court of Justice have increasingly determined and codified sections of British law in those areas covered by the various treaties to which Britain is a party. In the process, British constitutional and legal arrangements are begining to resemble those of Europe[98]".

We cannot ignore that the cornerstone of the Commonwealth was based on this philosophy unlike the conventions of continental law, and that the six Founding States, the United Kingdom, South Africa, Australia, New Zealand, the Republic of Ireland and Canada (except Quebec) are based on common law. In this respect, the previous text clearly applies to the case of the Commonwealth "although it does not have a single document (drafted in the traditional form) it does have certain important constitutional documents". Thus, Peaslee[99] considers that international organisations, there is usually, but not always, a "constitution" contained in a treaty or one or more less formal written agreements; where the purposes of the organisation are specified. For the most part, international organisations are constituted and ruled by international conventions (whether they are called treaties, agreements, charters or protocols), signed by duly authorised government representatives and subject to the constitutional processes of the respective member governments. However there are some exceptions to this practice; some of the organisations are governed by documents with less than the status of treaties, which have become effective through the enactment of the governing body of the organisation itself or through some similar procedure.[100] Brownlie and Dale explain that in these cases, there is no signed agreement that is binding on the members of the organisation but, in their opinion[101], there is no reason to deny them the status of international organisations. Amongst these exceptions was the Asian and Pacific Council

[98] British Embassy in Washington, "Does Britain have a written Constitution?", British Embassy in Washington, from: <http://ukinusa.fco.gov.uk/en/about-us/faqs/uk-government/written-constitution>, (accessed 17December 2012).
[99] PEASLEE, A.J., *International Governmental Organisations*, Leiden, Martinus Nijhoff Publishers, Vol. *Constitutional Documents*, 1979, p. 119.
[100] Ibidem.
[101] BROWNLIE, I., *Principles of International Law,* op. cit., p. 680.

(ASPAC) founded in 1966, which had as members Australia, New Zealand, Malaysia, China, Japan and others. Other examples of international organisations with no formal constitution are the Association of South-East Asian Nations (ASEAN) or the many subsidiary organs of the United Nations, established by resolution of either, and usually, the General Assembly or the Security Council.

We have stated that the Commonwealth has no traditional founding treaty, yet this does not mean that it lacks a series of rules of a constitutive or foundational nature. Indeed, as with the constitution of the United Kingdom, such rules are adopted in different regulatory acts and not in a single codified document. Accordingly, Dale notes that it lacks a signed and legally binding agreement of association. But that – which is lacking also in the case of a number of recognised international organisations- is made good by the politically and morally binding commitments embodied in the Declarations. In his opinion, the Declarations of London 1949, the Singapore Declaration 1971 and the Lusaka Declaration of 1979 have to be considered as "principal instruments constitutive of the Commonwealth association"[102], and he concludes that, if the Commonwealth lacks a single instrument labelled "Constitution", **the declarations, considered together provide the elements of a constitution.** In this sense, Dale in the middle of the eighties noted that **the Commonwealth countries are joined together by agreed terms of association**, the fundamentals of which are set out in the Declarations of London and Singapore. The Singapore Declaration, though not intended to bind the parties in law, constitutes a firm and unanimous commitment to abide by the principles, objectives, and lines of action stated; and, above all, to consult, discuss and co-operate. Behind the Commonwealth there is a shared political origin and history, under it a largely common legal substructure, and at the top stands a single Head.

At present, aside from the Declarations of London and Singapore, given the importance of their content, other declarations after the 1980s, when Dale wrote his paper/book?, are considered to form part of this constitutional bloc. The most relevant of them is the Harare Declaration of 1991, which encouraged the Heads of Government to work "with renewed vigour" on "the protection and promotion of the fundamental political values of the Commonwealth" and towards "democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government [103]"". In this sense, in the Fourth Report by the UK Foreign Affairs Committee on the role and future of the Commonwealth[104] , the members of the British Parliament stated:

> "The Commonwealth has been based, from the beginning in 1949, on the maintenance of fundamental values and principles. Since the 1949 Declaration the Commonwealth has regularly restated and refreshed those principles and values. Two documents have been especially important. In 1971, at the Singapore Heads of Government Meeting, the Declaration of Commonwealth Principles defined the voluntary character and consensual working methods of the Commonwealth, specifying its goals and objectives and The 1991 Harare Commonwealth Declaration which sought to apply those principles in the context of the end of the Cold War".

In this regard, in the Report of the Eminent Persons Group, the Heads of the Member States of Government stated that members are bound by the Commonwealth's fundamental values and principles, and that these are enshrined in a series of Declarations.

> "We reaffirm our strong and abiding commitment to the Commonwealth's fundamental values and principles". "We recall earlier statements through which the Commonwealth's values and

[102] DALE, W., *The Modern Commonwealth*, London, Butterworths, 1983, p. 214.
[103] Foreign Affairs Committee - Fourth Report: "The role and future of the Commonwealth", op. cit., p.113.
[104] Ibidem.

> principles have been defined and strengthened over the years, including the Singapore Declaration, the Harare Declaration, the Millbrook Action Programme, the Latimer House Principles and the Aberdeen Principles[105]".

In short, a written constitution embodied in a treaty or a less formal agreement is not essential to an international organisation. It will often be desirable, but it will not always be the natural foundation for the association. It is more essential that there should be an "organisation", that is, something organised with organs and a structure. This is what distinguishes international organisations from loose arrangements under a treaty. Then, we have a written agreement between States in its most solemn form, which may bind them to continuing, mutual obligations; but there will usually be not structure, no organs, in short, no "organisation[106]". However, both the Commonwealth Eminent Group and the British House of Commons recommend the adoption of a Charter that embodies the fundamental values thereof, although this does not imply that these key values might not be spread out in the different sources of which we have discussed.

> "We (The UK House of Commons) support the Eminent Persons Group's proposal for a Commonwealth Charter. However, the UK should only accept the Charter's final wording if it reflects the fundamental principles of the Commonwealth[107]".

> "We (the Commonwealth Eminent Persons Group) go one step further, mindful that in doing so, we propose building on foundations that you have laid in the evolution of the modern Commonwealth. We suggest that you consider the establishment of a Commonwealth Charter. Such a Charter would establish a Commonwealth "spirit" – one that is shared by the people of the Commonwealth and their governments, and that would institute firmly the concept of a Commonwealth whose collective purpose is driven by the aspirations of its people[108]".

d) Fourth element: the creation of at least one permanent organ with a will of its own. This organ should be formed by delegates of two or more states and should not be dependent on any particular state[109]. As Fawcett[110] notes international organisations have one or more organs, consultative, perhaps legislative, and executive, known by a variety of names; there is a bureau or secretariat. Further, some of them, set up as agencies, or other offshoots, are endowed with legal personality and enjoy privileges and immunities.

The Commonwealth has at least one permanent and independent body, the Commonwealth Secretariat, which falls under this definition, however it does not have a parliamentary assembly or court of justice similar to those of the European Union or the Council of Europe. Notwithstanding, we have already commented that there is no need to have these bodies in order for a structure to be considered an international organisation. We will examine this point in more depth in the section on the Commonwealth's bodies and organisations, in which we introduce and outline the organisational structure, yet for the moment we will say that there is a clearly-defined institutional structure, chiefly made up of the twice-yearly Heads of State Meeting (CHOGM), the Commonwealth Ministerial Action Group (CMAG), which meets annually, and the Commonwealth Secretariat, which is permanently constituted and is the most visible instrument of the Commonwealth.

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[105] Ibidem, p. 192, paragraph 1 and 4.
[106] DALE, W., *The Modern Commonwealth*, op. cit., p.216.
[107] Foreign Affairs Committee - Fourth Report: "The role and future of the Commonwealth", op. cit., p.114.
[108] The Commonwealth, "Report of the Commonwealth Eminent Group of Persons", Port-of-Spain, November 2009, p.124.
[109] SEYERSTED, F.,"International Personality of Intergovernmental Organisations", *Indian Journal of International Law*, 1964, Num. 4, pp. 233-269.
[110] FAWCETT, J. E.S., *The British Commonwealth in International Law*, London, Stevens & Sons, 1964., p.53.

It is also interesting to briefly consider three questions that are difficult to grasp, and that strengthen the sui generis nature of the Commonwealth, without implying that it should not be acknowledged as an international organisation.

1) **The double nature of the Commonwealth Secretariat**: the Secretariat was established in accordance with the memorandum of the Commonwealth Secretariat by the unanimous agreement of all Commonwealth Prime Ministers at the 1965 Commonwealth Prime Ministers Meeting. This is a permanent body whose tasks fall into three main categories: technical assistance, advisory services and policy development. It has a staff of 304 from 39 countries[111]. However, the Secretariat's website defines itself as an international organisation:

> (Regarding the Secretariat) "**This intergovernmental organisation** implements decisions agreed by Commonwealth Heads of Government through advocacy and other means, coalition–building, information sharing, analysis, technical assistance, capacity-building, and advice and policy development[112]".

Subsequently, it once again insists on its status as an international organisation that works together with other international organisations:

> "The Commonwealth also works together with other international organisations, like the United Nations[113]".

In the same vein, according to British legislation, the UK International Organisation Act of 2005[114] confers legal capacity, privileges and immunities on a number of international organisations and bodies, and certain categories of individuals connected to them, so that the UK can fulfil its international commitments. This Act covers the Commonwealth Secretariat/Commonwealth Secretariat Arbitral Tribunal. However, the Report from the Eminent Persons Group does not clearly define the Secretariat as an International organisation.

> "We recognise that the Secretariat is also constrained to a degree by not having full legal recognition as an international intergovernmental body. Instead, it is still tied in some respects to United Kingdom law (such as having financial obligations under UK law for contingent liabilities relating to all staff, including non-UK nationals)".

While we cannot confirm unequivocally that the Secretariat is a subject of International law, we can substantiate that it is the principal body of the Commonwealth and has been its permanent body since its establishment in 1965.

2) "Three in one" structure: The Commonwealth in turn is made up of three international organisations, the Commonwealth Secretariat, with the doubts we have already stated; the Commonwealth Foundation, which helps civil society organisations promote democracy, development and cultural understanding; and the Commonwealth of Learning, which encourages the development and sharing of open learning and distance education[115]. In fact in the Report by the Eminent Persons Group, both the Commonwealth of Learning and the Commonwealth Foundation are classified as International organisations.

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[111] The Commonwealth, "The Secretariat", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/Internal/180412/>, (accessed 17/12/12).
[112] Ibidem.
[113] Ibidem.
[114] UK Parliament, "International Organisations Act", 7 April 2005.
[115] Foreign Affairs Committee - Fourth Report: "The role and future of the Commonwealth", op. cit., p.115.

"Commonwealth Intergovernmental Organisations: Commonwealth Foundationand Commonwealth of Learning[116]"

The report by the House of Commons[117] states that there are three Commonwealth intergovernmental organisations:

- "The Commonwealth Secretariat, which carries out plans agreed by Commonwealth Heads of Government through technical assistance (via the Commonwealth Fund for Technical Cooperation—CFTC), advice and policy development. The Secretariat's mission statement is: "We work as a trusted partner for all Commonwealth people as: a force for peace, democracy, equality and good governance; a catalyst for global consensus-building; a source of assistance for sustainable development and poverty eradication". Kamalesh Sharma, current Secretary-General of the Commonwealth, is described on the Secretariat's website as "the principal global advocate for the Commonwealth" and is Chief Executive of the Secretariat;

- The Commonwealth Foundation, which helps civil society organisations promote democracy, development and cultural understanding, and

- The Commonwealth of Learning, which encourages the development and sharing of open learning and distance education".

3) **<u>The formal and informal elements of the Commonwealth</u>**: One of the peculiarities of the Commonwealth is that it is organised as a network of civil associations. We can understand it as a great partnership between intergovernmental and non-governmental actors, indeed the latter are more popular among the citizens of the Commonwealth states. This fact is expressed in the House of Commons Report:

> "The work of the formal, intergovernmental Commonwealth institutions is only part of the picture, and perhaps not the most visible part. There are around 100 associations (70 accredited) in the Commonwealth network. Among the associations are bodies concerned with land rights, parliamentary assemblies (the Commonwealth Parliamentary Association), culture, gender equality, health, humanitarian relief, disability, education and trade unions".[118]

The Eminent Persons Group Report also highlights this unique aspect of the Commonwealth, whose structure is similar to the System or Family of the United Nations. The report stresses the need to establish stable mechanisms for stable cooperation and coordination among that which they call the formal part (inter-governmental institutions and) and the informal part (non-governmental associations).

> "There is a sense that the Commonwealth could work better –particularly between governmental and non-governmental actors. Many Commonwealth commentators and civil society organisations have made repeated calls for measures to strengthen linkages between the formal and informal constituent parts of the association. The deficiency is that co-operation between the Commonwealth organisations is not considered as a matter of course when programmes are being developed. Commonwealth governmental and non-governmental bodies alike should be thinking first and foremost about how they can work in partnership with

[116] Commonwealth Eminent Group, "A Commonwealth of the People: Time for Urgent Reform", The Report of the Eminent Persons Group to Commonwealth Heads of Government, Perth, published by the Commonwealth Secretariat, October 2011, p.198.
[117] Foreign Affairs Committee - Fourth Report: "The role and future of the Commonwealth", op. cit., p.117.
[118] Ibidem.

> pooled resources and shared capacity. This can be assisted by changes of structures and processes but also requires a change of attitude, perspective and to some extent empathy".[119]

In short, despite the highly complex organisational structure, the Commonwealth has, at least, one permanent body, the Secretariat, which acts independently of the will of its members and cannot take orders from them, as it must ensure that the Commonwealth's fundamental values are implemented correctly. In addition, the Eminent Persons Group's report acknowledges the vital role of the CMAG (Commonwealth Ministerial Action Group) as the custodian of the Commonwealth's fundamental political values.

e) Fifth Element: that the organisation must be in accordance with international law is the hardest element to justify. We can state that there is no legal obstruction whereby it could be subjected to this type of Law. The Eminent Persons Group Report insists that the Declarations and other regulatory instruments of the Commonwealth, above all those that enshrine the fundamental values, are based on International law, primarily in the Universal Declaration of Human Rights. We have already seen that the Commonwealth as a whole is not subjected to any national law. In fact, the Commonwealth Secretariat insists that no decision or legislative act unanimously adopted by the members of the Commonwealth, whatever its nature, shall be adopted without being subjected to any national mandate. In this regard, I believe that if the Commonwealth in the exercise of its activities violates a rule of International law, it would be asked for international responsibility. Similarly, the Commonwealth Business Council and the United Nations signed an international partnership agreement in 2008 that establishes a Global Business Council and would have to follow international law.

> "The United Nations Deputy Secretary-General and the Director General of the Commonwealth Business Council signed a Memorandum of Understanding (MoU) **formalizing a partnership between the two organisation**. The MoU establishes a Global Business Council as cooperation between the United Nations Office for Partnerships and the Commonwealth Business Council".[120]

Lastly, the Eminent Persons Group Report specifies that the international relations that the Commonwealth maintains with other subjects of international law are governed by international law.

> "We (The Commonwealth) believe in an effective multi-lateral system for the maintenance of our global relationships, **based on inclusiveness, equity and international law** and in the strengthening of the United Nations as the surest foundation for achieving securing global peace, equity and justice in the challenges that face the world".[121]

In short, with certain special features, the Commonwealth association has been shown to have a constitutional and organic structure similar to that of international organisations in general. In Dale´s words **"The Commonwealth is, it is true, of an exceptional nature, having special qualities derived from its long history, which are not possessed by the generality of international organisations. But that, it is submitted, is not a reason for failing to recognise it for what it is."** Therefore, if we must speak of a sui generis international organisation, we cannot relegate it to a mere international structure or platform. Among other authors, I agree

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[119] Commonwealth Eminent Group, "A Commonwealth of the People: Time for Urgent Reform", The Report of the Eminent Persons Group to Commonwealth Heads of Government, op. cit., p.181.
[120] United Nations, "United Nations Office for Partnerships", United Nations, from: <http://www.un.org/unop/YNewsMOUwithCommonwealthBusinessCouncil.htm>, (accessed 18 December 2012).
[121] Commonwealth Eminent Group, "A Commonwealth of the People: Time for Urgent Reform", Report of the Eminent Persons Group, op. cit., p. 182.

with Fawcett, who, in 1963, described the Commonwealth as "a kind of international organisation"[122] and Crawford, in 1979, as a "kind of residual international organisation"[123].

Finally, the Heads of Government, in describing the Commonwealth (in the Lusaka Declaration of 1979) they describe it as an international organisation, and the Statesman's Year-book of 2010, listed the Commonwealth as "other international organisations". In keeping with this line, Peter Slinn which considers the Commonwealth as an international organisation explains that the 1971 Singapore meeting was designated the Commonwealth Heads of Government Meeting (CHOGM), because it provided the Singapore Declaration of Commonwealth Principles, which is the basis of the fundamental values and commitments of the Commonwealth and gave an organic structure to the Commonwealth. Thus, in Slinn words:

> "The Commonwealth, which in the 1940s functioned collectively only through an informal meeting of eight prime ministers, gathered for a 'free exchange of views of matters or common concern', was now an international organisation of over thirty states, equipped with a supreme deliberative body, the CHOGM, a Secretary General and a Secretariat"[124].

The second question that we must solve, which is closely tied to the first, is the recognition of a legal international personality. International legal personality is a concept referring to the status of having personality under international law, that is, possessing rights and duties governed directly by this law and, in general, a capacity to act in the international plane, including among, other rights, the capacity to enter into treaties with other international legal persons, to bring in international claims, and to be entitled to privileges and immunities according to the rules of international law. The status of being an international legal person is alternatively known as being a subject of international law. In classic International law, states remained the only subjects of international law so they were the only ones who had general competence as international legal persons. However, "in the second half of the 20th Century a new category of subjects of international law arose, endowed by states, with various limited degrees of international legal personality, these were the international organisations[125]. "In the case of the organisations, rather than enjoy a full international personality, they are limited to the purposes for which they were created; usually there is an express act of entrustment, through a founding instrument, which is not attributed homogeneously and differs depending on the organisation. The importance of the legal personality rests on the fact if the organization did not possess a separate legal personality then the organization constitutes nothing more than an extension of the States concerned, and thus when the organization acts it is nothing more than the States themselves acting"[126] . In the case of the Commonwealth, there is no act of these characteristics. As we have observed, there is no founding treaty as such, similar to the San Francisco Charter of 1945, which created the United Nations or the Treaty of London of 1949, which founded the Council of Europe; but an array of normative instruments, such as the Declarations of London, of Harare or of Singapore, which have been recognised by both the members of the Commonwealth and the doctrine, for its constitutive value. However, there is no provision in any of these instruments in which this personality is expressly recognised.

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[122] FAWCETT, J. E.S., *The British Commonwealth in International Law*, op. cit., p.53.

[123] CRAWFORD, J.R., *The creation of States in International Law*, Oxford, Oxford University Press, 2006, p.69.

[124] SLINN, P., *The Commonwealth and the Law* in MAYLL, J., *The Contemporary Commonwealth 1965-2009*, London, Routledge, 2009, p.128.

[125] BOCZEK, B.A., *International Law: A Dictionary*, Lanham, Scarecrow Press, 2005, p.10.

[126] SAROOSHI, D., "Some preliminary remarks on the conferral by States of powers on international organizations", New York University School of Law, *Jean Monnet Working Paper*, 2003, Num. 3, p.52.

The legal problem that arises concerns the act of entrustment itself. We said that legal personality is generally attributed by an express act, but is this the sole means to acquire said personality? In field of Public International law, there is no formally established obligation that contains the requirement of an express act in order to attribute a legal personality to an international organisation. However, we are aware that this is usual and that the existence of acts of these characteristics simplifies and clarifies the role the organisation should play on the international stage. In international practice, we can observe two ways of acquiring an international legal personality. The first *de jure* and the second *de facto*. We have already mentioned that the former is an express act of conferral of personality, largely contained in the constitutive instrument or instruments of the international organisation. The latter refers to practice itself or interaction of the organisation in terms of international relations. In this connection, Saroosi states that relatively few constituent treaties provide explicitly for the international legal personality of organizations, and that even where they do, as Klabbers notes, '[a]t best, the provisions are ambiguous, providing quite simply that the organization concerned "shall have legal personality" or similar terms.' In cases where there is no express provision for the legal personality of an organization then it will be necessary to employ the functional test adopted by the International Court in the Reparations case where it ascertained the existence of the UN's separate legal personality from that of its Member States[127]. In the case of the Commonwealth, Dale, holds the same view as Saroosi, the fact that there is no express provision is not decisive: the same may be said of many of the international organisations. International personality is a characteristic which can be acquired (the very process of acquisition being observable in the Reparation Case[128]) rather than inherited genetically from the constitution of the organisation.

As we have already pointed out an organisation may acquire legal personality in practice. It is not essential that there is an explicit act of attribution of juridical personality. Shaw remarks that "personality may also be acquired by virtue of being subjected to international duties".[129] There is no doubt that the Commonwealth, as a whole is subjected to international duties. Bekker defines legal personality as "the concrete exercise of, or at least the potential ability to, exercise certain rights and the fulfilment of certain obligations".[130] In my opinion, the Commonwealth has the potential ability to exercise certain rights and the fulfilment of obligations. Slinn[131] notes that there would be no legal difficulty in turning the Commonwealth into an organisation, which enjoyed undeniably full international personality through the conclusion by member-states of a 'Treaty of Commonwealth Cooperation'. However, the whole ethos of the Commonwealth association rejects such formality. Shaw admits that the more that the Commonwealth develops distinctive institutions and establishes common policies with the capacity to take binding decisions, the more the argument may be made for international personality.

I agree with Slinn that there is no impediment for the members of the Commonwealth to confer legal personality to the organisation. But I disagree with him in two issues. The first one, the acquisition of legal personality by an organisation is not only produced by a "written" agreement, it is not always necessary in order to acquire international personality. In this sense, Wessel[132] notes that international law does not provide any clear objective criteria for

[127] Ibidem.
[128] International Court of Justice, Case of Reparation for injuries suffered in the service of the Nations, Advisory Opinion, ICJ Rep 174, 11th April 1949, ICGJ 232.
[129] SHAW, M., *International law*, Cambridge, Cambridge University Press, 2003, p.63.
[130] BEKKER, P., *Commentaries on World Court Decisions 1987-1996*, Leiden, Martinus Nijhoff Publishers, 1998., p.15.
[131] SLINN, P., *The Commonwealth and the Law*, op. cit., p.128.
[132] WESSEL, R., "Revisiting the International Legal Status of the EU", *European Foreign Affairs Review,* Vol. 5, 2000, p. 519.

the acquisition of international legal personality. Thus, there are different schools of thought. One of these schools claims that the existence of legal personality does not depend on the subjective will of the Member States. In this view international organisations can turn into de facto international legal persons; they do not enjoy legal personality because the member States so decided, but because international law so demands. More recently, in this line, Portmann[133] argues that positions on international personality that strongly emphasizes the role of states or effective actors rely on assumptions that have been discarded in present international law. The principal argument is that international law has to be conceived as an open system, in which there is no presumption for or against certain entities enjoying international personality.

The second issue I disagree with Slinn regards that the act of conferring legal personality to an organisation should not bring about any fear regarding the loss of flexibility or informality. There is a wide range of international organisations, each one with its own specificities. Moreover, the concept of legal personality is not a monolithic one, its scope and content differs, and has its own characteristics. Clarifying the Commonwealth's legal nature will produce positive effects, will entail a more simplified structure, alongside international relations would be easier, and most of the misunderstandings regarding the organization would be solved.

As we have noted previously, I consider this and the aspect regarding subjectivity to be complex to ascertain. The Commonwealth certainly has a number of its own aims and objectives that it works to fulfil and it does not take orders, nor is it subjected to national constraints. However, the issue is further complicated; as we said, the Commonwealth Secretariat, unlike the Commonwealth itself, enjoys international subjectivity and a certain degree of legal personality. The Secretariat is represented on the international stage by the Secretary General, has ties with other international organisations, chiefly with the United Nations, and holds informal meetings with European Union. It has agreed on key normative instruments and joint programmes, such as the Memorandum of Understanding with the United Nations or the Hubs and Spokes programme with the European Union. Thus, the dual nature of the Secretariat, as an international organisation and a permanent body of the Commonwealth, hinders our analysis. In this regard, Slinn notes that the Secretariat has acquired a considerable measure of international capacity as evidenced by its observer status at the United Nations, bilateral memoranda of understanding between the Secretariat and member governments and it has observer status in the United Nations General Assembly.

Hence the complex nature of the Commonwealth and the duality of the Secretariat entail more difficulties than advantages. It also gives rise to a rather impractical pragmatic situation when interacting in the international arena, a fact that clashes with the Commonwealth's onw philosophy, since one of the fundamental features of this organisation is its capacity to adapt to the needs of the different stages over the centuries. In the same vein, Dale points out that is on the Secretariat, not on the Commonwealth association, that the member countries have conferred formally legal personality under their laws. This decision was done in 1965, when the Secretariat was founded. But, in his opinion, if the Heads of Government were to deal with that question today, they would be more confident in the solidity of their organisation, and require legal personality to be conferred on the Commonwealth association itself. This situation brings to mind the dilemma surrounding the relationship of the international subjectivity and personality of the European Union and of the three European communities before the entry into force of the Lisbon Treaty, a question that we will examine in due course. It also evokes the General Agreement on Trade and Tariffs, which began as an informal group

[133] PORTTMAN, R., *Legal Personality in International Law*, Cambridge, Cambridge Studies, 2010, p.82.

of states to eventually become the World Trade Organisation, a flexible international organisation based on cooperation.

In Dale's opinion the Commonwealth has the constitutional and organic structure which entitles it to the status of an international organisation and he does not even preclude the possibility that the Commonwealth might acquire international personality. He is also aware, however, of the danger of formalising the Commonwealth association to a point where it might pose a threat to the freedom of action of its members. "The essence of the Commonwealth association is its flexibility and adaptability, untrammelled by "finite constitutional rules, difficult, perhaps impossible, to alter when the needs arises"[134]. As I see it, for the present, we can only state that the legal personality of the Commonwealth is also an element *sui generis*. We cannot categorically deny that it has acquired this status or that it is in the process of acquiring it de facto, yet neither can we state unconditionally that it has this status. I feel it is important to insist that there is no legal impediment by which the Commonwealth cannot acquire or expressly have an international legal personality conferred on it. This is an internal question that hinges on of very will of its Member States. An international legal personality is not homogenous and it differs according to each organisation, therefore, the Commonwealth need not feel that the recognition of personality would entail the loss of flexibility. On the contrary, it would situate it on the international stage as a true subject of International law, with a series of attributions, it could play a real role, in whatever way the organisation chooses, interacting at the same level as the rest of the organisations. Practice shows that there is a wide range of more or less flexible organisations that subjectivity and legal personality of organisations do not imply per the transfer of sovereignty of the Member States that make it up, and that numerous organisations act as a platform on which its members cooperate and coordinate a series of joint actions. To my mind, this last model corresponds very well to the interests and philosophy of the Commonwealth.

Finally, the Eminent Persons Group has expressed the same opinion. They consider it is essential to clarify the legal nature of the Commonwealth if it wishes to undertake an active role in the international community and to meet the objectives for which the Commonwealth was re-formulated in 1949. The Group has put forward the following recommendation:

> "The Secretary-General should be able to call on Commonwealth Heads of Government, as appropriate and convenient, including the host of the last CHOGM, to perform functions and make statements on behalf of the Commonwealth at the United Nations and at regional and multilateral organisations in which Commonwealth countries are represented".

[134] DALE, W., *The Modern Commonwealth*, op cit., p. 58.

CHAPTER I: THE COMMONWEALTH

Commonwealth's Institutional Framework: The role of the British Monarch in the Commonwealth

The modern Commonwealth has created for itself new institutions and organs. Yet for its supreme institution, the Monarchy, it founds itself in the past[135].

1-The Monarchy: This is a unique institution, no other organisation has such an institution, a new element that reaffirms the vision of the Commonwealth as an organisation sui generis.

The relationship of the Monarchy to the Commonwealth includes three factors which reveal themselves to be of present significance[136]:

1-The "division of the Crown";
2-The Crown as "the symbol of free association"; and
3-The Monarch as Head of the Commonwealth.

1. Regarding the first of the three factors, the Balfour Declaration of 1926, defined the "group of self-governing communities composed of Great Britain and the Dominions" as "autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations". The element to be noticed is "united by a common allegiance to the Crown". The phrase was used again in the preamble to the Statute of Westminster of 1931, but there it was preceded by something new. When the colonies began to self-governing, and to be treated for some purposes as separate territorial units, it was necessary to think of the possibility of the Crown's remaining no longer unitary. Thus, by the mid-thirties the legislation together with other factors left no doubt that the Crown must be regarded as divided. But, as Dale states, out of this arose a dilemma. If there one King of the United Kingdom, another of Canada, and so on, how could there be a common, in the sense of one, allegiance to the Crown by the different communities? "Common" could no longer mean a single allegiance; it denoted **different allegiances of a common type**.

2. Hence, the Statute of Westminster formulated a new concept of the Commonwealth "the Crown is the symbol of the free association of the members". This implied that the members of the Commonwealth could reject the concept of allegiance to the Crown, as India did, but if they desired to continue their full membership of the Commonwealth had to accept the King as the symbol of the free association of the member nations, and "such the Head of the Commonwealth". The 1949 Declaration contained two new elements: first the "Crown" was replaced it by the person of the monarch as the symbol of the Commonwealth association. Second the monarch received the new title of "Head of the Commonwealth".

3. Finally, **after the Declaration of London of 1949 the Queen not the "Crown" was considered the Head of the Commonwealth.** Since then, all members of the Commonwealth, even those countries that wish to become a Republic but to remain within the Commonwealth, this was the case of India, have to accept the Queen as the symbol of the free association, as well as the Head of the Commonwealth.

According to Duncan Hall[137], after the Prime's Minister meeting in 1949, it was put on the record that "the designation of the King as the Head of the Commonwealth (...) does not imply

[135] DALE, W., "Is the Commonwealth an International Organisation?", op. cit., p.458.
[136] Ibidem.

that the king discharges any constitutional function by virtue of the Headship". In other words, the monarch as Head of the Commonwealth has status but not functions. In keeping with this line, Dale concludes that constitutionally, the role of Head of the Commonwealth remains symbolic. However, the Sovereign as Head of the Commonwealth has acquired a presence and has come to fulfil certain personal functions, attributable to that role. Thus, for instance, although the Queen does not attend Heads of Government Meetings, she is present in the city where they take place. She fulfils her role by meeting Heads of Government individually (both there and in London) and by entertaining them collectively to a formal dinner[138].

Moreover, she is kept fully informed of Commonwealth affairs by the Commonwealth Secretary- General.[139] It has to be said that the Queen today, and then, is Head of State of the countries within her realms, where the people owe her allegiance. As Head of State of the overseas countries which are her realms, the supreme executive power is vested in the Queen.[140]She opens Parliament, assents to legislation, and may hold a meeting of the Privy Council. Wether she is present in the country or not, her image circulates on coins and stamps; the royal arms are seen in the law courts and elsewhere, and on government documents, proceedings in the courts are often instituted in her name. In the other overseas countries (other monarchies and republics) the Queen does not exercise legal functions. However, as it has been already mentioned, as Head of the Commonwealth she performs certain functions.

If a member of a country, one of Her Majesty´s Realms, wish to become a Republic and to remain as member of the Commonwealth too, has to notify the Commonwealth Secretary-General of its decision. Then the Secretary-General notifies all other members, and after an appropriate interval announces the change. Hence, the new Republic will continue to accept the Queen as the symbol of the independent member nations and, as such, Head of the Commonwealth.[141]

<u>2- The Commonwealth Secretariat</u> is the main intergovernmental agency and central institution of the Commonwealth of Nations. It is responsible for facilitating cooperation between members; organising meetings, including the Commonwealth Heads of Government Meetings (CHOGM); assisting and advising on policy development; and providing assistance to countries in implementing the decisions and policies of the Commonwealth.[142]

The most difficult issue to understand, as we previously have explained, concerns the dual nature of the Commonwealth Secretariat. So very briefly, on the one hand, is the main Commonwealth's Intergovernmental Organisation, and, on the other, is one of the Commonwealth's central institutions. In this sense, "The Commonwealth Secretariat is the main intergovernmental agency and central institution of the Commonwealth"[143].Commonly, the Commonwealth is confused with the Commonwealth Secretariat, the same mistake happened with the EU and the European Community, whose terms were used as if they were synonyms.

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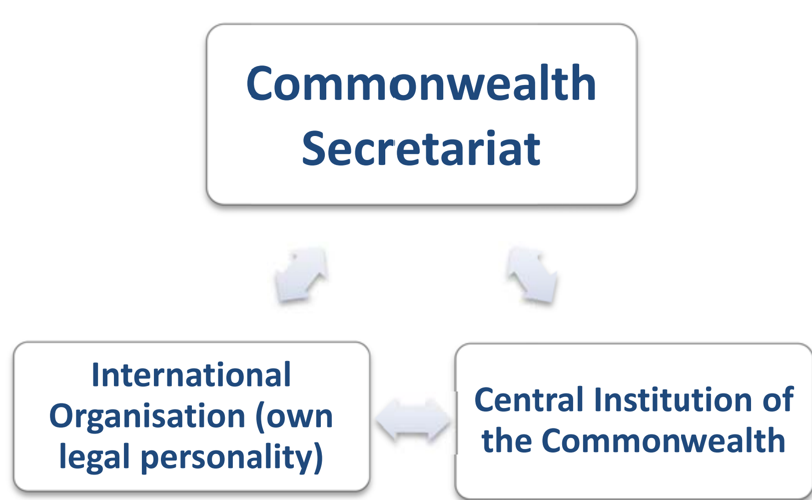
[137] HALL, H. D., *Commonwealth: A History of the British Commonwealth of Nations*, New York, Van Nostrand Reinhold Pbl., 1971, p. 736.
[138] DALE, W., "Is the Commonwealth an International Organisation?",op. cit., p.464.
[139] SMITH, A., *Stitches in Time- The Commonwealth in World Politics*, London, Beaufort Books, 1983, p.247.
[140] For Australia see the Royal Power Act 1953 (Aust), for New Zealand see the Royal Power Act 1953 (NZ).
The figures given are as at March 1, 1982.
[141] SMITH, A., *Stitches in Time- The Commonwealth in World Politics*, op. cit, p.247.
[142] The Commonwealth, "Commonwealth Secretariat", op. cit.
[143] Commonwealth ministerial directory, "Commonwealth Ministers", Commonwealth ministerial directory, from <http://www.commonwealthministers.com/about/>, (accessed 1 March 2011).

It must be said, that most of the work done by the Commonwealth, as a whole, is based on the work of the Secretariat. In this sense, "the Commonwealth Secretariat is the principal organisation of the Commonwealth. It implements the decisions taken by the association's 53 member governments."[144] It is also in charge of informing member countries on matters of common concern, and it is responsible for: facilitating cooperation between members, organising meetings, including the Commonwealth Heads of Government Meetings (CHOGM), assisting and advising on policy development, providing assistance to countries in implementing the decisions and policies of the Commonwealth and in recent years the Secretariat has acquired a considerable measure of international capacity, in this line, Green[145] points out that the Secretariat represents the Commonwealth in various international forums, as UNHCHR Working Group on regional organisations concerning ensuring that counter-terrorism measures are compliant with basic Human Rights standards.

SKETCH OF THE COMMONWEALTH'S SECRETARIAT DOUBLE NATURE[146]



According to Slinn, Commonwealth Secretariat body was constituted by heads of government in terms of an 'agreed memorandum' adopted at the 1965 Commonwealth Prime Ministers' Meeting.[147] Following Commonwealth practice, the memorandum is not a binding instrument which creates a legal identity with defined powers. As Read notes, 'no precise definition of its status was attempted, perhaps due to the nature of the Commonwealth as a whole'.[148] The Secretariat was nonetheless established as 'the visible symbol of the spirit of cooperation.

The Secretariat is located at Marlborough House in London, the United Kingdom and the functions of the Secretary General and the Secretariat (since, the terms were used interchangeably in the Memorandum)[149] were limited originally to the gathering and dissemination of information to member countries on matters of common concern.

[144] UK Government, "CHOGM 2009", UK Government: Foreign and Commonwealth Office, from: <http://www.fco.gov.uk/en/global-issues/institutions/commonwealth1/chogm-2009>, (accessed: 10 June 2010).
[145] GREEN R., *The Commonwealth Secretariat*, London, The Commonwealth Yearbook, 2006, p. 297.
[146] The Sketch from above has been created by the author of this thesis.
[147] Attached to 1965 Communiqué.
[148] READ, J., "Commonwealth Secretariat: Its Legal Capacities, Immunities and Privileges", Commonwealth Secretariat, 1978, p.78.
[149] The Commonwealth, "Agreed memorandum of the Commonwealth Secretariat", Commonwealth Prime Ministers Meeting, 1965.

Nowadays, the Secretariat is responsible for:

- Facilitating cooperation between members;
- Organising meetings, including the Commonwealth Heads of Government Meetings (CHOGM);
- assisting and advising on policy development;
- Providing assistance to countries in implementing the decisions and policies of the Commonwealth.

2.1 The **Commonwealth Secretary-General** is the head of the Commonwealth Secretariat, the central body which has served the Commonwealth of Nations since its establishment in 1965, and responsible for representing the Commonwealth publicly.[150]The position was created, along with the Secretariat itself, after the fourteenth Commonwealth Prime Ministers Conference in London in 1965, which issued a memorandum describing the role of the Secretary-General:

> "Both the Secretary-General and his/her staff should be seen to be the servants of Commonwealth countries collectively. They derive their functions from the authority of Commonwealth Heads of Government; and in the discharge of his/her responsibilities in this connection the Secretary-General should have access to Heads of Government...[151] "

The Secretary-General is the head of the Commonwealth Secretariat, and all Secretariat staff is responsible and answerable to him or her. He is also responsible for representing the Commonwealth publicly and is charged with the development and delivery of the Strategic Plan – a four-year framework which sets out the Secretariat's main goals and programmes. Promoting and protecting the Commonwealth's values is a core responsibility. The Secretary-General does so through regular high level contact with Commonwealth governments and civil society leaders, as well as through the media and public engagements. The Secretary-General also uses a low-key, personal and discreet 'good offices' approach in certain sensitive situations around the Commonwealth, and occasionally appoints Special Envoys.

The role of the Secretary General has certainly evolved and expanded since 1965 so that he (all the holders of the office have been men) is now perceived as the spokesman of the Commonwealth on the international stage. With the blessing of the heads of government, successive Secretary Generals have developed a 'good offices' role which has required an active involvement in the internal affairs of member-states and disputes between members. The role is now linked with the CMAG process in providing a complex and sophisticated machinery for dealing with violations of the Harare principles.[152]

Since the 1993 CHOGM, it has been decided that the Secretary-General is elected to a maximum of two four-year terms.[153] The election is held by the assembled Heads of Government and other ministerial representatives at every other CHOGM. Nominations are received from the member states' governments, who sponsor the nomination through the election process and are responsible for withdrawing their candidate as they see fit[154].

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[150] The Commonwealth, "Role of the Secretary-General", Commonwealth Secretariat from: <http://www.thecommonwealth.org/Internal/169940/role_of_the_commonwealth_secretary_general>, (accessed 1 March 2011).
[151]Ibidem.
[152] The Commonwealth, "The Harare Commonwealth Declaration", issued in Harare, on 20 October 1991.
[153] The Commonwealth, "CHOGM 2011", CHOGM 2011 - Australia Perth, from: <http://www.chogm2011.org/About_CHOGM>, (accessed 1 March 2011).
[154] Ibidem.

2.2- <u>The Commonwealth Deputy Secretaries-General</u>: two Commonwealth Deputy Secretaries-General assist the Secretary-General in running the Commonwealth Secretariat, which is the central institution of the Commonwealth of Nations. They are assigned an aspect of the Commonwealth's function to address particularly: one to economic affairs and the other to political affairs.

They are no longer elected by the Commonwealth Heads of Government, but appointed after competition by the Secretary General.

2.3- <u>The Commonwealth Chairman-in-Office (CIO)</u> is the Chairman-in-Office of the Commonwealth of Nations, and is one of the main leadership positions in the Commonwealth. It is held by the host chairman of the previous Commonwealth Heads of Government Meeting (CHOGM), and is maintained until the next CHOGM.

The primary responsibility of the Chairman-in-Office is to host the CHOGM, but the role can be expanded. For example, after the 2002 CHOGM, the incumbent, previous, and next Chairmen-in-Office formed a troika in an attempt to resolve the ongoing dispute over Zimbabwe's membership of the Commonwealth.[155]

The position was created after the 1999 CHOGM, with Thabo Mbeki becoming the first Chairman-in-Office. However, Mbeki did very little to develop the position, leaving it virtually vacant until the next CHOGM, in 2002, when the troika was created[156]. Even after John Howard became Chairman, the troika's first meeting was in London, in the presence of the Commonwealth Secretary-General, whose office drafted the troika's statement: leaving little role for the troika itself, but potentially increasing the power of the Secretary-General.[157] According to Derek Ingram, the third Chairman, Olusegun Obasanjo, did more to revive the role of the position after taking over in 2003.[158]

3- <u>The Commonwealth Ministerial Action Group on the Harare Declaration</u>, abbreviated to CMAG, is a group of representatives of members of the Commonwealth of Nations that is responsible for upholding the Harare Declaration. That Declaration dictates the Commonwealth's fundamental political values[159], and sets the core membership criteria of the organisation. Its remit to evaluate the Harare Declaration lapses every two years; the remit must be renewed and its membership reviewed by the biennial Commonwealth Heads of Government Meeting.

CMAG was established in November 1995 at Millbrook Resort, in Queenstown, New Zealand, as a result of the Millbrook Commonwealth Action Programme, to punish serious or persistent violations of the Harare Declaration[160]. It is composed of the Foreign Ministers (or equivalent) of eight Commonwealth member states, which may be augmented by either one or two further representatives of a region or interest involved in a particular case[161]. There have been twenty-seven ordinary meetings, two special meetings, and one extraordinary meeting, called

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[155] The Round Table (Ed.), "The Commonwealth at and immediately after the Coolum CHOGM", *The Round Table: The Commonwealth Journal of International Affairs*, Vol. 91, April 2002, Issue 364, pp. 125–129.
[156] Ibidem.
[157] Ibidem.
[158] INGRAM, D., "Abuja Notebook", *The Round Table: The Commonwealth Journal of International Affairs,* Vol. 93, January 2004, Issue 373, p. 22.
[159] The Commonwealth, "Commonwealth Ministerial Action Group", The Commonwealth, from: <http://www.thecommonwealth.org/cmag>, (accessed: 10 June 2010).
[160] Ibidem.
[161] Ibidem.

unevenly over the past twelve years.[162] For logistical reasons, 29 of the 30 meetings have been held in either London (headquarters of the Commonwealth) or New York City (headquarters of the United Nations).[163]

CMAG´s HISTORY: In its first meeting, CMAG decided that its initial focus would be upon the three (then-)military dictatorships of The Gambia, Nigeria, and Sierra Leone[164], and approved of the Commonwealth's suspension of Nigeria from the organisation earlier in the year[165] These three countries would form the mainstay of the work of CMAG, and form the whole of its reports, until the 1999 coup d'état in Pakistan necessitated it to vote unanimously to suspend Pakistan from the Commonwealth[166] . Nigeria's reintegration was deemed complete by 1999, when its suspension was lifted; indeed, it was chosen to be a member of CMAG prior to the thirteenth meeting[167].

CMAG’s fundamental task is to assess the nature of any infringement of the Commonwealth’s political values and recommend measures for collective action from member countries. CMAG has remained a unique body. Its authority to suspend or expelled a member country from the association is unique amongst international organisations. In 2000, the situations in Fiji and the Solomon Islands were put under permanent scrutiny[168], as was that in Zimbabwe in 2001.[169] Gambia was taken off the group's formal agenda at the seventeenth meeting.[170] Due to its acrimonious withdrawal from the Commonwealth in 2003, the issue of Zimbabwe, which had dominated the affairs of the Commonwealth since 2001, became moot and was not discussed from 2004 onwards,[171] while Fiji was taken off the agenda due to encouraging progress in that country's political progress[172].

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[162] Commonwealth Ministerial Action Group, “List of Meetings”, CMAG, from: <http://www.thecommonwealth.org/cmag>, (accessed: 10 June2010).

[163] Ibidem.

[164] The Commonwealth Ministerial Action Group (CMAG), “First Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration”, CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

[165] Ibidem.

[166] The Commonwealth Ministerial Action Group (CMAG), “First Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration”, CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

[167] The Commonwealth Ministerial Action Group (CMAG), “Thirteenth Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration”, CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

[168] The Commonwealth Ministerial Action Group (CMAG), “Special Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration”, CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

[169] The Commonwealth Ministerial Action Group (CMAG), “Sixteenth Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration”, CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

[170] The Commonwealth Ministerial Action Group (CMAG), “Seventeenth Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration”, CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

[171] The Commonwealth Ministerial Action Group (CMAG), “Twenty-third Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration”, CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

[172] Ibidem.

CMAG can be convened by the Secretary-General whenever required to deal with a perceived violation of the Commonwealths principles and values. It meets annually in the margins of the United Nations General Assembly in New York, but can also meet in extraordinary session when required. At its twenty-fourth meeting, in September 2004, it was decided that (at least in principle) CMAG should meet once a year and preferably in New York[173]. An extraordinary meeting was called for the 8 December 2006 in light of the 2006 coup d'état, at which it was decided to suspend Fiji's membership of the Commonwealth.[174].

On 12 November 2007, the Commonwealth gave Pakistan a 10-day deadline to restore its constitution and lift other emergency measures or face suspension. By 22 November 2007, the CMAG voted to suspend Pakistan from Commonwealth Membership.

4- The Committee on Commonwealth Membership (CCM) was a committee convened by the Commonwealth Secretariat in 2006 to examine and report on prospective changes to the membership criteria of the Commonwealth of Nations. It was chaired by P. J. Patterson, formerly Prime Minister of Jamaica, and consisted of seven other members.[175]

The committee met twice, both times in London: on 6-7 December 2006[176] and 14 May2007[177]. It issued its report on 24 October2007, and presented it to the Commonwealth Heads of Government Meeting 2007, in Kampala, Uganda. The Committee's reported to the 2007 CHOGM in the name of all the members, without dissenting opinion. Thus, according to McIntyre, who also served as a consultant to the Committee[178], the report supported the prevailing and existing requirements as established by the Edinburgh Declaration.

It dictated that the core criteria for membership should be that countries:

- 'As a general rule', have historic constitutional connections with an existing member, or a 'substantial' relationship with the Commonwealth as an institution or a particular group of members.
- Accept the Singapore Declaration of Commonwealth principles.
- Demonstrate commitment to democracy, the rule of law, good governance, and protecting human rights and equality of opportunity.
- Use English as the language of Commonwealth relations.
- Recognise Queen Elizabeth II as Head of the Commonwealth[179].

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[173]The Commonwealth Ministerial Action Group (CMAG), "Twenty-fourth Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration", CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).
[174]The Commonwealth Ministerial Action Group (CMAG), "Extraordinary Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration", CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).
[175] MCINTYRE, D., "The Expansion of the Commonwealth and the Criteria for Membership", *The Round Table: The Commonwealth Journal of International Affairs*, Vol. 97, April 2008, Num. 395, pp. 273-285.
[176] The Commonwealth, "Committee to meet on Commonwealth membership", The Commonwealth Secretariat, 6 December 2006, from: <http://www.thecommonwealth.org/news/157526/commonwealth_membership_in_focus_at_london_meeting.htm>, (accessed: 10 June 2010).
[177] SOAL, J., "Commonwealth Update", *The Round Table: The Commonwealth Journal of International Affairs*, Vol. 96, 2007, Issue 389, pp. 395–413.
[178] The Commonwealth, "Report on the Committee on Commonwealth Membership", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/document/181889/34293/35468/214257/londondeclaration.htm>, (accessed 3/3/2010).
[179]Ibidem.

- The Committee also recommended that new members be 'encouraged' to join the Commonwealth Foundation and engage in the Commonwealth Family, but that they would not be required to do so[180].

We will have recourse to this question later, when examining the way in which the adhesion criteria for new Commonwealth members have evolved.

5- <u>The Commonwealth Secretariat Arbitrary Tribunal</u>: The Commonwealth, in coherence with its philosophy of informality and flexibility, has not a Court of Justice, or any institution which exercises judicial functions. Nevertheless, the Commonwealth Secretariat Arbitrary Tribunal (CSAT), which was established and operates under a Statute agreed by Commonwealth's members in 1995, later amended, settles internal disputes of the Commonwealth, especially issues concerning recruitment. Thus, every contract entered into by or on behalf of the Commonwealth Secretariat which contains a requirement for any dispute arising out of any such contract shall be submitted to the CSAT.

<u>Commonwealth's Normative Instruments</u>

As we have discussed throughout this thesis, the Commonwealth is a flexible organisation with a legal personality sui generis, has a complex constitutional and institutional structure, lacks legal elements and rules in the strict sense, although this does not mean is has no politically or morally binding normative instruments. As shown above, in the case of the Commonwealth the boundary between political and legal is very blurred. In this section we will also refer to the normative instruments that make up the **founding/constitutional bloc** of the Commonwealth. As we pointed out earlier in this thesis, the Commonwealth, unlike other organisations, has no founding treaty in the strict sense; however it does have a set of normative instruments that take a similar form. We also mentioned that it is consistent with the philosophy of common law, as in the United Kingdom, which has no codified constitution in the continental style like France or Germany do.

The Declarations that we will analysis here cannot be taken en bloc, as they are heterogeneous instruments. In the international scene, a Declaration may be issued by a single state, by a gathering of states, or – through one of its organs - by an international organisation. It proclaims the intentions and aims of the party or parties to it. The most celebrated of the all modern Declarations is the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1984. The principles enunciated in this Declaration are of an objective, and law-shaping nature. But, they do not use the language of agreement, or commitment. It is difficult to say that in themselves they impose direct obligations on states voting for their adoption; but it would be wrong to say that they do not impose obligations in other ways, or that they have no legal effect at all.[181]

The Commonwealth Declarations emanate as do the United Nations Declarations from an organised body, the Heads of Government Meeting, a principal organ of the Commonwealth association. They are at the same time declarations of the Governments members of that body containing agreed commitments as well as aims. The Heads of Government are able to ensure- subject to the requirements of their domestic constitutions- that these commitments are carried out. Thus, the Commonwealth Declarations are in part declaratory, or proclamatory (the Lusaka Declaration does in terms "proclaim") and in part consensual and they contain mutual promises about the future conduct of the countries concerned. However, the

[180] Ibidem.
[181] BROWNLIE, I., *Principles of International Law*, op. cit., pp.32 and 144.

Commonwealth normative instruments do not impose obligations binding under international law, and are not considered to be as a treaty, which is defined in the Vienna Convention on the Law of Treaties. What this means is simply that non-compliance with the Commonwealth instruments (the Declarations as well as the two agreements) "would not be a ground for a claim for reparation or for judicial remedies. This... is quite different from stating that they would not be observed or that the parties are free to act as if there were no such instruments". The obligations entered into are binding morally and politically, and they will be regarded by governments as controlling their activities. Political and moral obligations may, in the international field be as efficacious as legal obligations. However, these instruments, as evidence old state practice, contribute to international customary law. The Lusaka Declaration and the Gleneagles Agreement in particular support a general principle of international which prohibits racial discrimination. Moreover, these also contain statements of intent that create expectations of a state of affairs which precludes one Commonwealth government from changing that state of affairs, or asserting a different state of affairs (estoppel) [182]. Lastly, I stress again there is no legal impediment to prevent the CHOGM, as one of the Commonwealth's principle organs, from adopting legally binding rules for the organisation's Member States. However these kind of rules would not be consistent with the voluntary and flexible nature of the Commonwealth. We should remember that the instruments adopted are binding in a different way, either politically or morally. Although the Commonwealth has not adopted legal rules internally, this does not means the organisation, depending on the will of its members, cannot reach legally binding agreements with third countries.

Listed below are some of the principal normative instruments of the Commonwealth, some of which enshrine values and principles of a "constitutional" nature and form what we have been defining as the organisation's founding/constitutional bloc. As previously discussed some of the "as evidence of old state practice, contribute to international customary law"[183].

1) **The Statute of Westminster** implemented the decisions made at British imperial conferences in 1926 and 1930. It was the enactment of the United Kingdom (December 11, 1931) which established the legislative sovereignty of the self-governing Dominions of the British Empire. It was stated that "no law hereafter made by the Parliament of the United Kingdom" or by any Dominion Parliament "shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and at the consent of the Dominion". "It also recognised the right of each dominion to control its own domestic and foreign affairs, to establish its own diplomatic corps, and (except for Newfoundland) to be separately represented in the League of Nations. The Statute applied to the Dominions of Canada, Australia, New Zealand, the Irish Free State, South Africa and New Foundland. However, the Statute was expressed not to apply to Australia, New Zealand or Newfoundland unless and until adopted by those Dominion´s Parliaments. The adoption of the Statute was strongly opposed by conservatives in Australia, and it was not until 1942 that it was finally adopted to clarify Government war powers (the adoption was backdated to the start of World War II. New Zealand adopted the Statute in 1947. Newfoundland never adopted it, so Britain resumed direct rule in the 1930s and retained it until Newfoundland became a Province of Canada in 1949. In spite of all this, under the provisions of the Statute, the British Parliament still had the power to pass legislation regarding the Canadian constitution and the Australian states[184]. These powers were removed by the Canada Act 1982 and the Australia Act 1986.

[182] DALE, W., "Is the Commonwealth an International Organisation?", op. cit, p.467.
[183] Ibidem.
[184] Australia has a federal system of government, is divided into states and territories.

2) As we have already said **the London Declaration of 1949** is considered to be the foundation document of the modern Commonwealth. This Declaration is connected to the fact that India wanted to become a sovereign independent republic. However, India´s Government declared and affirmed her desire to continue her full membership of the Commonwealth of Nations. Thus, according to Dale, this Declaration was "a typical product of English and Commonwealth pragmatism". The purpose of this document was to resolve India´s particular problem. That is, "how to accommodate India as a republic within the Commonwealth". Thus all Commonwealth Prime Ministers finally agreed that India could become a Republic and could reject the concept of allegiance to the Crown. However, she had to accept the King as the symbol of the free association of the Commonwealth members. So, India and the other members simply accepted the new situation. Hence, this Declaration established the principle which enables a State wishing to become a republic to do so without quitting the Commonwealth. Moreover, Dale[185] explains that this principle allowed States such as Malaysia, Tonga, Swaziland and Lesotho to remain in the Commonwealth, retaining nevertheless a monarchical form of government of their own. Both of these categories accept the monarch as the symbol of the free association of the member nations and such as such "the Head of the Commonwealth". In fact, the 1949 Declaration contained two new elements: first, the substitution of the "King" for the "Crown as the symbol of the Commonwealth association. Second, the new title of "Head of the Commonwealth".

In short, the London Declaration[186]:

- Gave to the "British Commonwealth of Nations" the new name of "Commonwealth of Nations" simply.
- Created a new role for the Sovereign as Head of the Commonwealth so forged a new unifying element for the Commonwealth association.
- Enabled the association to embrace republics and independent monarchies, whenever the occasion arose.

3) **The Declaration of Singapore**, the other significant Declaration for the foundation of the modern Commonwealth is the Declaration issued unanimously by the Heads of Government of all the then members of the Commonwealth on January 22, 1971, at Singapore that has become commonly known as a Declaration of Principles, but in the covering communiqué it was called a "Commonwealth Declaration". In Dale´s opinion is more than a statement of principles. He summarised it as containing[187]:

a) Three statements of a constitutional nature:

- "The Commonwealth of Nation is a voluntary association of independent sovereign states, each responsible for its own policies, consulting and co-operating in the common interests of their peoples and in the promotion of international understanding and world peace".
- "The association is based on consultation, discussion and co-operation".
- "Membership of the Commonwealth is compatible with the freedom of member Governments to be non-aligned or to belong to any other grouping, association or alliance. Within this diversity all members of the Commonwealth hold certain principles in common. It is by pursuing these principles that the Commonwealth can continue to influence international society for the benefeit of mankind".

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[185] DALE, W., "Is the Commonwealth an International Organisation?", op. cit, p.465.
[186] Ibidem.
[187] Ibidem.

b) Statements of these principles, including:

- Support for the United Nations in the pursuit of international peace and security;
- Belief in the liberty of the individual, in equal rights for all regardless of race, colour, creed or political belief, and in free and democratic political processes.
- Opposition to racial discrimination and oppression, and all forms of colonial domination.
- Progressive removal of wide disparities in wealth, and promotion of the "freest possible flow of international trade ... taking into account the special requirements of the development countries".
- International co-operation to "remove the causes of war, promote tolerance, combat injustice, and secure development among the peoples of the world".
- Security of each Member State from external aggression.

c) Promises or indications of action:

- A striving to promote "in each of our countries" representative institutions and guarantees for personal freedom.
- The vigorous combating of racial prejudice and discrimination "within our own nation".
- Not to afford to regimes practising racial discrimination assistance directly contributing to it.
- Using all efforts to foster human equality and dignity everywhere, and to further the principles of self-determination and non-racialism.
- Fostering and extending inter-Commonwealth relationships, including exchanges of knowledge and views of professional, cultural, economic, legal and political issues.

It has to be said that in spite of the form of the Declaration[188]. It is not a formal agreement comparable to Chapter I of the United Nations Charter ("Purposes and Principles"), or with equivalent passages in the constitutions of many international organisations, such as the Organisation of American States, or the Arab League since the drafting is informal, the statements are somewhat scattered, and some lack precision[189]. Nevertheless, the intention and effect of the Declaration, and the commitments it embodies, are plain enough. It is a document of the first importance comprising statements of:

i. The composition and working methods of the Commonwealth as a world-wide, multi-racial, and multi-lingual organisation of independent states, which are at every stage of economic development.

ii. The aims and beliefs of the organisation.

iii. The principles of action it will follow.

iv. The above mentioned statements of a constituent nature.

4. The Memorandum of 1965, which we have already discussed at length, in the section on the Secretariat. This document sets out in detail the functions of the Secretariat and the administrative organisation; and in Annexes the scale of immunities and privileges proposed.

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[188] The Commonwealth, "Declaration of Singapore", The Commonwealth Founding Documents, 22 January 1971.
[189] DALE, W., "Is The Commonwealth an International Organisation?", op. cit., p. 468.

5. Another main Declaration was the **Lusaka Declaration** of the Commonwealth on Racism and Racial Prejudice which was made by Heads of Government when meeting in Lusaka from August 1 to 7, 1979, 39 countries attending. It expanded the Singapore statements on this subject, proclaiming the desire of Commonwealth members to work for the eradication of all forms of racism and racial prejudice; and that the Commonwealth was "an institution" devoted to the promotion of international understanding, world peace, and equal rights for all citizens. It declares some of the human rights of Commonwealth peoples with greater definition. It concludes with the statement of intention that the Commonwealth "should co-operate with other organisations in the fulfilment "of the stated principles.

According to Dale[190], the Lusaka Declaration is not so concrete, judge from the "constitutional" viewpoint, as the Singapore Declaration. But, it shows a greater confidence from the organisational viewpoint. It is a Declaration "of the Commonwealth", which is referred to as an "institution" and in his opinion, the concluding statement refers to the Commonwealth as an "international organisation".

6. **The Commonwealth Statement of 1977 on apartheid** in sport, known as the "Gleneagles Agreement". Basically it developed principles enunciated at Singapore; it embodies an agreement to reinforce efforts to carry them out.

7. **The Melbourne Declaration** issued by Heads of Government in the course of their Meeting at Melbourne in 1981. This Declaration is in Dale´s opinion[191], essentially a call to accept, out of regard for the interdependence of all states, political commitments to take "prompt, practical and effective action" to assist developing countries economically".

8. Building on the 1971 Singapore Declaration, **the 1991 Harare Declaration** contained Commonwealth principles which enunciated, as fundamental political principles, democracy and democratic processes, the rule of law and the independence of the judiciary, good governance, fundamental human rights and equal opportunity, including gender equality.[192]

<u>Commonwealth's Membership: From the Dominion status to full membership</u>

The notion of eligibility as a member of the Commonwealth "has evolved over time and has been driven by major turning-points in the Commonwealth´s history". Before the demise of the British Empire, there was a growing awareness that its structure would have to become more flexible to accommodate the increasing demands from the 'colonies of settlement' for more Independence. So, a reform was needed and the Imperial Conference of 1926 provided that opportunity. The most important development to come out from that Conference was the Balfour Formula which accepted the equality of the separate Dominions with each other and with Britain. However, the authority in the Dominions still derived from the Crown. Most importantly, The Balfour Formula noted that membership of the British Commonwealth of Nations was voluntary[193]. Subsequently, the Statute of Westminster of 1931 ended the supremacy of the British parliament over Dominion legislation and paved the way for the development of the Dominions towards full-unfettered statehood within the Commonwealth.

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[190] DALE, W., "Is the Commonwealth an International Organisation?", op. cit., p.468.
[191] Ibidem.
[192] The Commonwealth, "The Commonwealth at the Summit: Communiques of Commonwealth Heads of Government Meetings 1944-86", London, Commonwealth Secretariat, 1987.
[193] TE VELDE, V., "Commonwealth Membership and the Patterson Commission Report: In the light of the Kampala Communiqué", Commonwealth Policy Studies, 2009, p. 3.

CHAPTER I: THE COMMONWEALTH

After the Second World War, the World lived an accelerated process of decolonisation that deeply affected to the Commonwealth structure. As Te Velde notes, India was the first Asian nation and the first republic to seek Independence, but wishing to remain within the Commonwealth. At that time, the majority of members were realms. Thus, to accommodate India's desire to become a member of the Commonwealth as a republic, a new formula was found. This one was to accept the King as Head of Commonwealth.

During 1948-1965, Britain's policy towards the Commonwealth changed[194], basically due to two facts: Firstly, the unity of the Commonwealth was decreasing. Secondly, the foreign policy of Attlee was foremost concerned with the Anglo-American relationship. In the 1950s and 1960s the wave of nationalism that swept through the colonies made the Commonwealth membership grew. In 1971, the CHOGM held at Singapore adopted one of the main Declarations of principles of the Commonwealth. It has been said that the Singapore Declaration is ''neither a Charter nor a code of conduct, but guidelines for the solution of Commonwealth and international problems''.[195] Members pledged support for peace, liberty, and international cooperation; they stood out against racial discrimination, colonial domination, and wide disparities of wealth.

In the 1990s there was an influx in applicants so it was necessary to set an Inter-Governmental Group on Criteria for Commonwealth Membership (IGCCM). The Group discussed whether, in the light of Mozambique´s admission, the membership should be opened to more countries. The decision was made to not 'open the flood gates', but to establish the requirement that the applicant needs to have had a constitutional link with an existing member, not just the UK. IGCCM also discussed the possibility of introducing observer or associate membership.[196] The main criteria for membership that were agreed were set down in the 1991 Memorandum on Commonwealth Membership, more commonly known as the Harare Criteria.

Harare criteria are basically six:

- Applicant must have had a constitutional link with an existing Commonwealth member,
- It must endorse the principles set out in the Harare Declaration (issued the same year than the Harare Criteria),
- It must be a sovereign state,
- It must be generally endorsed in the applicant country,
- It must accept the use of English as the language of the Commonwealth and;
- It must accept the Queen as the Head of the Commonwealth.

Te Velde comments that while the two first criteria continue to be debated, and are still open to interpretation, the others have been referred by Collinge and McIntyre as 'non-controversial'. McIntyre explains that in order to re-enforce these commitments **the Millbrook**

Action Programme was adopted during the 1995 CHOGM, this provided mechanisms for advancing Commonwealth fundamental values, promoting sustainable development, and facilitating consensus building. Heads of Government accepted that when member countries were ''clearly in violation'' of these principles, especially if there was an unconstitutional overthrow of a democratically elected government, there should be expressions of collective

[194] MILLER, J.D.B., *Survey of Commonwealth Affairs: Problems of Expansion and Attrition 1953-1969*, Oxford, Oxford University Press, 1974, p.418.
[195] MCINTYRE, D., "The Expansion of the Commonwealth and the Criteria for Membership", op. cit., p. 281.
[196] MOLE, S., "'Seminars for statesmen': the evolution of the Commonwealth summit", *The Round Table: The Commonwealth Journal of International Affairs*, Vol. 93, 2004, Issue 376, p. 540.

disapproval, including suspension of errant governments from Commonwealth councils, suspension of participation in technical assistance programmes, or even suspension of a country's membership. As we have already described in the section on the institutional structure of the Commonwealth, the Commonwealth Ministerial Action Group (CMAG), comprising eight foreign ministers, was established as a result of the Millbrook Programme. At the same time the Secretary-General was furnished with a range of measures with which to respond to infringements of Commonwealth principles. These include use of his good offices, appointment of envoys or eminent persons to visit and advice, and assistance in the restoration of democratic processes.[197]

On 27 October 1997, in Edinburgh, the Heads of Government of the Commonwealth issued a communiqué concerning the organisation's membership criteria, the Edinburgh Communique´. The Commonwealth members ''agreed that in order to become a member of [the] Commonwealth, an applicant country should, as a rule, have had a constitutional association with an existing Commonwealth member; that it should comply with Commonwealth values, principles and priorities as set out in the Harare Declaration; and that it should accept Commonwealth norms and conventions.''[198] However, there was no mention in the Communique´ of the Headship of the Commonwealth[199].

The fundamental values were spelt out in greater detail in the Coolum Declaration of 2002, which added freedom of expression to the fundamental political values. It also specified respect for diversity, celebration of pluralistic societies and tolerance, determination to relieve poverty and promotion of people centred sustainable development.[200] In the same vein, the Malta CHOGM in 2005 adopted the Latimer House Guidelines on the principles of accountability and the relationship of executive, legislature and judiciary as an integral part of fundamental political values. Thus the second criterion proposed by the CCM was acceptance of, and demonstrable commitment to, the fundamental values and principles set out in 1971 and subsequent declarations. The Valetta CHOGM in 2005 suggested that new applications could ''reflect the global relevance and profile'' of the association:

> ''There is no reason in principle why it should not remain open to new members if they are sovereign states that satisfy the agreed criteria and demonstrate full adherence to the Harare principles and commitment to the other working norms of the organisation.''[201]

The Heads of Government mandated the Secretary-General to convene a working committee at the appropriate political level to consider this issue and report to the next CHOGM. The Committee on Commonwealth Membership (CCM) was appointed in 2006. They adopted a report in 2007, which was the result of a thorough process of study and discussion, which indicated that there was a general inclination to be more open to new applicants provided that criteria and procedures were clear and transparent and that there would be no dilution of Commonwealth values and norms. The committee focussed on four areas: the historic evolution of the association; the principles and values; the norms and conventions, and other

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[197] The Commonwealth, "The Commonwealth at the Summit: Communique´s of Commonwealth Heads of Government Meetings 1987–1995", The Commonwealth Secretariat: Commonwealth Secretariat Archives, 1997.
[198] Commonwealth Heads of Government Meeting (CHOGM), "The Edinburgh Communique, 1997", The Commonwealth, from: <http://www.secretariat.thecommonwealth.org/files/37061/FileName/1997EdinburghCommunique.pdf>, (12 November 2012).
[199] MCINTYRE, D., *The Expansion of the Commonwealth and the Criteria for Membership*, op.cit., p. 277.
[200] The Round Table (Ed.), "The Commonwealth at and immediately after the Coolum CHOGM", *The Round Table: The Commonwealth Journal of International Affairs,* Vol. 91, April 2002, Issue 364, pp. 125–129.
[201] Commonwealth Heads of State and Government Summit (CHOGM**)**, Valetta, Malta, 23 - 27 November 2005.

issues. Following this report, in 2007, the CHOGM held in Uganda issued the Kampala Communiqué[202] which recommended a 'core criteria for Membership'

- An applicant country should, as a general rule, have had an historic constitutional association with an existing Commonwealth member, save in exceptional circumstances;
- In exceptional circumstances, applications should be considered on a case-by case basis;
- An applicant country should accept and comply with Commonwealth fundamental values, principles, and priorities as set out in the 1971 Declaration of Commonwealth Principles and contained in other subsequent Declarations;
- An applicant country must demonstrate commitment to: democracy and democratic processes, including free and fair elections and representative legislatures; the rule of law and independence of the judiciary; good governance, including a well-trained public service and transparent public accounts; and, protection of human rights, freedom and expression, and equality of opportunity;
- An applicant country should accept Commonwealth norms and conventions, such as the use of the English language as the medium of inter-Commonwealth relations, and acknowledge Queen Elizabeth II as the Head of the Commonwealth; and
- New members should be encouraged to join the Commonwealth Foundation, and to promote vigorous civil society and business organisations within their countries, and to foster participatory democracy through regular civil society consultations.[203]

If an existing member changes its constitutional status (as from realm to republic) it does not have to reapply for membership, and countries in accumulated arrears with their financial contributions are to be renamed 'Member in Arrears' rather than Special Member.[204]

The Kampala criteria for membership are little changed from those endorsed at Edinburgh in 1997 saves in four respects:

1- The historic constitutional association remains, as do the acceptance of fundamental political values and principles and the norms and conventions of Commonwealth relations.

2- The major change is the addition of the possibility of exceptional circumstances considered on a case-by-case basis, making possible repeats of Mozambique's experience. The most likely of the new applicants would appear to be Rwanda. But there can be little fear that the Kampala decision will open the floodgates because all the other criteria remain in place and have been rendered more stringent.

3- There is an explicit recommendation that new members should join the Commonwealth Foundation and encourage civil society and business organisations.

4- There is no reference in the CCM Report to the succession to the Headship. The IGCCM Report of 1997 had referred to acknowledgment of 'the British monarch' as a symbol of the free association of the members and as such Head of the Commonwealth. The CCM Report of 2007 refers simply to ''Queen Elizabeth II''.

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[202] The Commonwealth, "The Kampala Communiqué of the Commonwealth Forum of National Human Rights Institutions", 19 November 2007.
[203] Ibidem.
[204] Ibidem.

In November 2009 the Trinidad and Tobago CHOGM adopted the Trinidad and Tobago Affirmation on Commonwealth Values and Principles, and welcomed the Commonwealth's 54th member - Rwanda[205]. Several other countries were expected to submit official applications to join, including Algeria, Madagascar, Sudan, and Yemen but they were not considered[206].

In short, different historical events have caused the evolution of membership criteria. The most remarkable ones are: the Independence of India and its accommodation as a republic within the Commonwealth, in 1949. In 1957 a non-white state, Ghana, became a member of the Commonwealth. Another precedent was set when Malaya, in 1957, became the first independent constitutional monarchy within the Commonwealth. An important shift was made with the admittance of Small States, Cyprus was the first one in 1961, and Nauru's accession as the first microstate in 1968. Finally, the most recent change is the idea of admitting members that were never British dependants, such as Namibia, Cameroon, Mozambique and Rwanda. However, concerning this last issue, we have to clarify that the admittance of new members not linked to the British Empire will be considered case by case. Keeping with this line, Duxbury[207] states that "the Commonwealth does not envisage itself developing into a universal organisation".Mc Intyre points out there was always resistance to new members, but eventual acceptance, furthermore there have been many comings and goings, but countries that left have usually returned.

Finally, the development of the membership will demonstrate how a set of patchy and confusing criteria have become a set of articles and have been set down in various documents, the lasted of them being the Kampala Communiqué. To my mind, this indicates that the Commonwealth is something more than a mere association of states or a platform for International relations. As in the case of other organisations, it has clear criteria for admitting new members.

<u>The acceptance of small states as members of the Commonwealth</u>

According to Arnold Smith[208], the question whether to impose a minimum population requirement for membership was tackled in 1960. There were then only ten Commonwealth members, with Ghana the single representative of black Africa. But it was foreseen that Cyprus and Malta, with populations of half-million or less, would soon be independent. Después de diversos debates, the Cabinet Secretaries concluded that the Commonwealth should do nothing to exclude countries for reason of size. In that respect, Cyprus joined in 1961, connections were obviously strongest with two non- Commonwealth countries, Greece and Turkey, but they wanted a third option rather than have to choose between them, which in fact would have meant enosis or union with Greece. Commonwealth membership helped to opt for independence. Malta, under Borg Olivier wanted to become an integral part of Britain, and offered many attractions- a Mediterranean base, sunshine for tourists without foreign currency, among others – but the idea was brushed aside, like an embarrassing temptation.

[205] In 2009, The Commonwealth included 54 member States, in 2013, Gambia left the Commonwealth, so nowadays there are 53 member states.

[206] UK Government, "CHOGM 2009", UK Government: Foreign and Commonwealth Office, from: <http://www.fco.gov.uk/en/global-issues/institutions/commonwealth1/chogm-2009>, (accessed: 10 June 2010).

[207] DUXBURY, A., "The Commonwealth and the Edinburgh CHOGM: Challenges and Opportunities", *Australian National University Press,* Vol. 5, 1994, Num. 4, p. 438.

[208] SMITH, A., *Stitches in Time - The Commonwealth in World Politics*, op. cit., p.252.

CHAPTER I: THE COMMONWEALTH

The accession of Malta and Cyprus to the Commonwealth

It is interesting to analyse Malta's and Cyprus' role, despite none of them were founding members of the Commonwealth, they both have played a vital role in the Commonwealth's history, despite they both are small islands of the Mediterranean, but they contributed to modify theaccession criteria for new members, in fact they were flexibilised, and the territorial dimensions as well as the number of population were no longer relevant. Initially, the small dimmensions of both territories arrose questions regrding their own survilliance and self-sufficiency if they wanted to opt for self-determination. But, soon it was obvious that the size would not represent an obstacle for their aspirations. So, thanks to their self-determination and inclusion in the Commonwealth as full members, the Commonwealth profile woud radically changed.Today, "almost two thirds of the Commonwealth's members are classified as "small states". The Commonwealth therefore plays an influential role as a collective voice and advocate for small states, and contributes to greater international awareness of issues affecting them[209]". Hence, the impact that the membership of these two small islands has been very relevant for the history of the Commonwealth itself.

The accession of Cyprus to the Commonwealth

In order to deal with this content, I am going to focus on three main issues: The independence of Cyprus from the British colonial rule, the Cypriot application to the Commonwealth, and the involvement of the Commonwealth in the Cypriot conflict.

The independence of Cyprus from the British colonial rule[210]

As the Modern era approached, the Ottoman Empire relinquished control of the small but valuable island of Cyprus. In 1878, after facing military defeat by the Russians, the Ottomans agreed to allow British administration of Cyprus in return for assistance, so in 1914, Britain annexed Cyprus officially and became an official British crown colony. During the British occupation, Turkish Cypriots accordingly (and predictably) viewed Cyprus as a British territory.[211] Meanwhile, the Greek Orthodox Church, which had been solidifying its hold on the cultural and political institutions of the Greek population of the island, mobilised towards the idea of *enosis,* or political unification of the island under Greek Cypriot control.

British colonial rule in Cyprus during the 20th Century was characterised by the following developments:

1. A growing Greek Cypriot demand for *enosis*
2. Further antagonism between Greek and Turkish populations
3. Greek Cypriot demands for self-determination exploding into armed resistance to British rule
4. The emergence of Archbishop Makarios and General Grivas as prominent Greek Cypriot figures strongly in favour of *enosis* and 5. Growing interest from world superpowers

Apicelli notes that unfortunately sources give no satisfactory or comprehensive account of why the Greek and Turkish Cypriots lived in harmony for the duration of the Ottoman rule, but

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[209] New Zealand Government, "The Commonwealth and the Commonwealth Small States", New Zealand Government, from: <http://www.mfat.govt.nz/Foreign-Relations/2-International-Organisations/Commonwealth/0-cwsmallstates.php>, (accessed: 20 December 2012).
[210] APICELLI, M., *The Beginnings of Cypriot History*, New York, Maxwell School of Syracuse University, 2006, p.29.
[211] Ibidem.

came to violence under the British colonisation and subsequent independent statehood. During the British colonial rule, ethnic hostilities between Greek and Turkish Cypriots were further fanned, as each group came to identify increasingly with its "parent" country. Essentially, an exponential negative feedback loop ensnared the two peoples as nationalism became more prominent, and as Turkey and Greece encourage nationalism on Cyprus for their own strategic purposes. During the late colonial period, Greek and Turkish Cypriots adopted the flag, national anthem, and national holidays of their respective parent countries. During the 1912-13 Balkan wars, the First World War, and the Greek-Turkish war of 1919-23, Cypriots from both ethnic groups fought as volunteers on opposite sides.[212] It is not difficult to imagine the divisive nature of these conflicts on the already loosened cultural ties between Greek and Turkish Cypriots. The heretofore pacific Cypriots, who had known no serious armed conflict throughout their history, were for the first time participating in wars of nationalistic pride. Also for the first time in modern history, Cyprus was producing charismatic war hero-leaders such as the founder of EOKA[213], General George Grivas.

Thus, both groups felt the pangs of nationalistic sentiment: Greek Cypriots' desire manifested itself in a call for *enosis*, while their Turkish counterparts reacted by promoting *taksim*, the partition of the island. The Greek Cypriot desire for self-determination was fuelled by the Pan-Hellenic notion of *enosis*. Since, the Greek Cypriots composed such an overwhelming majority (80%) of the population, the tendency for them to view Turkish Cypriots as a minority population living within their ethnic state was very strong. After all, the Turkish Cypriots were (relative) newcomer pilgrims who had over the centuries adapted to the particular mode of living on the island that did not closely resemble that of Turkey. By contrast, the Turkish Cypriots experienced their nationalistic sentiments largely as a reaction to the Greek cry for *enosis*. Due to their fear of powerlessness as a relatively small population in reference to the Greeks Cypriots, Turkish Cypriots would live in fear of oppression by the majority if left unprotected. Thus, the Turkish Cypriots voiced their response to these fears by promoting *taksim*, a movement that endorsed separation, insulation, and protection from the Greek majority. After divvying up the population of Cyprus along ethnic lines, Turkish Cypriots would then be able to form their own republic and subsequently engage in their own sort of *enosis* by furthering relations with Turkey. Such was the de facto outcome after the independence of Cyprus was established.

While in the "golden age" of Greek and Turkish Cypriot relations the two groups lived in harmony and interdependence, by this stage of the island's history both sides were suspicious of each other. This new-found lack of mutual empathy resulted in a widening of the gap between the two populations. As Greek Cypriot demands for *enosis* became more prevalent, any British sympathy for the Greek Cypriot plight quickly dried up. More than once in the 20th century did Greek Cypriot frustrations and sense of abandonment flare up into rioting and guerilla activity.[214] In 1950, once elected Archbishop Makarios III escalated the conflict with British rule by holding a plebiscite in Cyprus, in which 98% of the population was reported to have voted for *enosis*.[215] This referendum vote thrust the Cyprus problem onto the world stage, attracting international attention in NATO and UN forums.[216] In addition, these events

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[212] JOSEPH, S. J., "The United Nations as an Instrument of National Policy: The Case of Cyprus", University of Nicosia, *The Cyprus Review*, 1989, p. 134.
[213] Ethnike Organosis Kyprio Agoniston (or the National Organisation of Cypriot Fighters.
[214] FOLEY, C., SCOBIE, W.I., *The Struggle for Cyprus*, Stanford, Hoover Institution Press, 1975, p.9.
[215] Ibidem.
[216] MILLER, L.B., *Cyprus: The Law and Politics of Civil Strife*, Cambridge (Massachusetts), Center for International Affairs, Harvard University, 1968, p.64.

only served to solidify the sense of threat[217] that all of the stake-holders on the island felt. Greek Cypriots became increasingly recalcitrant towards a British administration who thought that favoured the Turkish minority. The Turkish Cypriots, no longer in control of the island's government, began to feel both resentment towards the Greek Cypriots for their troublemaking and fear due to lack of empowerment as a minority group with no significant governmental control.

Makarios traveled to Athens in 1950, where he first met George Grivas. The two of them discussed the perceived draconian oppression of the British colonial government, as well as prospects for an island-wide Greek Cypriot uprising.[218] The resistance to British rule generated by Grivas and the militant-nationalist EOKA forces would prove successful beyond their wildest dreams in effecting independent rule. Greek Cypriot leaders could not predict, however, the amount of international interest they would draw to the formulation of the subsequent 1960 Cypriot constitutional convention. Nor did the Greek Cypriot leaders ever consider the amount of resentment their increasing stockpiles of weaponry and pitched cries for independent home-rule were eliciting in the Turkish Cypriot population. After ten years of rebellion, riots, civil strife, negotiation, truce, and eventually capitulation, the British government agreed to Cyprus' scheduled transition from a crown colony to an independent Republic within the Commonwealth.[219]

In 1974 Turkish troops invaded and occupied the northern 36% of the Republic of Cyprus. This area was later declared independent. The secession has not been recognised internationally, except by Turkey. The UN and Commonwealth have for many years protested about the occupation and tried to resolve the problem by negotiation.[220]

<u>Cypriot application to the Commonwealth</u>

Cyprus's independence in 1960 occurred at an important juncture in the Commonwealth's evolution. A new round of membership expansion was poised to begin, but its scope and form were as yet unknown. Until then, 'old' Commonwealth members, such as Britain and Canada, had anticipated that the Commonwealth would grow by small numbers via the accession of large units. This was called into question by Cyprus, at the time the smallest British dependency to achieve independence, whose leadership insisted on full membership or no membership.[221]

Since 1947, the Commonwealth had changed dramatically, some Commonwealth's States governments, especially Canada, preferred to deal with these changes on a case-by-case basis rather than try to anticipate them and establish guidelines. Cyprus was such a case, but it also led to the elucidation of more general principles about future membership which helped to shape the modern Commonwealth. By early 1959, constitutional negotiations had brought the prospect of Cyprus's independence and this raised the question of Commonwealth membership. At the close of the February 1959 constitutional conference in London, British Prime Minister Harold Macmillan announced that Greece and Turkey would not object to

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[217] NORTHRUP, T.A., *The Dynamic of Identity in Personal and Social Conflict*, in KRIESBERG, L., *Intractable Conflicts and Their Transformation*, New York, Maxwell School of Syracuse University, 1998, p.7.
[218] FOLEY, C., SCOBIE, W.I., *The Struggle for Cyprus*, Stanford, op. cit., p.15.
[219] MILLER, L.B., *Cyprus: The Law and Politics of Civil Strife*, op. cit., p. 3.
[220] The Commonwealth, "Cyprus", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/Templates/YearbookHomeInternal.asp?NodeID=138423>, (accessed 3/3/2010).
[221] MACLEOD, R., "Canada's attitude towards Cyprus joining the Commonwealth", *The Round Table: The Commonwealth Journal of International Affairs*; Vol. 328, 1993, Issue 1, p.393.

Cyprus remaining associated with the Commonwealth after Independence. However, according to Macleod, Macmillan observed that because of Cyprus's unique situation involving a treaty relationship with two foreign powers, full Commonwealth membership might not be appropriate so that other options might have to be considered.

In September 1959, the anticipated British proposal on the future of Cyprus in the Commonwealth arrived. In it, the British government argued that with such a small area and population, Cyprus would have only a small role in world affairs and that the treaties with Greece and Turkey suggested that the new state would be less than fully sovereign and could create a security problem regarding Commonwealth Prime Minister's Meetings (CPMMs) because outside states might become privy to the proceedings[222]. Because of these considerations, **the British government recommended that Cyprus be offered an association with the Commonwealth to reflect its unique situation. This would include almost all the benefits of full membership except attendance at CPMMs. (Commonwealth Prime Ministers Meetings)**

However, not all Commonwealth's members agreed the mentioned proposal, the group lead by Canadian government accepted that Cyprus represented a unique case, but was uneasy about the prospect of differentiated Commonwealth types of membership. A brief prepared for the Prime Minister of Canada, John Diefenbaker, described the British proposal as establishing a three-tiered membership structure--full members, partial members, and dependencies which represented a departure from the principle of equality of independent members.[223] Even if Cyprus's prime minister would have little influence in the world, it could still be instructive for other Commonwealth prime ministers to hear the Cypriot perspective, and by being receptive to it they might increase Cyprus's influence elsewhere. So Canadian officials saw more advantage to maintaining the Commonwealth's open and flexible character and not making distinctions on size any more than on colour or race. Despite the many Canadian doubts, Diefenbaker was reluctant to oppose the British plan. Canadian believed that a large part of the reason the British government did not want to offer Cyprus full membership was dislike for Greek Cypriot leader Archbishop Makarios III.[224] The controversial archbishop had been a leader of the *guerilla* movement pressing for union with Greece and had been briefly exiled in 1957. More recently, he had been elected to head the post-independence government. There was now a clear difference in attitude between the British and other group of members, led by Canadian government over the membership of Cyprus in the Commonwealth.

The argument, however, was not over Cyprus per se but Commonwealth membership in general. Cyprus was the first of what could be many small applicants for membership. Were it to be refused full membership, existing members, especially the 'old' members, might well be blamed and this could create a negative impression of the Commonwealth in remaining dependencies, reducing the attractiveness of Commonwealth membership for them.[225] Even was Cyprus to accept partial membership, Canadian officials felt that there was a real

[222]Sir Saville Garner, British High Commissioner to Canada, to Diefenbaker, 15 September 1959, PAC RG 25 ACC 86-7/414 box 204 file 12833-40.Cyprus-Commonwealth Relations.

[223]Memorandum for the Prime Minister. "Cyprus and the Commonwealth", 25 September 1959. PAC RG 25 ACC 86-7/414 box 205 file 12833-40.

[224]This does seem to have played a part. A British list of objections to Cypriot membership prepared in early 1959 was headed by the prospect that Makarios would be the first prime minister and Britain did not want him at CPMMs. 'The Objections to Cyprus Becoming a Member of the Commonwealth' (nd). PRO DO 35/8019.

[225] UK Government, Brief VI-C-1, "Cyprus and the Commonwealth", UK Government, 21 April 1960, PAC RG 25 vol 3446 file 1-1960/3 part 2. Meeting of Commonwealth Prime Ministers, May 1960.Briefs.

possibility that it would soon become dissatisfied, especially when Rhodesia's prime minister was invited to CPMMs but not Cyprus's.

Diefenbaker went to the 1960 CPMM in late April fully prepared to support Cypriot membership, but there was no application to consider. As the Canadians had expected, in January, Cypriot leaders had rejected the idea of partial membership and chose to become independent outside the Commonwealth in 1960. At the meeting, however, Diefenbaker urged that Commonwealth members study the general issue of membership and small members which, as the issue of Cyprus had so dramatically demonstrated, required serious rethinking. The meeting established the Commonwealth Study Group (CSG), composed of six officials from around the Commonwealth to examine the constitutional development of the remaining dependencies with particular emphasis on the smaller ones. Robert Bryce, one of the six officials, personally believed that Cyprus should be excluded from the Commonwealth unless Britain was deeply committed to its inclusion.[226] He felt this way not because of its size, but because he was not convinced that given the strong pulls towards Greece and Turkey, the new state would be able to pursue Commonwealth ties in a meaningful way. This did not change Canadian policy towards Cyprus as it was very much a minority view.

Following the conclusion of Anglo-Cypriot negotiations on British bases in Cyprus in August 1960, Makarios asked the British government to poll Commonwealth members on their receptiveness towards a possible Cypriot application to full Commonwealth membership. On 16 February 1961 the Cypriot House of Representatives passed a resolution expressing its wish that Cyprus join the Commonwealth. The Canadian government readily agreed.[227] The 1961 CPMM, which saw South Africa depart from the Commonwealth, witnessed Cyprus's acceptance into it.

Decolonisation was producing more changes and the Commonwealth had to accept and adapt to them, especially if the association wanted to continue to have a meaningful place in international relations. As the pace of decolonisation accelerated in the 1960s, many other states once considered incapable of becoming independent followed Cyprus into the Commonwealth as full members. By opening the issue of small membership, Cyprus blased a trail for others, and by its actions, the Canadian government, although not leading the process of change, led the acceptance of change by the 'old' Commonwealth. The Commonwealth is often lauded for its flexibility and willingness to change, but the case of Cyprus illustrates that this is often accompanied by doubts, even among members in the fore of accepting it.

The involvement of the Commonwealth in the Cypriot conflict

The Republic of Cyprus joined the Commonwealth upon independence in 1961. The Turkish invasion of Cyprus took place the 20th of July of 1974.

> "Turkey invades Cyprus, thousands of Turkish troops have invaded northern Cyprus after last-minute talks in the Greek capital, Athens, failed to reach a solution.
>
> Tension has been running high in the Mediterranean island since a military coup five days ago in which President Archbishop Makarios, a Greek Cypriot, was deposed.

[226] UK Government, "Memorandum for the Prime Minister from Robert Bryce", Secretary to the Cabinet and Clerk of the Privy Council, 30 June 1960, PAC RG 25 ACC 86-7/414, vol. 207 file 12852-40, Commonwealth Study Group, 1960.

[227] UK Government, Memorandum: "Cyprus and the Commonwealth", 21 February 1961. PAC RG 25 ACC 85-6/551 vol. 3447 file 1-1961/1 part 1. Briefs Prepared for the Meeting of Commonwealth Prime Ministers 1961.

The coup led to fears among the Turkish Cypriot community that the Greek-backed military rulers would ignore their rights and press for unification for Cyprus with Greece or enosis. Archbishop Makarios became the republic's first elected president in 1959 only after agreeing to give up plans for a union with Greece. A Turkish armada of 33 ships, including troop transporters and at least 30 tanks and small landing craft, has landed on the northern coast"[228].

At the Commonwealth Heads of Government Meeting (CHOGM) in Kingston, Jamaica, held during April 29 – May 6, 1975 the Commonwealth took a principled stand on the Cyprus Problem. In the final communiqué Heads of Government:

"Expressed their solidarity with the Government of the Republic of Cyprus and their determination to help in the achievement of a political settlement based on the independence, sovereignty, territorial integrity and non-alignment of the Republic of Cyprus. They reaffirmed their support for General Assembly Resolution 3212 and Security Council Resolutions 365 (1974) and 367 (1975) and in particular they called for the speedy withdrawal of all foreign armed forces from the Republic of Cyprus, for the taking of urgent measures for the return of all refugees to their homes in safety and for the continued efforts through the intercommunal talks to reach a freely and mutually acceptable political settlement[229]".

At Kingston it was agreed to establish a committee consisting of representatives of the Governments of Australia, Britain, Guyana, India, Malta, Nigeria and Zambia. The mandate of the Committee was to "meet with the Secretary General, follow developments concerning Cyprus, make recommendations and assist in every possible way towards the early implementation of the above mentioned United Nations Resolutions". The Commonwealth Committee on Cyprus was formally constituted on July 30, 1975.

The Commonwealth continued to promote the cause of Cyprus and to support a solution based on UN resolutions in its communiqués and political activities. Particular concern was expressed by the Commonwealth upon the unilateral declaration of independence (UDI) of the secessionist entity in the occupied part of Cyprus, on November 15, 1983. UN Security Council resolution 541, of November 18, 1983 had deplored the UDI, considered it legally invalid and called for its withdrawal. The resolution had inter alia called upon all states to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus and not to recognize any Cypriot state other than the Republic of Cyprus.

The CHOGM in New Delhi, during November 23-29, 1983 condemned the UDI in clear terms, fully endorsed Security Council resolution 541 and pledged their solidarity with the Government of Cyprus. In more detail the communiqué on Cyprus reads:

"Heads of Government condemned the declaration by the Turkish Cypriot authorities issued on 15 November 1983 to create a secessionist state in Northern Cyprus, in the area under foreign occupation. Fully endorsing Security Council Resolution 541, they denounced the declaration as legally invalid and reiterated the call for its non-recognition and immediate withdrawal. They further called upon all states not to facilitate or in any way assist the illegal secessionist entity. They regarded this illegal act as a challenge to the international community and demanded the implementation of the relevant UN Resolutions on Cyprus.

[228] British Broadcasting Corporation (BBC), "1974: Turkey invades Cyprus", BBC News, 20 July 1974, from: <http://news.bbc.co.uk/onthisday/hi/dates/stories/july/20/newsid_3866000/3866521.stm>, (accessed: 21 December 2012).

[229] Government of Cyprus, "International Organisations and the Cyprus Question: The Commonwealth and the Cyprus Question", Government of Cyprus: Ministry of Foreign Affairs of the Republic of Cyprus, from: <http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/9B7B697CF899E85BC22571EA002780AD?OpenDocument>, (accessed: 8 December 2010).

> At this critical moment for a member country of the Commonwealth, Heads of Government, reaffirming their Lusaka and Melbourne communiqué and recalling the relevant Security Council resolutions, pledged their renewed support for the independence, sovereignty, territorial integrity, unity and non-alignment of the Republic of Cyprus; and in this respect, they expressed their solidarity with their colleague the President of Cyprus"[230].

The Heads of Government meeting in New Delhi established a Commonwealth Action Group on Cyprus, whose members were the Secretary General of the Commonwealth and Australia, Guyana, India, Nigeria and Zambia. The Action Group's mandate was to assist in securing compliance with Security Council Resolution 541, to monitor developments and to assist the Secretary General's efforts. The Commonwealth maintained their adherence to the principles and resolutions of the United Nations with regard to a solution in Cyprus. In 1997 the Action Group appointed the Deputy Secretary General of Commonwealth Mr. Srinivasan as observer to the process of intercommunal negotiations under the auspices of the UN.

At the CHOGM, held in Coolum, Australia, from the 02 to the 05 March 2002, Commonwealth leaders reaffirmed United Nations Security Council Resolutions and their previous communiqués on Cyprus, "welcomed the resumption of talks between the two sides under the auspices of the United Nations Secretary-General within the framework of his mandate of good offices mission as described in Security Council Resolution 1250" and "encouraged all concerned to co-operate fully with the Secretary-General and his Special Adviser to show flexibility and negotiate to the conclusion of a just and lasting settlement consistent with relevant Security Council Resolutions." Commonwealth Heads of Government reiterated also "their support for a Cyprus settlement that ensures the independence, sovereignty, territorial integrity and unity of a reunited Cyprus".

The CHOGM in Abuja, Nigeria, held during 5-8 December 2003, condemned the negative approach taken by the Turkish Cypriot leader in regard with the resumption of negotiations for finding a settlement. The communiqué on Cyprus reads as follows:

> «Heads of Government welcomed the signing by the Republic of Cyprus of the Accession Treaty to the European Union on 16 April 2003 and expressed the wish that a solution of the Cyprus problem would be found before 1 May 2004 that would allow a reunited Cyprus to become a member of the European Union. They reaffirmed their support for the independence, sovereignty, unity and territorial integrity of Cyprus. They regretted that the latest effort of the United Nations Secretary- General, under his mission of good offices in Cyprus, had collapsed at The Hague meeting on 10 March 2003 due to the negative approach taken by the Turkish Cypriot leader. They further regretted that the Turkish Cypriot leader continued to maintain the same negative approach, thus hindering the resumption of negotiations based on the Annan Plan. Recalling and reaffirming previous UN Security Council Resolutions and reaffirming their previous Communiqués on Cyprus, Heads of Government called upon all parties concerned and in particular Turkey and the Turkish Cypriot leadership to co-operate fully with the UN Secretary-General so as to enable the early resumption of substantive negotiations based on the UN Secretary-General's proposals, aimed at the conclusion of a just, lasting and functional settlement consistent with relevant UN Security Council Resolutions».

The Heads of Government meeting in Malta 25-27 November 2005 expressed their support for the sovereignty, independence and territorial integrity and unity of the Republic of Cyprus. They expressed their support for a lasting, just and functional settlement to the Cyprus

[230] Government of Cyprus, "International Organisations and the Cyprus Question: The Commonwealth and the Cyprus Question", Government of Cyprus: Ministry of Foreign Affairs of the Republic of Cyprus, from: <http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/9B7B697CF899E85BC22571EA002780AD?OpenDocument>, (accessed: 8 December 2010).

problem based on the principles of the United Nations Charter, the relevant UN Security Council resolutions and the principles of the Commonwealth. Furthermore, they called for the implementation of UN Security Council Resolutions on Cyprus, in particular Security Council Resolutions 365 (1974), 541 (1983), 550 (1984), 1250 (1999) and all subsequent resolutions, and they reiterated their support for the respect of human rights of all Cypriots including the right to property, the implementation of the relevant decisions of the European Court of Human Rights and for the accounting for all missing persons.

At the last CHOGM held in Kampala, Uganda during 23-25 November 2007, the Heads of Government expressed their support for the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus. They expressed their support for a lasting, just and functional settlement to the Cyprus problem based on the principles of the United Nations Charter, the relevant UN Security Council resolutions and the principles of the Commonwealth. The Heads of Government called for the implementation of UN Security Council Resolutions on Cyprus, in particular Security Council Resolutions 365 (1974), 541 (1983), 550 (1984), 1250 (1999) and all subsequent resolutions. They reiterated their support for the respect for human rights of all Cypriots, including the right to property, the implementation of the relevant decisions of the European Court of Human Rights and for the accounting for all missing persons.

The Commonwealth Heads of Government agreed on the importance of supporting the efforts of the UN Secretary-General to bring about a comprehensive settlement of the Cyprus problem in line with the relevant UN Security Council Resolutions. They welcomed the principles and decisions enshrined in the 8 July 2006 Agreement and stressed the need to start the process as described in Under-Secretary General Gambaris's letter of 15 November 2006, without delay and without preconditions, in order to prepare the ground for full-fledged negotiations, leading to a comprehensive and durable settlement.

<u>Malta accession to the Commonwealth</u>:

Malta is unique in the history of British decolonisation, in the 1950s the island colony attempted to integrate into the UK. Although a number of other colonies were considered for incorporation into the United Kingdom – Gibraltar and the smaller Caribbean islands for instance- no other scheme of integration was pursued so systematically, or came so close to succeeding. No similar experiment was attempted by Britain, which favoured exporting its constitutional practices rather than integrating the colonial periphery with the imperial metropolis. According to Smith[231], the reasons for Britain´s departure in the case of Malta are much debated. Britain´s initial position was to support for integration, the principal determinant would appear to be imperial pride at Malta´s expression of loyalty to the British connection, coupled with acceptance that Maltese dependency on the metropolis would preclude a conventional path to full independence. In Holland's view, strategic concerns were paramount in initial British support for integration. Referring to the uncertainties following the loss of Suez base in 1954 and the terrorist campaign launched against the British presence in Cyprus in the same year, Holland argues that "the prospect of making Veletta – the finest natural harbour in Southern Europe suitable for military purposes- into a "home" port on a permanent basis held a clear-cut appeal" Britain´s constitutional arrangements set up at the end of the Second World War had failed to create the stability necessary to preserve Britain´s continuing defence interests on the island. Smith considers that Britain´s unwillingness to

[231] SMITH, S. C., "Integration and Disintegration: The Attempted Incorporation of Malta into the United Kingdom in the 1950s", *The Journal of Imperial and Commonwealth History*, Vol. 35, March 2007, Num. 1, pp. 49-71.

underwrite such a potentially expensive commitment lies at the heart of the ultimate failure of integration.

The reasons for initial Maltese support for integration were basically two. The first one was that Britain constituted an attempt not only to raise living standards through the extension of the welfare state to Malta, but also to afford the island protection from any future changes in British defence dispositions in the Mediterranean. The idea of Maltese integration was first broached by Mabel Strickland, editor of the Times of Malta and daughter of the former Maltese Prime Minister, Lord Gerald Strickland[232] . However, integration was taken up by her principal political opponent, the Malta Labour Party (MLP) leader, Dom Mintoff. Integration, which made its first appearance in an election manifesto in 1950, became a key aspect of party policy. MLP success at the 1955 general election allowed Mintoff actively to pursue his integrationist ideas. The key determinant in Mintoff´s sponsorship of closer association was the prospect of achieving "economic equivalence" through the extension of the social benefits enjoyed in Britain to Malta.

In formal proposals submitted to the British government in 1955, Mintoff made clear that his conception of integration involved not merely the extension of British constitutional norms, including parliamentary representation, to Malta, but also parity in wages and social services with the United Kingdom[233]. For Nationalist Party Leader, Giorgio Borg Olivier, Malta´s destiny lay in the achievement of dominion status, which in 1950s had come to imply full self-government within the Commonwealth. In pursuit of his objective, Borg Olivier requested the transfer of responsibility for Malta from the Colonial Office to the Commonwealth Relations Office.[234]The Secretary of state for colonies, Oliver Lyttelton, rejected the Maltese premier´s plea on the grounds that Malta´s position as a fortress colony necessarily imposed restrictions on self-government. He added that Malta was neither a sufficiently sizeable territory nor qualified financially or economically to become a fully self-governing member of the Commonwealth. In short, the widely view was that Malta could aspire neither to independent nationhood nor to membership of the Commonwealth. However, Malta should look to some form of closer association with a stronger power[235].

British government feared that if they dismissed the idea of integration, Malta might seek closer association with Italy. Such a development would be gravely embarrassing, especially at a time when Cypriots were agitating for union with Greece. Moreover, another concern was articulated on the issue of Maltese representation at Westminster. In particular, ministers feared that a Maltese lobby might hold the balance of power, especially at times when the respective strengths of the two main parties were comparable. The foreign secretary, Harold Macmillan, told Eden that "at this moment in our history the voluntary and patriotic desire of Malta to join us is something we ought not to repel[236]. So, in order to solve the many issues raised by Maltese integration, a formal Conference was held in September 1955. The Malta Round Table Conference where they produced a report, the central finding of which was that

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[232] In an editorial of April 1943, she wrote: "This war has shown that Malta is as much a part of Britain as Portsmouth or Croydon. The one tolerable practical solution to Malta´s constitutional and economic post-war problems then would be full political unity with Britain. Let Malta be a country of England, as an integral part of the United Kingdom represented in Parliament at Westminster, and enjoying local government ; with all the advantages and responsabilitiesthat this would entail".
PIROTTA, M., *Fortress Colony: The Final Act 1945-1964,* Valletta Studia Editions, Vol. II, 1991, p.386.
[233]Government of Malta, "The Mintoff Plan: Memorandum by the Colonial Office for the Cabinet (Official) Committee on Malta", National Archives of Malta (NAM), 28 July 1955, OPM 512/1955).
[234]UK Government, "Minute by Henry Hopkinson", 24 June 1953, CO 926/93, Num. 8.
[235] UK Government, «Cabinet conclusions», 30 June 1955, CAB 128/29, CM 19 (55) 10.
[236]UK Government, "Minute from Macmillan to Eden", 2 July 1955, PREM 11/1432, Num. 552.

the representation for Malta at Westminster was “practicable and reasonable”[237] . However, the Conference stipulated that it was for the Maltese people to demonstrate “clearly and unmistakably” their support for Mintoff´s proposals[238]. With this in mind a referendum on integration was held in February 1956.

Mintoff, with nearly three-quarters of the votes cast in favour of integration, appeared to have achieved the “clear and unmistakable” endorsement recommend by the report of the Malta Round Table Conference. Although the percentage voting against was relatively low, the very high abstention rate meant that less than half of the total electorate (44.24%) actually voted in favour of integration. Concerns about the repercussions of Maltese integration on the wider empire were raised. Concentrating on the constitutional aspects of the scheme, Sir Norman Brook, Cabinet Secretary, speculated that once Malta´s right to representation at Westminster had been conceded other smaller colonial territories would seek the same status.

In Brook´s opinion, what the Maltese were really seeking was an assurance that their economy would be made viable. In an attempt to provide an appropriate status short of integration to those colonial territories deemed incapable of full self-government, the Colonial Office produced the concept of “statehood”. Territories falling into this category enjoy self-government in internal affairs while remaining dependent on Britain for defence, foreign relations, security and financial stability[239]. However, British Government was scared that if they offer to Malta a preferential treatment, Northern Ireland, Scotland and Wales would request greater financial assistance, as well as reviving demands for separate Scottish and Welsh parliaments. Eden himself had growing doubts about Mintoff´s integration scheme, recalling that “tensions on the island had their consequences at home, where a number of Government supporters in Parliament showed increasing reluctance to accept Maltese representation at Westminster”[240].

Towards the beginning of 1958 Mintoff expressed that as regards integration he had “lost faith in the British Government´s intentions´ and that this left ‘only the alternative of “Independence”’[241]. When integration was reconsidered as a possible constitutional solution for smaller dependencies, in 1962, Borg Olivier’s party won the elections under a new interim constitution facilitated the achievement of his long-standing vision of Maltese independence within the Commonwealth. So, finally, Malta gained its political independence from Britain and become a member of the Commonwealth on the 21st of September 1964. On 13 December 1974, Malta formally adopted a republican form of government, and the former governor-general, Sir Anthony Mamo, became the first president. Under subsequent accords negotiated between 1970 and 1979, British troops withdrew from Malta, and the NATO naval base on the main island was closed.

[237] UK Government, “Report Malta Round Table Conference 1955”, UK Government Official Documents, Cmd. 9657, 1955, p.21, para.82.
[238] Ibidem.
[239] UK Government, “Smaller colonial territories: Memorandum by Lennox-Boyd”, UK Government Official Documents, 7 September 1955, annex B, CAB 134/1295, MC 2 (55), Num. 5.
[240] EDEN, A., *Full Circle: The Memoirs of Anthony Eden*, London, Cassell, 1960, p.378.
[241] UK Government, “Letter from Lambe to Lord Selkirk”, UK Government Official Documents, 21 February 1958, ADM 1/27145, TNA.

4. ECONOMIC APPROACH: TRADE AND MONETARY SYSTEM UNDER THE TERMS OF THE EMPIRE

Another important question that deserves our attention regard the commercial and economic elements, which are part of the Commonwealth basement, and to examine what happened to them. We have seen how the long 18th century, from the Glorious Revolution until Waterloo, and became the first western nation to industrialise. **Trade and empire went hand in hand, with a symbiotic relationship to each other**. Merchants sent out ships to trade with North America and the West Indies, where England had established a network of colonies. By 1775 Britain possessed far more land and people in the Americas than either the Dutch or the French - who were the two main northern European rivals for international power and prestige. The East India Company's trade also still flourished at this time, and greater settlement by the British in Bengal occurred after c.1765. The loss of the thirteen mainland American colonies in the War of Independence was a major blow to British imperial strength, but Britain recovered swiftly from this disaster, and acquired additional territories during the long war years with France from 1793 to 1815. The new colonies included Trinidad, Tobago, St Lucia, Guyana, the Cape Colony, Mauritius and Ceylon. Various Indian states were also subjugated. By 1815, Britain possessed a global empire that was hugely impressive in scale and stronger in both the Atlantic and Indian Oceans, and around their shores, than that of any other European state. All of this had occurred within basically the same protectionist trade network as in 1688: free trade, much discussed by Adam Smith and Josiah Tucker, had failed yet to make much inroad into British economic policies[242]. For Britain protectionism was extremely beneficial, since it meant the emergence of well-developed and numerous trading companies with important roles in developing British business abroad[243]. However, the origins of the important trade and currency institutions of the Commonwealth can be traced to the Great Depression of 1929-32, which resulted in the strengthening of the economic ties between the countries of the British Empire,[244] we can said that the Empire banded together for defensive purposes[245], in order to face the increasing protectionism in the rest of the world, as well as rising unemployment.

In this sense, we must analyse two relevant aspects: the imperial commercial dimension and how the empire would be transformed into a sui generis preferential trade area. Likewise it is interesting to analyse the foundation of a monetary bloc, known as the Sterling Bloc. One of the consequences of the economic crisis of 1929–33 was that a large number of countries abandoned the gold standard. This meant that their governments no longer guaranteed, in gold terms, their currencies' values. In September 1931, Britain left the Gold Standard. With the exception of Canada, the self-governing Empire countries continued to peg their currencies to sterling because Britain was the most important economic partner[246].The Irish Free State, whose currency had a rigidly fixed exchange rate with the British pound, also left the gold standard in 1931. To reduce the fluctuation of exchange rates, many of the countries that left the gold standard decided to stabilize their currencies with respect to the value of the British pound (which is also known as sterling). These countries became known, initially unofficially, as the Sterling Area (and also as the Sterling Bloc). Sterling Area countries tended (as they had before the end of the gold standard) to hold their reserves in the form of sterling balances in

[242] ROBERTSON, P., SINGLETON, J., "The Commonwealth as an Economic Network", *Australian Economic History Review*, Vol. 41, 2002, Num. 3, pp. 241-266.
[243] DAVENPORT-HINES, R.P.T, JONES, G., *The End of Insularity,* Essays in Comparative Business History, London, Routledge, 1990, p.125.
[244] Ibidem.
[245] MORGAN, K.; "Trade and British Empire", BBC-History, from: <http://www.bbc.co.uk/history/british/empire_seapower/trade_empire_01.shtml>, (accessed: 6 December 2012).
[246] DRUMMOND, I. M., *The Floating and the Sterling Area 1931-1939*, Cambridge, Cambridge University Press, 1981.

London. The countries that formed the Sterling Area generally had strong historical links with the UK and/or was a major market for their exports. Membership of the Sterling Area was not constant. By 1933, it comprised most of the British Empire, and Denmark, Egypt, Estonia, Finland, Iran, Iraq, Latvia, Lithuania, Norway, Portugal, Siam (Thailand), Sweden, and other countries[247]. Between 1931 and the resumption of dollar convertibility in 1958, **the Sterling Area was separate financial world which strongly influenced its members to trade with each other whenever possible**. The area was steadly eroded mainly because of the loss of confidence among its members. The imposition of quantitative restrictions on British imports in 1952, by Australia and other Sterling Area[248]countries in financial difficulties, produced a serious loss of goodwill trust. The result was the establishment of a multipolar system rather than a network by the 1960s, in which ties were no longer confined to the Sterling Area but to relationships with outsiders. After the restoration of convertibility and the termination of dollar pooling in 1958, the Sterling Area was of little significance[249]. Returning to the commercial issue, we have highlighted the trade relevance for the Empire, for me it acted as the vertebral and catalyst factor for its transformation into the nowadays Commonwealth. In fact, as Morgan remarks, the expansion of the British Empire into one of the largest in history, apart from the thirst of conquest this was due to the desire for greater trade[250]. We cannot forget that Britain was a small island, dependant on international trade. Therefore, the international economic crash of the beginnings of the 30s the insularity and the commercial dependence of the Britons as well as the imperial structure made easy that both Britain and its colonies agreed to a system of "Imperial Preferences" which gave preferential tariff treatment to one another's trade – signalling the end of Britain's commitment to non-preferential open trade which had existed for over 100 years. In the International stag, more commercial blocs such this one were created, that were described as "defensive" bloc, such as the case of the Nordic states that in 1930, the Netherlands, Denmark, Norway and Sweden tried to shield themselves from the worst of the growing economic crisis with the creation of the Dutch Scandinavian Economic Pact[251].

In an initial period, from 1914 to 1932 this commercial bloc, described as an imperial preferential trade área, followed an imperial logic, since it was very beneficial for the metropolis interests. It worked as follow, the imperial economy was organised along vertical lines, with Britain at the top, and the rest of the Empire exported primary products to Britain, to be processed into manufactures for export to the Empire and the rest of the world. Equilibrium was maintained through Britain's trade surplus with the rest of the Empire, and the rest of the Empire's surplus with the rest of the world. After Second World War, the imperial logic disminished into a gradual sui generis preferential trade area, since the United Kingdom kept on enjoying a privileged position in the area.

This preferential trade area, known as the Commonwealth Preference Trade Area or network (CPA), unlike the Sterling Area, possessed a formal basis in the Ottawa Agreements[252], which specified minimum contractual tariff preferences. The CPA was gradually taking shape, the United Kingdom introduced tariffs on many foods imports from non-Commonwealth countries,

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[247] MUSHIN, J., *The Sterling Area, University of Wellington*, Economic History Association Encyclopedia, 2012, p. 11.
[248] SCHENK, C. R., *Britain and the Sterling Area*, London, Routledge, 1994, p.93.
[249] ROBERTSON, P., SINGLETON, J., "The Commonwealth as an Economic Network", *Australian Economic History Review*, Vol. 41, 2002, Num. 3, pp. 241-266.
[250] MORGAN, K., *Symbiosis: Trade and the British Empire*, London, BBC Editions, 2009, p.133.
[251] World Trade Organisation (WTO), "Historical background and current trends", World Trade Report 2011, from: <http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr11-2b_e.pdf>, (accessed 6/12/12).
[252] The Ottawa Agreements were 12 bilateral trade agreements providing for mutual tariff concessions and certain other commitments, negotiated 20 July-20 August 1932 at Ottawa by Britain, Canada and other Commonwealth Dominions and territories. They may be seen as the culmination of a trend towards Imperial Preference, which began with Canada's unilateral grant of such preferences in 1897.

but continued to admit Commonwealth primary produce duty free. For their part, British industries already enjoyed the benefit of tariff preferences in the dominions. It was at the Ottawa Conference of 1932, that the Commonwealth countries, including Canada, undertook to maintain this system of reciprocal tariff concessions[253] and authors considered that at that time the CPA was formally established. Thus Commonwealth countries discriminated in favour of each other in their economic dealings. The CPA network provided the Commonwealth exporters with a measure of security in other Commonwealth markets. Whatever their welfare implications, preferential trading arrangements appeal to governments and interest groups in exporting sectors[254].

According to Robertson and Singleton, the high degrees of shared language, history, customs and legal systems, as well as common educational systems for the elite, acted together to bond nations that were geographically, and often ethnically disparate. So, in 1945 the Commonwealth was under the impression that it was still an economic superpower, an assessment that was not implausible given the prominence of Britain, Canada and Australia in the Bretton Woods and commercial policy debates. On the basis this world view, Commonwealth economic cooperation was both a duty and a programme that promised high rewards. Although not absolute, contractual and goodwill trust based on shared beliefs and similarities in background were common amongst Commonwealth nations, their leaders and their citizens. Use of English by the business and political elite increased confidence and reduced communication costs. Moreover, many Commonwealth leaders had lived in Britain, the mobility of officials around the Commonwealth, the widespread acceptance of British civil service traditions and standards, and similar educational experiences. In essence these leaders and bureaucrats shared a commitment to the Commonwealth as a viable and worthwhile institution almost as a family or club. Both sides (Britain and the colonies) believed that they were getting good deals.

Regarding Commonwealth relations with third countries, members had good reasons for mistrusting outsiders. This mistrust was derived from, among other things, the agricultural protectionism of the United States, continental Europe and Japan. The policies of the United States were condemned as particularly uncooperative. Post-war mistrust of the continental Europeans and the Japanese was also in some degree fuelled by resentment about agricultural protection. Therefore, in the mid-twentieth century, the Commonwealth exhibited all of the characteristics of what Casson has termed a commitment network, in which members agree to act reasonably in the light of changing circumstances, even when they were under no contractual obligation to do so. Commercial information was shared on a regular basis. The British did not share cost information to the same extent as the rest of the Commonwealth, not least because the costs of private manufacturers were secret while those of farmers were in the public domain. Nevertheless, detailed information about the competitive position of British industries was made available at Commonwealth conferences, as well as in bilateral negotiations. **The Commonwealth appears to have displayed many of the characteristics of a clan-type organisational form. Clan networks are distinguished by a high degree of solidarity, and members are prepared to sacrifice immediate gains for the sake of other clan members because they are confident of being equitably rewarded in the long term. The basis of this solidarity is often social or biological (for instance in the Mafia)[255].**

[253] Further information see: CAIN, P.J., HOPKINS, A. G., *British Imperialism: Crisis and Deconstruction, 1914- 1990*, London, Longman, 1993, ROOTH, L*., British Protectionism and the international economy*, Cambridge, Cambridge University Press, 1993.
DRUMMOND, I. M., “Imperial Economic Policy 1917-1939: Studies in Expansion and Protection”, *International Journal,* Vol. 30, 1975, Num.3, pp. 472- 496.
[254] POMFRET, R., *The economics of regional trading arrangements*, Oxford, Oxford University Press, 1997, p. 425.
[255] ROBERTSON, P., SINGLETON, J., “The Commonwealth as an Economic Network”, op. cit, p.254.

Among the various causes behind the gradual dismantling of the preferential trading area of the Commonwealth, the chief ones were:

a) **The different level of economic development of its members**: Unlike the European Union, where most countries have a similar level of economic development, in the British Empire and later in the Commonwealth, the member nations had a heterogeneous level of economic and trade development that constrained trading patterns.

b) **Transformation into an unorganised international structure**: Britain did not always need to incorporate other parts of the globe into a formal empire in order to influence their affairs significantly. Instead, it could sometimes use its latent power to induce nations that were technically independent to favour British imports without needing to assume the expense of administration and defence (the informal Empire). Taken together, in that period the components of the Empire comprised the formal and informal networks, the formal worked, as we have already mentioned, with a substantial amount of central administration from London, and the informal included independent states which were not formally part of the Empire, both components operated in a largely unorganised international structure of two different networks, a formal and an informal one.

c) The emergence of other regional networks: Between 1945 and 1950, the Commonwealth became a network embedded in other networks. Britain and the self-governing dominions retained independent control in some areas, but their scope for action was constrained by their need to draw on the resources, and conform to the rules, of larger and wealthier entities. Thus, by the mid-1950s Britain itself began to regard the Commonwealth as something of a mixed blessing, if not an actual encumbrance. Moreover, ties between some Commonwealth members and outsiders became stronger. Furthermore, alternative preferential networks came to be regarded as more natural than the Commonwealth Preferential Area. Australia formed bilateral ties with the United States that were stronger than any of those within the Commonwealth, and the Commonwealth lost much of its economic and political relevance. Australia and New Zealand were drawn into closer trading relationships with Japan, which later became the basis for a wider Asia -Pacific economic network. Disregarding British misgivings, Australia and New Zealand signed trade agreements with Japan in 1957 and 1958, respectively[256]. Moreover, New Zealand and Australia also entered into a partial free trade agreement with each other in 1965. Canada continued to enjoy closer economic relations with the USA than it did with Britain. For Britain leaving the Commonwealth was only the prelude to joining an alternative preferential trading network in Europe. The world economy became a set of overlapping networks, of which GATT, the IMF and the EEC were but three of the most prominent.

As Granovetter[257] has argued, models based on the atomistic individualism of organisations are unrealistic because the people associated with any organisation invariably interact with outsiders, it is reasonable to expect that individual nations would not attempt to act on their own within supranational organisations and international markets unless they possessed great bargaining power.

d) <u>A new economic world order</u>: The Commonwealth Preference System began to unravel in the 1950s and 1960s, but it did not disappear until 1977. In a general sense, the

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[256] RIX, A., *Coming to terms: the politics of Australia's trade with Japan 1945-1957*, Sydney, Allen and Unwin, 1986, p.72.

[257] GRANOVETTER, M., "Economic action and social structure: a theory of embeddedness", *American Journal of Sociology*, Vol. 91, 1985, Num.3, pp. 481-510.

Commonwealth economic network was dissolved into a new 'one world' regime, presided by the IMF and GATT, in the late 1950s and early 1960s.

Under the auspices of GATT, the obstacles to trading with non-Commonwealth countries began to diminish, except in relation to certain foodstuffs. At the multilateral level, the GATT agreement of 1947 established a competing framework to the Ottawa system. When Commonwealth members signed the GATT charter, they assented to the principle of no new preferences, which was advocated by the USA. Henceforth any extension or intensification of the Ottawa system was precluded. Canada became a leading supporter of GATT and sought to loosen its involvement in the CPA. In the first GATT round, Cana da and Britain put all of their mutual preferences on to a non-contractual basis.

Though India and Pakistan were by no means free traders, they viewed the CPA as a distasteful reminder of colonialism Commonwealth countries found that the demand for their exports was growing more rapidly in non-Commonwealth countries than it was in the CPA. In the absence of another global slump, the CPA became increasingly irrelevant the Commonwealth trading network, like the Sterling Area, evolved from a bipolar into a multipolar structure between the 1950s and 1960s. Britain was no longer the undisputed hub of the system by the 1960s, as Commonwealth countries turned to the USA, Japan and Europe for new trading partnerships. By the mid-1950s, Britain and other relatively autonomous Commonwealth countries were inclined to regard the CPA as no longer functional. Britain also lost its leadership in world shipping after the Second World War.

e) **Loss of confidence**: All the mentioned developments were part effect and part cause of declining competence trust. Britain and other Commonwealth countries lost confidence in each other as reliable customers and suppliers. Political crises, including Suez, which discredited Britain, accelerated the loss of goodwill trust. As trust ebbed away, the frequency of commercial disputes increased in the CPA. Several important countries were drawn into economic relationships with other powers, which led to a further weakening of the CPA. Australia's dissatisfaction with the terms of the Ottawa Agreement came to a head in 1956. Australian demands coincided with the announcement by six European[258] nations of plans for a customs union.

f) **Britain and Europe**: After World War Second, European markets were growing more rapidly than markets in the Commonwealth. Britain was searching for a compromise between membership of the CPA and of Europe. However, as the French President, Charles de Gaulle, stressed in 1963, when rejecting Britain's first application for membership of the EEC, the UK would have to choose between the Commonwealth and Europe. The EEC was an exclusive economic bloc, especially in the crucial area of agriculture. So, in the 1960s Britain succeeded in establishing a European industrial group[259] (EFTA) with some of the smaller non-EEC countries, and in forming a free trade agreement with Ireland. London finally submitted to the EEC in 1973, and the CPA lapsed in 1977. Frederick[260] explains that when Britain joined the EEC it had to abandon the system of Commonwealth Preference on imports of food, industrial products, and raw materials. Since they were mostly outside Europe, Britain's former colonies did not have the option of becoming full or associate members of the EEC and many of their traditional exports to Britain now became subject to the EEC's common external tariff. The new British- Commonwealth trade restrictions were economically damaging on both sides.

[258] MILWARD, A. S., *The European rescue of the nation-state*, London, Routledge, 2000, p.88.
[259] ROBERTSON, P., SINGLETON, J., "The Old Commonwealth and Britain's First Application to join the EEC 1961-3", *Australian Economic History Review*, Vol. 40, 2000, Num. 2, pp. 153-177.
[260] ABBOTT, F. L., *British Withdrawal from the European Union*, London, ISR Business and the Political-Legal Environment Studies, 2002, p.107.

Economic growth, investment, and employment in other Commonwealth countries suffered. The erection of food and other import barriers also raised British prices-costs and, in his opinion, there was bad feeling and reciprocal loss of UK's export preferences in Commonwealth markets.

CHAPTER II: THE COMMONWEALTH AND THE EUROPEAN UNION

CHAPTER II: THE COMMONWEALTH AND THE EUROPEAN UNION RELATIONS

In this chapter we analyse the type of relations between the two organisations and explain the feasibility of expanding the fields of current cooperation. The analysis takes a comparative approach, according to the methodology used throughout this thesis, that is, we adopt a fourfold approach: historical, political, economic and legal.

1- COMPARATIVE HISTORICAL APPROACH: THE FOUNDATION OF THE EUROPEAN COMMUNITIES VS. THE IMPERIAL TRANSFORMATION TOWARDS THE COMMONWEALTH

The current European Union date back to the end of World War II. The war had left Europe in ruins and prompted the search for a lasting peace and, in particular, the need to bring about lasting reconciliation between France and Germany. So, the 9th of May 1950, the French foreign minister Robert Schuman offered to pool his country's coal and steel resources with those of France's enemy, Germany, under the control of a single supranational High Authority, Schuman's proposal was open to the participation of other European countries. This proposal is known as the Schuman Plan and its author was Jean Monnet (head of France's Modernisation and Re-equipment Plan). A year later the governments of "the Six": France, Germany, Italy and the Benelux countries (Belgium, the Nederland and Luxembourg) signed the Treaty of Paris establishing the European Coal and Steel Community. Hereby, they relinquished their national sovereignty over heavy industry. While, the origins of the current Commonwealth date back to the split of the British Empire. In particular, it is related with the transformation of the British Colonies into Dominions. As we already explained, originally this term meant subordination, 'Dominions beyond the Seas'. But later the term 'Dominion' would become the label for the self-governing colonies – a meaning which, in spirit, was the opposite of that in the original designation.

In spite of the anecdotal fact that both organisations are originally interrelated to number SIX. In the European Communities the six founding members were: Germany, France, Italy, Belgium, The Netherland and Luxembourg. While in the Commonwealth case, SIX were the Dominions which allowed the foundation of the Commonwealth: Canada, Australia, New Zealand, Newfoundland, Orange Free State and the Irish Free State. Both organisations are the result of extremely different historical realities.

The European Communities were born to appease Europe, after two world wars, originated in Europe, it was necessary to reconciliate the continent. Jean Monnet's idea of a united Europe entailed the adoption of a gradual process of integration, which was firstly started with the idea of establishing a High Authority with powers to administer the "Six" coal and steel industries, the Treaty of Paris in April 1951, which entered into force on 23 July 1952 for a period limited to 50 years, created the European Coal and Steel Community. The idea was widened to cover an expanded range of economic activity. Following this functionalist view, the Six signed the Treaty in Rome on 25 March 1957, establishing the European Economic Community (EEC) and the Treaty establishing the European Atomic Energy Community (EAEC or Euratom). Those Treaties, which entered into force on 1 January 1958 for an unlimited period, provided for the further integration of economic sectors by creating a common market as part of the EEC and by pooling nuclear industries under Euratom. As an organisation designed for the common management of the entire economy of the Member States, the EEC soon emerged as the most important Community.

Regarding the Commonwealth, we cannot be that precise, because the foundation of the Commonwealth is the result of the progressive process of decolonisation. The British Imperial System which emerged from the First World War is the starting-point of its subsequent transformation. Externally it was no doubt that the First World War brought about a significant advance in the international status of the dominions. As Professor Mansergh notes, at this

time, the dominions were recognised as being completely self-governing within their own frontiers, they recruited and controlled their own armed forces, they were brought into consultation in on imperial foreign policy and they received qualified international recognition in the making of peace and in membership of the League of Nations. But, they were not still considered sovereign states.

Within the framework of this Imperial System, Britain and the government leaders of its self-governing colonies and dominions held periodic gatherings between 1887 and 1937. The 1907 gathering changed the name of future meetings, to Imperial Conferences and agreed that the meetings should henceforth be regular rather than taking place while overseas statesmen were visiting London for royal occasions. Originally these conferences were instituted to emphasise imperial unity. However, as time went on, the conferences became a key forum for dominion governments to assert the desire for removing the remaining vestiges of their colonial status. Regarding the foundation of the current Commonwealth, it is essential to stressed the importance of two facts. The 1926 Imperial Conference and the Statute of Westminster of 1931. The conference of 1926 rejected the idea of a written Constitution for the British Empire, preferring the British model of implicit rather than explicit constitutional guidelines and guarantees. Instead of a Constitution, the Committee on inter-imperial relations agreed the Balfour Declaration. The Balfour Declaration set up the four- fold doctrines of autonomy, equality, common allegiance and free association. It had real political and emotional force at the time. However its importance was underestimated until these doctrines were embodied in the preamble of the Statute of Westminster in 1931. The Statute is of historical importance because it marked the effective legislative independence of these countries, either immediately or upon ratification. This act ended the power of the British Parliament over the Dominions unless they made a specific request and consented to it.

In short, we can note that the Treaties of Paris of 1951 and Rome of 1957 are the founding treaties of the European Communities. While, the Balfour Declaration of 1926 together with the Statute of Westminster of 1931 set up the origins of the Commonwealth. The European Communities are the result of Schuman´s proposal and subsequent acts of foundation of the three European Communities, the ESCC, the EEC and the Euratom. The Commonwealth was a pragmatic response towards the transition that the British Empire was experiencing. Therefore, both the Balfour Declaration and the Statute of Westminster were regulating practical realities, the Commonwealth was not created 'ex novo', but was the result of the progressive transformation of the Dominions into sovereign states. Since then, both suffered a radical shift.

As we have seen, the recognition of the equal legal status of the Dominions, supposed for the British Empire, its progressive movement to decolonisation. Ireland, which was a Dominion within the British Empire, it became independent in 1921 and created its own State, the Irish Free State. However, the biggest changes occurred after the Second World War. The beginnings for transition were sown during that War. Thus, according to McIntyre, by the end of the Second World War, Ireland's position had shown that Dominion status was, in effect, redundant[261]. Moreover, Canada, New Zealand and South Africa had each made separate decisions to enter the Second World War. Only in Australia did the Prime Minister take it that Britain's declaration applied to this country. All four old Dominions joined the UN as independent members. On April 1949 the Republic of Ireland left the Commonwealth and on Easter Monday the new republic was celebrated. McEvoy describes the relationship of Ireland

[261] MCINTYRE, D., *The significance of the Commonwealth 1965-90*, Christchurch, Canterbury University Press, 1991, p.97.

to the Commonwealth during the period of its membership as a "tortuous" one.[262] Taking into account that Ireland was forced to accept dominion status under threat of the renewal of Anglo-Irish hostilities, she was not an enthusiastic member of the club as were the older dominions.

After Second World War, Britain, which had been an imperial power, knew it was not worth to prevent colonies from fighting for their liberation. No imperial power was able to resist the pressure to decolonise after the war. So this irresistible pressure entailed a shift in British attitude towards decolonisation process. Although some British supported fighting to preserve the Empire, most British politicians took the pragmatic view that decolonisation was inevitable and should, therefore, be put into practice in as painless manner as possible. Britain conceived a system which allowed her to maintain her strategic interests and her position as a world power, but, at the same time, let her to prepare her colonies for self-government when she withdrew. Hence, Britain led the transformation of the Empire into the Commonwealth.

One of the major milestones in the history of the modern Commonwealth is undoubtedly, India´s independence, which changed the course of the organisation's history. The 15th of August of 1947 India became an independent Republic, but declared and affirmed her desire to continue her full membership of the Commonwealth of Nations. Thus, the challenge was to accept a Republic as a member of the Commonwealth. This fact was resolved in April 1949 with the adoption of the London Declaration, which is considered the foundation document of the modern Commonwealth. This declaration had two main provisions. First, it allowed the Commonwealth to admit and retain members that were not Commonwealth Realms, including both republics and indigenous monarchies. Second, it renamed the organisation from the 'British Commonwealth' to the 'Commonwealth of Nations'. But, all countries have to accept the King as the symbol of their free association and thus as Head of the Commonwealth. India agreed that. So, when she became a republic, in January 1950, she accepted the British Sovereign as a "symbol of the free association of its independent member nations and, as such, Head of the Commonwealth". The other Commonwealth countries in turn recognised India's continuing membership of the association. Following India's precedent, other nations became republics or constitutional monarchies with monarchs different from the British, and were accepted as members of the Commonwealth. Therefore, we can consider India´s accession to the modern Commonwealth as the first enlargement that the modern Commonwealth lived. After the adoption of this Declaration, "the Commonwealth became the natural association of choice for many of the new nations emerging out of decolonisation. Starting with Ghana in 1957, the Commonwealth expanded rapidly with new members from Africa, the Caribbean, the Mediterranean and the Pacific".

Regarding the European Communities, as explained in the minor thesis, Britain occupied a distinctive position of deeply rooted ambivalence towards the construction of the highway of European integration since 1945. In 1951 and 1957, six European states founded three different communities which are the seeds of the current European Union. The United Kingdom was formally invited to join this project. However, The British government refused to participate for different reasons. Goldberg points out three main reasons that explain British refusal[263]:

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[262] MCEVOY, F. J., *Canada, Ireland and the Commonwealth: The Declaration of the Irish Republic*, Dublin, Irish Historical Studies Publications, 1985, p.25. MCEVOY, F. J.,"Canadian-Irish relations during the Second World War", *The Journal of Imperial and Commonwealth History*, vol. 5, 1977, Num. 2, pp. 206–226.

[263] GOLDBERG, J., "The British problem and the enlargement of the EEC in 1973", Jean Monnet's Life and European History Documents, 2003.

- The importance of its commercial, political and, even, sentimental bonds with its colonies and former colonies, most of them integrated in the Commonwealth and its special relationship with the USA.
- Its refusal to join a customs union. The British government defended the establishment of a free trade area, in which the internal customs rights were abolished, but national governments would maintain their competences of enacting their own tariffs with regard to third countries;
- The fact that Britain was totally opposed to embarking on a project whose long-term aim was to surrender the sovereignty of national states to supranational European institutions

Whereas the EEC witnessed a spectacular economic growth, with growth rates in the sixties clearly superior to those in America. Britain realised its mistake. Therefore, in August of 1961 the British Prime Minister requested the beginning of negotiations on accession to the EEC. However, after starting negotiations, the French leader, Charles De Gaulle, in 1963 vetoed British accession to the EEC. In 1967, when British Labour Prime Minister, Harold Wilson, again requested to join the EEC, the French general once more banned the accession of the United Kingdom. Only when De Gaulle was replaced by Pompidou and after overcoming the tough opposition of a significant section of the British public that claimed to maintain an anti-European stance, negotiations came to an end in 1972.

The United Kingdom's entry into the European Communities

The 1st of January 1973, Denmark, Ireland and the United Kingdom join the European Communities. The Europe of the Nine was born. Hence, this was the first enlargement that the European Communities suffered. However, as we have already mentioned, the accession of the United Kingdom to the European Union was not an easy path. Thus, after her accession, the debate on membership continued in Britain's domestic policy. So, in my opinion, the first enlargement that the EU experienced can be considered as the most complex one. Not only because it was the first one, but also because Britain did not share the same idea than the Six had on the construction of a united Europe. Britain disliked the idea of a European federation, mainly because it did not want to be rulled by an external power and she had to handle other interests. Particularly, it was linked to the USA and the Commonwealth countries. Britain feared membership could produce a severe impact on the UK's Commonwealth markets, which still counted for a large part of the nation's trade. So, its relations with the Six European states were far from smooth.

THE SUCCESSIVE ENLARGEMENTS AND THE ESTABLISHMENT OF THE EUROPEAN UNION AND OF THE MODERN COMMONWEALTH

Undoubtedly the character of the EU and the Commonwealth has been altered with the arrival of new members, before 1960, the Commonwealth was dominated by white nations, by 1968, 12 of the 28 members were from Africa. Since then, black nations are majority. Regarding the European Communities, it was transformed from six to twenty-seven member states.

The changing nature of the Commonwealth has led to a number of political conflicts – notably over white rule in Rhodesia (now Zimbawe) in the late 1960s and over the system of apartheid in South Africa that remained in place between 1948 and 1994. Following South Africa´s withdrawal from the Commonwealth in 1961, there was growing division and tension within the Commonwealth along racial lines. In 1971, Commonwealth heads of government met in Singapore and drew up a code of ethics, known as the "Singapore Declaration". It was signed

by all members and covered human rights, racial equality, economic freedom and support for the United Nations. The current Secretary-General of the Commonwealth, Kamalesh Sharma, explained that the Singapore Declaration is one of a series of documents agreed over the last 60 years that defines the fundamental Commonwealth principles. These documents are: Singapore in 1971, Harare in 1991, Millbrook in 1995.

Regarding the European Union, a major development in the Thatcher years was the passing of the Single European Act in 1986. This Act was supported by Thatcher and her allies on the grounds that a free, single market would mean greater deregulation and less governmental intervention (and therefore greater economic growth), but it was also supported by Jacques Delors, on the grounds that it would restart the move towards greater European integration. The creation of the European Union was due to the Maastricht Treaty. At the Maastricht summit in December 1991, the heads of state of the European Community agreed on a Treaty on European Union which changed the provisions laid down by the Treaty of Rome and made new commitments. The Maastricht Treaty, as it is usually known, set out to strengthen political and economic ties between member states. The Treaty of Maastricht, as Nugent[264] notes, “marked a new stage in the process of creating an ever closer union among the peoples of Europe.” By the end of 1993, all members’ states had ratified the Treaty, though a number of opt-out clauses were agreed with Britain and Denmark. As a result of these opt-outs, the Treaty does not have the same effect throughout the Union.

Later came the Amsterdam Treaty, which was signed in 1997, started the reform process which was needed to take account of the changes that enlargement would bring. In 1995 three new members joined the European Union. The Amsterdam Treaty amended and updated the other Treaties, and made a number of politically significant changes, particularly in the areas of fundamental rights, employment, and the free movement of persons. However, a month after the Treaty of Amsterdam had come into force; the Treaty of Nice was being negotiated. The pure purpose of the Nice Treaty, which was signed by European leaders on 26 February 2001 and came into force on 1 February 2003, was to prepare for enlargement, and to deal with the "Amsterdam leftovers". This was primarily concerned with changing the structure and decision making processes, to allow for the fact that the EU was now going to be an EU of 25 rather than 6, and it was no longer practical to carry on using the same systems that had been in place since the Treaty of Rome. But, the Treaty of Nice did not go far enough.

Finally, following a period of reflection, the Treaty of Lisbon was created to replace the Constitutional Treaty and to solve the institutional impasse. After been ratified by the 27 members, it came into force on December 2009. The treaty, which contains many of the changes the constitution attempted to introduce, is often described as an attempt to streamline EU institutions to make the enlarged bloc of 27 states function better. But its opponents see it as part of a federalist agenda that threatens national sovereignty. UK currently has an opt-out from European policies concerning asylum, visas and immigration. Under the new treaty it has the right to opt in or out of any policies in the entire field of justice and home affairs. Moreover, the UK has secured a written guarantee that the Charter of Fundamental Rights cannot be used by the European Court to alter British labour law, or other laws that deal with social rights.

[264] NUGENT, N., *The Government and Politics of the European Union*, London, Macmillan, 1994, p.23.

THE ACCESSION OF CYPRUS AND MALTA TO THE COMMONWEALTH AND THE EUROPEAN UNION

Cyprus and Malta were granted independence, in 1960 and 1964 respectively. Cyprus became a republic, while Malta kept the Queen as head of state until 1974. Both joined the Commonwealth in 1961 and 1964 respectively. However, it was not an easy accession process. Malta and Cyprus had to deal with an important handicap, their size.

Regarding the accession of Malta and Cyprus to the European Union, while most of the attention leading up to the expansion of the EU in 2004 focused on the former Communist states of central and eastern Europe, Maltese and Cypriot accession also marked a significant change. It was an important step onto the world stage for both countries. It is clearly inevitable that the countries of the Mediterranean region, as Malta and Cyprus, have always taken a keen interest in their powerful, northern neighbour, the European Union. Indeed, the importance of the Union as a trading partner have always created, by itself, a need for them to keep a close relationship, as a matter of great priority. Mediterranean countries, particularly Malta and Cyprus, were interested in the prospect of improved access to EU Market for their exports which, together with financial assistance from the EU, could accelerate their economic development: the prospect of free access to EU labour market for their workforce was also attractive. Conversely, geographical proximity, strategic interest and colonial links have also compelled the members of the EU to take an active interest in the Mediterranean region. Indeed, the reasons for the EU´s desire for involvement in the region were succinctly stated by the European Commission:

> "Owing to its proximity and the volume of trade generated, the stability and prosperity of the Mediterranean region are essential to the stability and prosperity of the Community. In a wider sense, the security of the Community is at stake (local or regional conflicts, political instability, terrorism, drugs, and environment)[265]".

As the smallest member of the EU, with a population of 408,000 people, Malta gained status by joining the EU, where it nominates an EU Commissioner and elects five MEPs to the European Parliament. In December 2007, Malta became part of the Schengen area, which enables passport free travel across national borders and it joined the Eurozone in January 2008. However, the accession of Malta was not an easy one. It is interesting to note that of the ten accession countries in the 2004 enlargement wave, Malta was the only state with an electorally strong Eurosceptic party actively campaigning against EU membership, namely the Malta Labour Party (MLP).

Moreover, among the EU accession referendums of 2003 the Maltese referendum distinguishes itself both with the highest turnout (90.9%) and the highest percentage of rejection votes (46.4%). Indeed, the question of EU accession was the dominant issue on Malta's political agenda and divided the island into two blocs: The pro-EU group was led by the PN and included the tourism lobby, the Confederation of Malta Trade Unions, the Federation of Industry and the environmental NGOs whereas the anti-EU group led by the MLP contained the General Workers' Union, the hunters and trapper's lobby, and the Progressive Farmers' Union[266]. Analysing the arguments put forward by the both camps, it can be seen that while the pro-EU camp emphasised the economic benefits of membership and the need for Malta to restructure its economy which would be realised more easily and effectively inside the EU, the

[265] European Commission, "Communication from the Commission to the Council: Redirecting the Community´s Mediterranean Policy", The Commission of the European Communities, 1990.

[266] CINI, M., "Malta Votes Twice for Europe: The Accession Referendum and General Election", *South European Society and Politics*, Vol. 8, 2003, Num. 3, pp. 132-146.

anti-EU camp stressed the issues of employment and taxation, i.e. how the EU membership would hurt the domestic industry, cause job losses for Maltese people and increase the cost of living in various ways (increased food prices due to the Common Agricultural Policy, higher taxes, and a spike in property values due to foreign demand).

For Greek Cyprus, EU membership was an important recognition of their claim to sovereignty. In the build up to Cyprus joining, the EU, along with the UN, played a leading role in attempting to reunify the island. They made their offer of membership on the basis that the whole island would join. It was not clear whether Cyprus would be able to join without reunification. However, when this proved impossible following an unsuccessful referendum in 2004, the Greek part of the island joined alone. On the 1st January 2008, Cyprus adopted the euro.

THE EUROPEAN UNION AND THE COMMONWEALTH AT PRESENT

Today, the Commonwealth is a vibrant and growing association of states working to promote democracy and good governance, respect for human rights and the rule of law, as well as sustainable environmental, economic and social development. It is a unique global family of 53 member countries. From Africa to Asia, from the Pacific to the Caribbean, from Europe and the Mediterranean to North America, the Commonwealth's membership stretches across all the world's continents and oceans and includes 1.8 billion people, or 30% of the world's population. Over half are young people aged 25 or under. The Commonwealth's member nations are characterised by an astonishing diversity. They include Canada, the world's largest territory and Nauru, the world's smallest republic. They include Namibia, the world's driest country and Guyana which has some of the world's best conserved tropical forests. Many Commonwealth members are small; some are isolated island states, others are completely landlocked. Some of today's most rapidly industrialising countries, such as India and Malaysia, are members. But so too are Mozambique and Tanzania which, in terms of GNP, are some of the world's poorest. All of the world's major religions are practised within the association. Yet, despite this amazing diversity, all Commonwealth members are united by certain agreed common values and principles; a common heritage and language. They share similar systems of law, public administration and education. As voluntary members of the association, the Commonwealth's members work together in a spirit of cooperation, partnership and understanding.

Currently, the European Union is a unique economic and political partnership between 28 democratic European countries. Its aims are peace, prosperity and freedom for its 498 million citizens and its most spectacular achievement has been the creation of a single currency, the Euro, which was introduced for financial (non-cash) transactions in 1999, while notes and coins were issued three years later. The euro is used daily by more than 60% of EU citizens.

In short, both organisations lived complex first enlargements process which caused several shifts on the structure and running of each other. However, they overcame those difficulties and opened the door to forthcoming accessions. Moreover, the European Union and the Commonwealth has had to deal with big challenges that have deeply transformed their nature in opposite ways. The European Union is still living a process of integration, whereas the Commonwealth evolved from the British Empire to an organisation of sovereign states.

2. COMPARATIVE POLITICAL APROACH: THE IMPERIAL FEDERATION PROPOSAL VS. THE EUROPEAN FEDERATION PROPOSAL

Historically, both the Commonwealth and the EU have evolved and undergone immense transformations, although, as we have already seen, they have followed a wholly opposite line of evolution. If we use the parameter of integration to gauge the degree of evolution of the two organisations, the Commonwealth has "dis-evolved", namely, the degree of integration has decreased. While it is true that in its origins, the Commonwealth had an imperial structure, a far cry from what at present is deemed an international organisation of a democratic nature, after the dismemberment of the British Empire, the remaining structure could have become a democratic organisation maintaining the same degree of integration. Indeed, it was proposed to take advantage of the structure and turn it into an Imperial Federation.

The idea of an Imperial Federation

According to Carl Berger the organised movement for imperial unity began with the founding of the Imperial Federation League in London in 1884 and the establishment of different branches in other territories, as the Canadian branch which became a centre of opposition to free trade with the United States and the threat of eventual political absorption.[267] It grew in vitality and amplitude in the 1890s, the supporters of imperial unity advocated imperial tariff preferences, which Canada extended to Britain in 1897 and in Canada, they forced the Laurier government to provide 7,300 volunteers to support the empire in the South African War (1899–1902). The zenith of imperial solidarity was Dominion's participation in the Great War, 1914–18. Nevertheless, due to the human and material costs of the war, the imperial idea began to have many detractors. Thus, the proposal of an Imperial Federation was not carried through. Instead, it ceased to be a bloc of a shared linguistic, political, legal, economic and trading character, to transform instead into a voluntary association of states, in which the principle of integration was replaced by the principle of cooperation.

As I see it, the renunciation of the integrated group option is due to three factors. First, as noted by the federalists, the distance between the territories: it took months to travel from Australia to England; distance was an insurmountable obstacle. At present, this obstacle has disappeared; and had the telecommunications revolution taken place in the late nineteenth century, we might be looking at a very different Commonwealth to the actual one. The second factor that prevented the setting up of an international integrated organisation was the nationalist awakening of the colonies. Colonial nationalism "makes these peoples (the colonies) also lend importance to the study of their own pasts and become aware of the huge gulf separating them from their colonialist past". Hence, "the nationalist mood" is the true force that is driving these peoples towards independence" (…)[268]" The peoples that seek their independence will find in nationalism a highly effective too with which to counter European domination". In addition, the international situation was clearly ripe for the growth of these anti-colonialist movements. Lastly, the third reason for which the establishment of an integration organization was unsuccessful is that the formation period of the Commonwealth, which coincided with the Great Depression of the 30s, was marked by a period of tough protectionist measures. Consequently any process of regional integration would have failed. By contrast, the current process of globalisation favours the creation of supra-national and

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[267] BERGER, C., *The sense of power: studies in the ideas of Canadian imperialism, 1867-1914,* Toronto, University of Toronto Press, 2013, p.286.

[268] BERGER, C., *Imperialism and nationalism, 1884-1914: a conflict in Canadian thought,* Michigan, Copp Clark, 1969, p.73.

regional economic blocs such as the EU or Mercosur, whose cultural and language component is extremely relevant for the very dynamics of regional integration.

Due to the three factors discussed above, the gradual dis-evolution of the Commonwealth could have led to its demise, as it did not pursue a path to integration. In spite of the real risk of the bloc's total disintegration, the skill and the leading role of the UK ensured that most of the nations making up the bloc have remained in it and have continued to remain united. Hence, in the late forties, the Commonwealth underwent a complete transformation, which today bears no resemblance to the club of former colonies.

Towards a European Federation?

From a historical perspective, the EU, in terms of the level of integration, has taken great strides. From the three distinct Communities focused on coal and steel, nuclear power and economics, the Union has become a single organisation with its own international legal personality and currency. Moreover, from the six founding states it now has 28 members. The idea of creating a European Federation is something which genuinely divides political movements and societies in Europe and dates back centuries ago, "the French Revolution and Napoleonic wars put nationalism and Europeanism at odds. The European idea was an antidote against violence and war, a beacon of peace in the tradition of Dante, Erasmus, and the Enlightenment, stressing the spiritual, cultural, and moral unity of Europe". Since Victor Hugo won general approval for his speech at the International Peace Congress in Paris on 21 August 1849, when he floated the celebrated notion of a 'United States of Europe', many thinkers have work on this ideal. Nowadays, not everybody remember that he United Kingdom was the location for the establishment of what may be termed the first European federalist group in November 1938 , The Federal Union which was a pro-European grouping established to advocate the idea of a federal Europe in which governments would join together around a tiered structure to prevent over centralisation. However, this ideal, traversed turbulent times that witnessed two world wars and was not seriously taken into practice after Second World War, which was the catalyst for change. The chaos unleashed on Europe made many revisit fundamental attitudes and sped up the self-criticism that many addressed to their societies and political regimes.

Nevertheless, what the EU has become, as we have deeply explained in the minor thesis, has been a controversial issue and only few generally conclusions have been accepted. For McCormick, the European Union is "more than a conventional international organisation, but less than a European superstate". In his view, the EU has some features of a federal system of government and is confederal in several ways, in spite of the fact that surprisingly little has been published on the idea EU as a confederation. Some Federalists argue that the logic of the development of the EU up to now suggests that, in time, the inevitably the EU will become a Federation. However, and I totally agree with McCormick, federalism is not an absolute or a static concept, and it has taken different forms in different situations according to the relative strength and nature of local political, economic, social, historical, and cultural pressures. Nevertheless, the final form the EU will take is anyone's guess. It might remain loose confederal association of states, or might become a tighter United States of Europe, or it might remain unique. The past offers little real certainty about the future.

In short, the historic background shows that there have been different movements, and regarding the European Union, they still exist, which have advocate and support the idea of transforming the organisation into a Federation. Regarding the Commonwealth, this idea dates back to the 19th Century, when the British Empire was evolving into the Commonwealth. However, the idea was abandoned and to expect an integrated organisation or a federal

Commonwealth seems unlikely to happen. While, the idea of a European Federation is more likely.

Due to the three factors discussed above, the gradual dis-evolution of the Commonwealth could have led to its demise, as it did not pursue a path to integration. In spite of the real risk of the bloc's total disintegration, the skill and the leading role of the UK ensured that most of the nations making up the bloc have remained in it and have continued to remain united. Hence, in the late forties, the Commonwealth underwent a complete transformation, which today bears no resemblance to the club of former colonies.

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[269] MCCORMICK, J., *The European Union: Politics and Policies*, Bolder, Westview Press, 2008, p. 143.

back to the 19th Century, when the British Empire was evolving into the Commonwealth. However, the idea was abandoned and to expect an integrated organisation or a federal Commonwealth seems unlikely to happen. While, the idea of a European Federation, which was seriously taken into consideration after World War Second, is still a crucial issue in the EU future debate. However, nobody can predict the final form that the EU will adopt.

Finally, The Commonwealth is the result of two political phenomena; the first one, the disintegration of the British Empire and secondly, the reformulation of a new international order, made up of those territories that were British colonies, later dominions and finally, sovereign states. In 1949, the modern Commonwealth was set up, as an association of sovereign States and, as I have defended throughout these pages, the 21st Century Commonwealth, must be understood as an international organisation, with its own specificities.

SETTING THE FRAMEWORK FOR AN INSTITUTIONAL CO-OPERATION BETWEEN THE COMMONWEALTH AND THE EU: AREAS OF COMMON ACTIVITY

Although the framework of activities developed by the two organisations is very different, there are several areas of action common to both where, in my opinion, they could collaborate or even co-operate. Both have signed cooperation agreements with other international organisations. One example of these is the agreement in the area of Youth signed between the Commonwealth and International Labour Organisation.

The Commonwealth and the EU concur in the following areas:

- Climate action/Environment, natural disasters.
- Economy, Trade, Development.
- Human rights and human aid.
- Youth.
- Health.

- Youth –

To my mind, the two organisations pursue a similar goal, to encourage the young to become actively involved in society in order to lead the change and improve today's society. Likewise, both organisations seek to highlight that the young should be entrusted with building the future of the organisation itself. "Young people represent the future of the Commonwealth" "The EU seeks to involve youth in shaping the Union's future".

As the Commonwealth sees it, youth is an essential asset for the future of society for which it encourages young people to "play an active part in reversing marginalisation, poverty, illiteracy, unemployment and disease".

The EU encourages youth to contribute to society and promotes an active citizenship of young people, to foster their social integration in society. Thus, with the aim of fulfilling what has been described above, the Commonwealth is making a great effort to "give young people an opportunity" and is pushing "for young people to be represented at all levels of decision-making, including a seat and voice at the table when Commonwealth Ministers for Youth Affairs meet" .

The EU, by contrast, makes no mention of a need to incorporate the youth at all levels of decision-making, although it does consider it a priority to promote European cooperation in

the youth field and to take into account a youth dimension in the EU policies. The youth policy is the exclusive competence of the member states. The Union only promotes cooperation between member states and coordinates European projects.

The two organisations have developed their action programmes: The Commonwealth Youth Programme focuses on cooperation in development. This programme ensures “that today's development challenges are met head-on and that a better future is created for all Commonwealth citizens” and “that youth participate in development projects that create opportunities for themselves and their communities”. The EU’s Youth in Action Programme 2007- 2013 is designed to encourage young people, especially the most disadvantaged and the disabled to participate in public life, and also to promote their sense of initiative, entrepreneurial spirit and creativity. In this way it boosts the mobility of disadvantaged young people in an informal education setting, and also, through the European Voluntary Service (EVS), fosters involvement in projects within associations and local communities, both in Europe and in developing countries, thus promoting mutual understanding. In my opinion, we find two main differences in the way the two organisations approach these policies. The first difference lies in the range of action and the second in the dimension.

As for the range of action, the Commonwealth’s youth policy is limited to the 53 countries making up the organisation. The EU, on the other hand, acts on two levels. The internal level, which covers the 28 member states, and the external level, whose outreach extends beyond the borders of the Union, “developing countries.” The scope of the Commonwealth policy is largely centred on human rights, cooperation and development aid, whereas in the case of the EU it depends upon the range of action. Hence, at the internal level, the European youth policy focuses on law and social cohesion while at the external level, EU policy covers the humanitarian field and development cooperation.

To conclude, there are differences in the approach to youth policy, in large part, because the majority of member states of the Commonwealth, though not all of them, are developing countries; whereas, in the EU’s case, all its member states are developed countries. However, there is a correlation framework in which the two organisations might cooperate. Indeed, the fifth indent of Article 149(2) of the Treaty establishing the European Community (ECT) states that Community action is aimed at "encouraging the development of youth exchanges and exchanges of socio-educational instructors".

Since the EU exterior action in the field of youth is focused on humanitarian aspects and development cooperation and the activity of the Commonwealth is aimed at these two fields, the two organisations could enter into collaboration agreements. In this regard, the Commonwealth, by way of its youth programme, has recently collaborated with a number of organisations, such as UNICEF and ILO, in project on Youth Entrepreneurship Training.

It is worth mentioning that the UK has signed an exchange agreement with young nationals from Commonwealth countries, known as The Commonwealth Youth Exchange Council (CYEC), which was founded in 1970. CYEC has grown into a leading youth development charity promoting young people as change makers and active citizens across the Commonwealth network of nations which provides support, guidance and funding for life changing youth exchanges between the United Kingdom and Commonwealth Countries. CYEC do not just organise exchanges - we are part of many UK-based and international projects which promote global youth work. Global youth work is informal education that supports young people to develop a critical understand of the links between personal, local and global issues.

- Trade and Development-

Economy and trade, dealt with from the standpoint of development cooperation, is one other area of activity in which both organisations concur. As for the EU, we can distinguish two types of trade: trade between the countries of the Union and trade with third countries, those outside the EU. This section examines the latter, as the former has already been given in-depth consideration in the sections on economic approach. The common commercial policy is one of the main pillars of the European Union's relations with the rest of the world. It is an area of exclusive Community responsibility (Article 207 of the Treaty on the Functioning of the European Union), and is the pendant to the creation of a customs union of the Member States. The common commercial policy implies a uniform conduct of trade relations with third countries; the Commission negotiates and concludes international agreements on behalf of the Community at the bilateral and multilateral levels.

Regarding the Commonwealth, it is worth mentioning that in the mid-twentieth century the Commonwealth was the world's leading economic community. Writing in 1956, Gunnar Myrdal compared the Commonwealth favourably to Western Europe as an economic and political grouping. He commented that Western Europe lacked the Commonwealth's "sense of solidarity". By 1970, the Commonwealth lost its raison d'etre as an economic association, mainly, due to British successfully application for membership of the European Economic Community (EEC).

Thus, at present the Commonwealth is not a trading bloc akin to EU, instead, as we have seen, it gives preferential trade access to its member countries. The trading activity of the Commonwealth is focused on development cooperation. In this regard, as indicated by the Commonwealth Business Forum, the Commonwealth works to ensure that developing countries - especially least developed and small countries - are not unfairly exposed to trade competition from larger, richer countries.

The relationship between trade and development is a complex one. For the European Union, evidence suggests that trade and openness to the global economy play an important role in creating jobs and prosperity in developing countries. Making trade work for development means weighing the needs of every developing economy carefully, and tailoring policies that reflect different vulnerabilities - and different potential strengths. There is no single model for trade and development.

This same idea of fare trade is shared by the Commonwealth, the organisation believes that access to international markets presents tremendous opportunities for poor countries to trade their way out of poverty. It also believes that an open trading system will help increase income levels and reduce poverty.

According to the European Union official website, the line of the external trade policy of the EU wants the abolition of trade restrictions and customs barriers. So the organisation supports harmonious, liberalised trade serving the interests of all the international players, and especially the most disadvantaged countries. In this spirit, general and specific preferences for such countries are a major aspect of the common commercial policy.

Through its trade policy the EU aims to ensure that developing countries are able to benefit from access to its own markets and from the openness of the global economy. It sees progressive openness to trade as one part of a development strategy that has already lifted hundreds of millions of people in the developing world out of poverty, and can do the same for hundreds of millions more.

However, while the European Community played an important role in the reduction of barriers to trade in the years after World War II, progress in recent years has been slower. Thus, European Trade Policy has been criticised for making it difficult for developing countries to trade with it, with some suggesting that the EU is guilty of protectionism, it has also been accused of blocking progress in the current Doha Round by refusing to offer significant cuts in agricultural tariffs. An example of these critics is the WTO Secretariat report, on the trade policies and practices of the European Communities, it has encouraged the EU to continue undertaking key structural reforms. These include further liberalization of services, both at the intra-EC level and vis-à-vis third countries, and of its agricultural policies through the simplification of its tariff structure and the reduction of its high tariff rates on, and incentives to the production and export of, agricultural products. Such reforms would also contribute to the improvement of the EC's resource allocation and advance the full establishment of its internal market.

In spite of the critics, promoting easier trade between Europe and the rest of the world has been one of the most significant roles of the EU Commission since the European Community was founded in 1957. As a result, the EU has been increasingly keen to make bilateral free trade agreements.

In this line, the WTO notes that the EC has build an extensive network of preferential trade agreements (PTAs) , as part of a broader policy of promoting multilateralism. These PTAs have so far resulted in free trade in non-agricultural goods, and limited liberalization of trade in agricultural products; in some cases, these agreements also cover trade in services. A significant number of its negotiations are with, or encourage the creation of, regional groupings. Negotiations with regional bodies include the Negotiations on an EPA with the Caribbean region, which have been concluded; trade relations with countries in the other ACP regions are governed by interim agreements.

Regarding the Commonwealth, its Secretariat is at the forefront of advocating the conclusion of a forward looking international trading regime that is open, free and development oriented. It does this through assisting developing member countries to gain skills to improve their understanding of trading rules and regulations. It also helps them to strengthen their effectiveness in participation in WTO negotiations, providing policy advice, research, advocacy, and other forms of technical assistance.

Commonwealth countries are part of several regional trade groups. One of these groups is the one composed by the Africa, Caribbean and Pacific countries (ACP), which have a trade and aid agreement with the EU. In this line, the majority of Commonwealth members (66,6%) are members of the ACP group, and they nearly represent the half of the total of the ACP members (46,8%).

We can note that the necessary conditions for establishing a cooperation network in this field, between both organisations do exist. Firstly, they both share the same philosophy; they seek to proomote fair trade, focused on development aid. Secondly, the activity of both organisations concurs in a common geographic area, the ACP countries area. In this regard, in 2004 the European Commission, Commonwealth Secretariat and Organisation Internationale de la Francophonie (OIF) —with the support of the ACP Secretariat—launched a joint initiative titled 'Building the Capacity of ACP Countries in Trade Policy Formulation, Negotiations and Implementation'. The project is structured around the experienced trade policy advisers and analysts that have been deployed across the ACP region. It is this delivery of support to regional organisations and government ministries on trade policy matters that spawned the project title—'Hub & Spokes'. The Hub and Spokes Project promotes the effective

participation of African, Caribbean and Pacific (ACP) countries in international trade negotiations and works to strengthen their capacity to formulate and implement trade policies. It does this through placing trade experts in selected ACP countries to provide this expertise. The ACP trade and trade between Commonwealth member states will be analysed in the following chapters.

- Education–

Regarding the scope of education, Commonwealth's action focus especially on disadvantaged groups, such as girls, children in rural and urban poor areas, the disabled, those that are nomadic and those who may be learning in environments suffering conflicts, natural disasters and other emergencies.

Therefore, Commonwealth's main goal is to achieve a world in which every individual has access to high quality universal education regardless of their gender, age, socio-economic status, or ethnicity.

While in the EU's education framework, each Member State is responsible for the organisation of its education and training systems and the content of teaching programmes. However, in accordance with Article 149 of the EC Treaty, Union's role is to contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action. Thus, EU policy on this issue, aims to stimulate mobility and to promote cooperation at European and international levels.

The orientation of the respective education strategies, from both organisations, a priori, could seem different. Commonwealth action is much more focused on education as a tool for literacy and is addressed to groups ofpeople that may have access difficulties, that is, mainly, population fromdevelopingcountries. However, we will see, that the Commonwealth also has a programme focused on the highest level of intellectual achievement.

The Commonwealth Ministers of Education and Commonwealth Heads of Government (CMAG) mandate the work of the association in this area. This work focuses on the EFA (Education For All) Six action areas which are:

(i) to accelerate the achievement of Universal Primary Education;
(ii) elimination of gender disparities in education;
(iii) improvement of quality in education;
(iv) use of Distance Learning to overcome barriers;
(v) support to education in difficult circumstances; and
(vi) the mitigation of the impact of HIV & AIDS on education.

Likewise we must remark the activity that the Commonwealth of Learning carries out regarding this issue, the Commonwealth of Learning is an intergovernmental organisation created by Commonwealth Heads of Government to encourage the development and sharing of open learning/distance education knowledge, resources and technologies. COL is helping developing nations improve access to quality education and training.

The action of the European Union is centred on the high education and not, as it happens in the Commonwealth, in the literacy of its member countries. It is rather based on the cooperation and coordination of joint educational programs that aim to improve the education quality, especially higher education, and to promote the mobility and exchange of teachers and students in the territory of the twenty eight European Union member states, moreover

with third countries. Now, in the last years, the EU has incorporated a more solidary educative line aimed to promote understanding between peoples around the world, as well as contributing to foster sustainable development and reform, in line with the Millennium Goals.

In this regard, the European Union has at its disposal a number of specific tools which aim to foster mutual understanding, the learning of foreign languages and the use of new technologies, while promoting the recognition of skills and qualifications, namely: The Lifelong Learning Programme for action at EU level, comprising the following sectoral programmes: Comenius (pre-school and school education), Erasmus (higher education, higher vocational education and training), Leonardo da Vinci (vocational education and training other than at higher level), Grundtvig (adult education), the transversal programme (areas which fall outside of the four preceding programmes), and the Jean Monnet programme (European university integration and support for certain key institutions and associations active in education at European level); the programmes involving international cooperation in higher education, such as the Erasmus Mundus programme between the European Union and third countries, the objective of which is to improve the quality of higher education in Europe and to make it a centre of excellence. In addition, the regional programmes Tempus (Western Balkans, Eastern Europe, Central Asia and Mediterranean Partner Countries), Alfa (Latin America), and Asia-link (Asia) involve modernising higher education in the partner countries.

Regarding the Commonwealth, the Commonwealth Scholarship and Fellowship Plan (CSFP) is an international programme under which member governments offer scholarships and fellowships to citizens of other Commonwealth countries. The CSFP was established at the first Commonwealth education conference in 1959 and is reviewed by education ministers at their triennial meetings – the only scholarship scheme in the world to receive such high-level recognition.

The CSFP was set up to provide a framework through which any Commonwealth government could offer scholarships or career development opportunities to citizens of other Commonwealth countries. The five main principles of the Plan, laid down at the time of its formation, are that it would:

- be distinct and additional to any other schemes;
- be based on mutual cooperation and the sharing of educational experience among all Commonwealth countries;
- be flexible, to take account of changing needs over time;
- be Commonwealth-wide, and based on a series of bilateral arrangements between home and host countries;
- recognise and promote the highest level of intellectual achievement;

It is for each individual country to decide whether to offer awards and, if so, what type of awards. For many years, awards were focused on postgraduate Scholarships – at both Master's and doctoral level – with some undergraduate awards and mid-career Academic Fellowships. Since 2000, however, there has been greater diversity, including the introduction of Distance Learning Scholarships, Post-Doctoral Fellowships, undergraduate exchange, and short Professional Fellowships.

The CSFP is reviewed at the Conference of Commonwealth Education Ministers (CCEM) held every three years. The last review for the 17CCEM in June 2009, found that the number of awards had risen sharply, and that the scheme enjoyed widespread support and recognition. I finish this section also suggesting the possibility of establishing a line of stable cooperation as far as education is concerned, among both organisations to encourage access to international

quality education, as both organisations coincide, above all in recent years, in the need of fostering mutual understanding, open learning, distance education knowledge, resources and technologies, and enhancing sustainable development and reform in line with the Millennium Goals.

As we have explained, the EU has signed cooperation agreements on education with non member countries. Some countries of the Commonwealth, like India, participate in them. Likewise, in the year 2007 a joint strategy between Africa and the EU was adopted and first Action Plan (2008-2010) which emphasise the importance of co-operation in higher education to build high-quality tertiary capacity through networking, mobility of students and scholars, and institutional support and innovation. Fostering higher education in Africa is instrumental both for growth and jobs and to provide schools with more qualified teachers.

In short, given that the European Union is committing itself more and more with the education in developing countries, the Commonwealth could provide its experience so that those projects centred on developing regions, such as the EU_Africa project, may be completed successfully. In the same way, cooperation could reach more geographical areas of interest for both organisations, as it happens in commerce. The Hubs and Spokes program explained earlier could be a taken as a model, as long as it adapts to every region educational needs.

- Health –

In spite of the fact that illnesses are the same for everyone and do not make distinctions as for race or nationality, unfortunately there are great differences as far as cure and possibility of surviving are concerned, for they differ depending on the country of origin.

The main task of the Commonwealth on this area entails helping to build consensus between the developed and the developing countries that make up the Commonwealth. Thus, again, the activity of the Commonwealth is centered on the health of the less privileged groups, the developing countries. That is to say, health is connected to humanitarian aid and development. Health policy in the EU is regulated by the Article 168 Treaty on the functioning of the European Union,which states tha Union action shall complement national policies, in particular, by supporting co-operation between member states. Thus, health policy and the organisation, financing and management of healthcare are a national responsibility of member countries.

Traditionally, the principal aims of this politics are protection and promotion of public health, by improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. This policy has to enable the free movement of people around the EU.

The difference that may be seen between both is the type of approach given and the addressees to whom the above mentioned politics are directed. Although, as we said before, the diseases are the same for everybody, there are big differences between the developed countries and developing countries, since the secondly mentioned do not possess the necessary resources to confront many diseases that in the first world are eradicated or practically eradicated. The member countries of the EU are all developed countries, while a great deal of member countries of the Commonwealth are developing countries.

Thus, The Commonwealth implements programmes in five areas:

- e-Health ,
- health worker migration,
- HIV/AIDS,
- maternal and child health,
- and non-communicable diseases.

The scope for EU legislation in the area of health policy is specifically limited, but incentive measures to promote and improve health can be adopted and this provides the basis for the Health Programme 2008-13 which provides EU funding to support the health agenda.

The EU has coordinated joint actions to address:

- major diseases such as cancer and HIV/AIDs;
- coordination on health threats including communicable diseases;
- major campaigns against drug abuse;
- The EU is also responsible for setting policy on:
- plant and animal health;
- food safety;
- public health and consumer policy;

The work of the Commonwealth in the health care area is centered on:

- Enhancing the dissemination and implementation of the Commonwealth Code of Practice. It has organised regional workshops to inform different groups about the code, engaged with professional associations and health regulation councils, made presentations at different international fora and engaged with different partners to promote the code's implementation;
- Participating in the development of international policy instruments such as the development of the global code of practice for international recruitment of health workers and report on scaling up the production of health workers and informing and supporting the engagement of member states in these processes – through high level dialogue and publications;
- Developing policies for the managed migration of health workers more suited to small states; and
- Researching migration trends in the Commonwealth and promoting policies for return migration – through dialogues and publications.

Aiming to fulfil efficaciously the above mentioned objectives, the Commonwealth collaborates with governments, international organisations, civil society, the private sector and other stakeholders to implement projects which recognise that healthy individuals are central to social and economic development. For example, the World Health Organisation, UNAIDS, think tanks, schools of medicine, public health, nursing, the International Labour Organisation, the United Nations Development Programme, Microsoft and the Open Society.

In recent years, health policies in the EU have acquired a more global dimensionand Europeans are aware that the EU's social model and its global trade and development aid position allow it to play a major role in improving global health.

So, EU action to improve health in third countries is underpinned by the Treaty on the Functioning of the European Union. It specifies that the Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health, and that a high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Thus, the EU Co-operates with third countries and international organisations. Some examples of this are:

- EFTA/EEA and associated countries: This includes co-operation and active participation of the EEA/EFTA countries in Community activities in accordance with the conditions established in the EEA Agreement.

- Third countries: There will also be emphasis on fostering co-operation with other countries. Full use will be made of existing mechanisms such as the European Mediterranean Partnership, the Transatlantic Agenda, the Northern Dimension and the Task Force on Communicable Diseases Control in the Baltic Sea Region.

- International organisations: Existing co-operation with International organisations, in particular the World Health Organisation (WHO), the Council of Europe and the Organisation for Economic Co-operation and Development (OECD) will be strengthened in the course of implementing the programme.

- Enlargement: The accession of Croatia the 1st of July of 2013 completed the sixth enlargement, following the accession of Romania and Bulgaria in 2007 and the ten Member States one, in May 2004. More than 100 million new citizens will help drive the European economy forward. Enlargement has brought higher standards of democracy and rule of law in Europe. It strengthened the security of all EU citizens and increased prosperity in the Union and leads the way to establishing a global public health policy.

On 23 October 2007 the European Commission adopted a new Health Strategy, 'Together for Health: A Strategic Approach for the EU 2008-2013'. This Strategy aims to provide, for the first time, an overarching strategic framework spanning core issues in health as well as health in all policies and global health issues. In this line, This Strategy states that sustained collective leadership in global health is needed for better health outcomes in Europe and beyond.

Through its Research Framework Programmes, the EU has been supporting research across the entire innovation cycle. This starts with basic research, clinical research and public health and health services research. This includes information and communication technologies (ICT) for health (eHealth). In addition, EU policies on environmental standards or on the implementation of multilateral environmental agreements also have a positive impact on global health.

In line with the commitments made on policy coherence for development, the EU should be prepared to address the following aspects of global health:

- On trade, the EU should work to ensure more effective use of TRIPS provisions to increase the affordability and access to essential medicines. The EU should also work at global and regional level to eliminate trade in falsified medicines e.g. through the International Medical Products Anti-Counterfeiting Taskforce. The EU should also

address further the problem of illicit drugs and its effects on health and consider the crucial role of demand reduction.

- On migration, the EU Member States should ensure that their migration policies do not undermine the availability of health professionals in third countries. The EU should speed up progress towardsthe agreed commitments under the European Union Strategy for Action on theCrisis in Human Resources for Health in Developing Countries.
- On security, the EU's Common Foreign and Security Policy should boost progress on the EU response to situations of fragility and highlight the importance of access to health services for populations under stress in fragile contexts, humanitarian crisis and in peace and stabilization processes.
- On food security, food assistance and nutrition the EU should ensure that itspolicies work to increase access to food and link with national health strategies.
- On climate change, the EU will take global health objectives into account inimplementing the collective commitment by developed countries.

In short, we can perceive a great deal of aspects in which they could cooperate. The Commonwealth as well as the EU committed themselves for the achievement of the Millennium Development Goals, a global project designed to definitely reduce the many aspects of extreme poverty, including health care. A consequence of the new dimension that the politics of the EU has acquired, a more internationalist one, is that now there are many fields of action that overlap with those of the Commonwealth, such as: the fight against poverty-related diseases, the application of technological resources to health, AIDS, lifestyle and the training of qualified staff.

One third of the Commonwealth's 1.8 billion people live on less than one dollar a day. Almost two thirds of the world's HIV/AIDS cases and maternal deaths take place in Commonwealth countries. More than half of the world's 115 million children without education are to be found in the Commonwealth. That is why the Commonwealth not only has an interest in achieving the MDGs but also a responsibility to do so."

The former Commonwealth's General- Secretary, McKinnon argued that efforts must go beyond the "target of halving income poverty and reach the Goal - that is, the total eradication of extreme poverty and hunger.[270]"

- Environment-

For the European Union, environment is at the top of the policy agenda. Over the past thirty years, European environmental action has evolved from the resolution of certain specific problems to a more horizontal, preventive and integrated approach. Since the early 1970s Europe has been firmly committed to the environment, at both Member State level and internationally. European environment policy, based on Article 191 Treaty on the Functioning of the European Union, aims to ensure the sustainable development of the European model of society. Environment is a transversal policy, that means that all policies have to take into account that environment is correctly protected.

In order to fulfill with the different priorities set up in the Treaty, EU has developed the Sixth Environment Action Programme, which takes a broad look at the environmental challenge

[270] MCKINNON, D., "Statement by the Commonwealth Secretary-General on the occasion of the High Level Plenary Meeting of the United Nations General Assembly", United Nations, New York, 16 September 2005.

and provides a strategic framework for the Commission's environmental policy up to 2012. The areas that this Programme covers are the following: climate change, biodiversity, the environment and health, and the sustainable management of resources and wastes.

Commonwealth's environmental policy is specially interlinked with sustainable development. The Secretariat's objective is to promote and support economic and social development within Commonwealth countries, especially the small and least developed. In doing this our priority is to ensure that all development is environmentally sustainable. However, Commonwealth is involved in other areas of environment which include: climate change, environment and health, biodiversity (forest) and Natural Disasters.

Commonwealth's action in this issue implies differents action plans and Bodies:

- Commonwealth Secretariat's work programme on the environment
- Commonwealth Climate Change Action Plan: Commonwealth Heads of Government agreed the Lake Victoria Commonwealth Climate Change Action Plan, a statement of intent by governments to work both individually and collectively on climate change.

The plan highlights six areas for co-operation:

- Strengthening quality and participation in climate change negotiations.
- Promoting action through Commonwealth networks to deepenconsideration of the economic and human aspects of climate change.
- Improving land use management and sustainable use of forestresources (including widened international support for theIwokrama Programme).
- Studying the sustainability of fresh agricultural produce and exportsfrom developing countries.
- Supporting natural disaster management in member countries.
- Providing technical assistance to least developed countries and small state

Commonwealth Consultative Group on Environment: The Commonwealth Consultative Group on Environment (CCGE) was established by the Commonwealth Secretary-General in 1993 following the 1992 United Nations Conference on Environment and Development (UNCED), often known as the Earth Summit in Rio de Janeiro. CCGE is the Commonwealth's primary intergovernmental forum for consultations on environment and sustainable development issues. It meets in the wings of the UNEP Governing Council/Global Ministerial Environment Forum.

Commonwealth Disaster Management Agency: give Commonwealth small states insurance policies which help them meet the challenges thrown up by global warming and sea-level rise, in a context where extreme events are now occurring with greater severity and more frequently.

Iwokrama and Centre for Rainforest Conservation and Development: examine and demonstrate practical ways in which forests can be sustainably managed and maintained in partnership with local people and the private sector. new and more innovative approaches to economic development that will help people to earn a living from the forest, attract foreign exchange, and create investment and broad-based development, by using this resource in a variety of ways, not just as a source of timber.

Commonwealth Service Abroad Programme : As part of an ongoing package to support reconstruction efforts following the tsunami disaster in December 2004 (when the

Commonwealth provided 23 doctors to provide interim cover during the recovery period), we are helping to train Regional Health Care Managers and strengthen the National Medical Council of the Maldives.

Commonwealth's Climate Change Action Plan states:

> "13. … that Commonwealth governments and the Commonwealth Secretariat will play their full part to implement our shared goals and envisaged actions, working in strategic partnership and conjunction with other international institutions, raising awareness, facilitating access, and sharing best practice. Our governments will contribute additional technical and financial support according to our means".

Thus, in order to implement this: Commonwealth works with a wide range of partner organisations in this area. These include United Nations partners such as UN Habitat and the UN Commission on Sustainable Development, regional organisations, the private sector, young people and other Commonwealth organisations such as the Commonwealth Parliamentary Association and the Commonwealth Forestry Association.

European Union has a similar statement, Article 191 of the Lisbon Treaty states that "within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned".

So, we can note that for both organisations it is essential to cooperate on this issue with other organisations, mainly because environment is a global concern, so fighting for the protection of environment entails taking common actions. There are many areas of possible cooperation between both organisations. The most important ones are two: climate change and sustainable development.

Regarding climate change, The Kyoto Protocol to the United Nations Framework Convention on Climate Change strengthens the international response to climate change. Adopted by consensus at the third session of the Conference of the Parties (COP3) in December 1997, it contains legally binding emissions targets for Annex I (developed) countries for the post-2000 period. The EU and its Member States ratified the Kyoto Protocol in late May 2002. The developed countries commit themselves to reducing their collective emissions of six key greenhouse gases by at least 5%. Each country's emissions target must be achieved by the period 2008-2012. In this regard, in 2007, the 53-member states of the Commonwealth could not reach a consensus on binding emission cuts.

I conclude this section insisting on the importance of setting new frameworks of cooperation. This area would be an interesting one, taking into account the difficulties many of the member countries of the Commonwealth have concerning the Kyoto Treaty on reduction of emissions of greenhouse gases, and the other area in which both organisations should be interested on is environmental sustainable development. In this regard, the EU Commission notes that it must be taken up by society at large as a principle guiding the many choices each citizen makes every day, as well as the big political and economic decisions that have. However, the Commission is aware about the profound changes in thinking, in economic and social structures that to reach this requires.

In July 2009 the Commission adopted the 2009 Review of the EU Sustainable Development Strategy. It underlines that in recent years the EU has mainstreamed sustainable development into a broad range of its policies. In particular, the EU has taken the lead in the fight against climate change and the promotion of a low-carbon economy. At the same time, unsustainable trends persist in many areas and the efforts need to be intensified. The Commonwealth is also deeply involved in this issue and has long been working with other international organisations, such as the UN Habitat and the UN Commission on Sustainable Development.

Recently, in July of 2010, Secretary-General Kamalesh Sharma met European Development Commissioner, Andris Piebalgs, to the Commonwealth Secretariat on the first visit by a Development Commissioner to the Commonwealth's Secretariat; the Commissioner endorsed the Secretary-General's call for a deepening of the relationship between the two institutions, especially in sustainable development area.

- Development Cooperation and Humanitarian aid-

Traditionally, the principles of national sovereignty and non-intervention have been interpreted in absolute terms. Nevertheless, from the end of the Cold War, in the decade of the nineties, they became more relative. Kosovo showed the inadequacy of the principle of non –intervention and a serious violation of the international rights.

National sovereignty still remains as a basic principle on which the international order is founded: respect for the territorial integrity of states and non-interferance in their affairs is codified by the Charter of the UN. However, after the Cold War, interventions have no longer been an instrument used by powerful states to dominate weaks ones, rather a tool used to attain objectives such as the avoidance of humanitarian catastrophes and the re-stablishment of international peace and security. So national sovereignity has to be interpreted taking into account the respect of human rights and the assurance of the principle of self-determination. Thus, a new set of conditions have to be respected in order to assure the legality, legitimacy and political oportuneness of intervention. One of the new basic assumptions of the international order that is in gestation is that sovereignty can never be a pretext for genocide. Thus, the European Union's humanitarian action is based on international humanitarian law and by the humanitarian principles of neutrality, impartiality and non-discrimination. However, according to Ortega, "Europeans have carried out legitimate humanitarian interventions since 1945, but also have carried out some that were questionable and contrary to international order"[271].

The Kosovo crisis marked a turning point in the development of the international system; the West was not able in freeing itself from the constraints of realpolitik. Kosovo showed the inadequacy of the principle of non-intervention, facing a serious violation of international law.
The EU received many critics for not stopping atrocities in Bosnia at the beginning of the 1990s, it also was criticised for not taking action in Kosovo and Rwanda's conflicts. In this line, according to Schneider there was no intervention in Rwanda and in Kosovo and that was a terrible failure of the world community (…) the increased misery of the refugees in the context of the bombings makes anti-interventionists arguments to turn out deceiving[272].

[271] ORTEGA, M., "Military Intervention and the European Union", Institute for Security Studies, *Chaillot Papers*, 2001, Num. 45, p. 93.
[272] SCHNEIDER, P., *Intervention in Kosovo*, Candor, Telos, 1999, p.78.

After Kosovo crisis, the EU starts to play a more active role in humanitarian aid in order to prevent or relieve human suffering. The EU assures that its humanitarian response is determined by the needs of victims alone and is not based on or subject to, political considerations.

The European Union is the world's leading provider of humanitarian aid. In 2006 it contributed over 2 billion, or more than 40% of overall international humanitarian assistance. This aid – not just money but also goods, services and technical assistance – helps beneficiaries prepare for and deal with major disasters outside the EU, whether natural, man-made or structural. EU Humanitarian aid consists of 3 broad types: emergency aid, food aid, and aid for refugees.

The principal instruments for immediate EU disaster response remain Community humanitarian aid delivered under Council Regulation (EC) No 1257/96, and the Member States' capabilities mobilised under the EC Civil Protection Mechanism. EU military assets may complement and strengthen delivery of aid under both of these mechanisms. Furthermore, strategic planning scenarios for so-called 'Petersberg' humanitarian tasks using both civilian and military assets are currently being developed.

In providing aid, the EU seeks to be impartial and independent. The work is coordinated by its aid office, European Community Humanitarian aid Office (ECHO) , which cooperates closely with partner bodies implementing aid on the ground, especially the UN and non-governmental organisations, such as charities.

Commonwealth is also active in humanitarian aid; its Secretariat has a long track record in providing technical assistance that has included responding to member states' requests for support in times of disaster, and in addressing their vulnerability to the impacts of future events.

Though disaster-related work is not separately identified in the Secretariat's strategic plan , it has been an important element within some of the recent interventions which the Commonwealth was called to provide assistance to affected member states. Drawing on its natural strengths and existing mechanisms the Commonwealth delivered practical assistance in the immediate aftermath of these events, and delivered advice and support to strategic interventions that would help to strengthen early warning systems, disaster risk management and inform future planning . The Commonwealth Secretariat has been responding to requests for assistance by member Governments particularly the Governments of the Maldives, Grenada and Pakistan with initiatives having been designed to provide technical support in the aftermath of disasters. In addition, experts and organisations in the Caribbean, Indian Ocean and Pacific have worked with the Commonwealth to examine ways in which they could collectively reduce the future impact of natural disasters by strengthening advance warning networks across international borders.

Some of the initiatives includes ; Asia Pacific Regional Programme; Support to Grenada nutmeg industry; Expert technical assistance to Guyana following the floods in December 2004/ January 2005; Technical assistance to the Republic of the Maldives following the tsunami in December 2004; Technical assistance to the Islamic Republic of Pakistan following the earthquake in October 2005; Commonwealth Connects Programme: 'Rebuilding after the Tsunami: Using ICTs for Change'; Commonwealth Disaster Management Agency (CDMA) initiatives in providing credit support insurance for small states in times of disaster; and Disaster warning and response systems in small island developing states .

In November 2005, the Communiqué of the Malta Commonwealth Heads of Government Meeting (CHOGM) included two paragraphs addressing the Natural Disasters and Humanitarian Assistance calling for:

> "…. Action to strengthen disaster management through increased capacity for disaster preparedness, early warning systems, risk management and post-disaster recovery and reconstruction".

Implementation of this mandate is currently co-ordinated by the Governance and Institutional Development Division (GIDD) in collaboration with other relevant actors in the Secretariat and funded by the Commonwealth Fund for Technical Co-operation (CTFC), being the principal means by which the Commonwealth delivers development assistance to member countries. A programme has been developed through which member countries co-operate in capacity building for disaster risk reduction and disaster response management. The Commonwealth is working towards the adoption of Commonwealth Programme for Natural Disaster Management. The Secretariat works with other key players, including civil society organisations and other Commonwealth organisations and associations, in appropriate fields and builds partnerships to support the needs of governments and provide essential assistance for often significant tasks.

Although there are possible areas of cooperation, as both develop a similar action on the field of humanitarian aid, no cooperation agreement or joint initiative has been signed between both organisations.

-Human rights –

To promote human rights around the world, the EU funds the European Initiative for Democracy and Human Rights. The initiative, with a €1.1 billion budget for 2007-2013, puts respect for human rights and democracy into a global context and focuses on four areas:

- strengthening democracy, good governance and the rule of law (support for political pluralism, a free media and sound justice system);
- abolishing the death penalty in countries which still retain it;
- combating torture through preventive measures (like police training and education) and repressive measures (creating international tribunals and criminal courts);
- fighting racism and discrimination by ensuring respect for political and civil rights.

The initiative also funds projects for gender equality and the protection of children. In addition, it supports joint action between the EU and other organisations involved in the defence of human rights, such as the United Nations, the International Committee of the Red Cross, the Council of Europe and the Organisation for Security and Cooperation in Europe.

Apart from the external action on this field that the European Union develops, since 2000, the European Union is aware of the importance of assuring fundamental rights to the citizens from the territories of its member states. In this sense, the European Union Charter of Fundamental Rights which was signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000 sets out in a single text, for the first time in the European Union's history, the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU.

Moreover, the Treaty of Lisbon has reached a very important achievement, since it guarantees the freedoms and principles set out in the Charter of Fundamental Rights and gives its provisions a binding legal force.

Regarding the Commonwealth, if anyone asks: 'which is the most important task that the Commonwealth develops?' Undoudbtfuly, I will reply that the Commonwealth out stands for its work concerning the field of Human Rights. The Commonwealth is particularly geared to ensure the respect and protection of human rights within the territories of its member states. We can not forget that the Commonwealth has closely experienced some of the most serious violations of human rights happened in the world; we can highlight the case of South Africa and its apertheid's policy. The Declaration of Singapore 1971 and the Harare Declaration 1991, which constitute the constitutional framework of the organisation, proclaimed the opposition to all forms of racial oppression, and is committed to ensure the principles of human dignity and equality. Moreover, members of the Commonwealth have repeatedly declared that racial equality is one of the cornerstones of the Commonwealth. So, all of its members must respect and guarantee human rights.Likewise, the suspension and expulsion proceedings are used when a member state seriously and reiteratedlybreachhuman rights. Such is the case of Fiji, which was suspended from the Councils of the Commonwealth following the military overthrow of civilian government in December 2006.

In short, all Commonwealth's member states work to ensure that all people:

- Enjoy equal rights regardless of gender, race, colour, creed or political belief can fully exercise the inalienable right to participate in free and democratic political processes; and can benefit from and contribute to equitable and sustainable development.
- The impact of the Commonwealth's work is realised through a number of different programmes examples of which include.
- Assisting in the adoption of international standards on human rights and the implementation of major international human rights instruments.
- Capacity building for the preparation of reports and effective participation in the Universal Periodic Review process.
- Enhancing capacity and strengthening of police and national human rights institutions
- Mainstreaming human rights into the work of the Secretariat across other units and divisions.
- Developing documentation on best practices and manuals for training purposes.

The Commonwealth Secretariat works with High Commissions, national institutions (such as national human rights commissions ombudspersons, and civil society). At the international level the Secretariat works closely with the United Nations system, particularly the Office of the High Commissioner on Human Rights (OHCHR) and at regional level it has a good working relationship with bodies such as the African Commission on Human and Peoples Rights, Asia Pacific Forum of National Human Rights Institutions (APF) and the Pacific Regional Rights Resource Team.

The Commonwealth as a whole is involved in this field, so not only the Secretariat developes a great task, but also non governmental organisations which are part of the Commonwealth Family are actively working on this area. In this regard, we must highlight, the Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth.

CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights, and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its biennial CHOGM reports and periodic fact finding missions CHRI continually draws attention to progress and setbacks in human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member-state governments and civil society associations. By holding workshops and developing linkages, CHRI's approach throughout is to act as a catalyst for activity around its priority concerns.

CHRI is accredited to the Commonwealth and, since 2002, also holds Observer Status with the African Commission on Human and Peoples' Rights. Moreover, has also been granted Special Consultative Status with the Economic and Social Council of the United Nations in July 2005.

Although there are possible areas of cooperation, as both develop a similar action on the protection of human rights, no cooperation agreement or joint initiative has been signed between both organisations, and it would beeasy to arrange it, sincebothorganizations already have cooperation agreements with other organisations in this field. The Commonwealth Secretariat works closely with the United Nations system, particularly the Office of the High Commissioner on Human Rights (OHCHR), The EU works with other organisations involved in the defence of human rights, such as the United Nations, the International Committee of the Red Cross, the Council of Europe and the Organisation for Security and Cooperation in Europe.

The Commonwealth’s activity regarding Human Rights has a great reputation, since it’s the most important activity that the organisation develops. The EU could take profit of this experience and could complement it with their own initiatives. Their activity is implemented in overlapping geographical areas. Therefore, it would be more effective if both could coordinate their own efforts and develop a joint initiative, especially for those geographic regions their share, that are of common concern. An example could be to design a joint initiative which covers those areas within the ACP framework.

THE EU BUDGET VS. THE COMMONWEALTH BUDGET

The Commonwealth’s work is financed by three separate budgets or funds. The budget of the Secretariat itself, the fund of the Commonwealth Youth Programme and the Commonwealth Fund for Technical Cooperation, while the European Union has only one budget. Both organisations have its own resources to finance their own expenditure.

Regarding the budget of the Commonwealth’s Secretariat itself, is based on assessed contributions. Governments contribute on an agreed scale based on capacity to pay. In order to deal with arrears, in December 2003, the Heads of Governments at the CHOGM in Abuja, Nigeria approved the Abuja guidelines which govern the procedures for dealing with arrears of contributions to the Secretariat’s funds. The Commonwealth Youth Programme (CYP) is also financed by assessed contributions. Its aim is to reduce poverty among young people. CYP has an expanding network of partners with whom it collaborates in areas of common interest for the development of the young people of the Commonwealth, and, finally, the Commonwealth Fund for Technical Cooperation (CFTC) is financed by voluntary contributions. This Fund was launched by Commonwealth Heads of Government in 1971 as a mutual fund; the CFTC provides technical assistance in support of economic growth, poverty reduction and sustainable development. The CFTC has an annual budget of around £29 million, which is

resourced by voluntary contributions from Commonwealth member governments and overseas territories, and drawn upon on a demand-led basis. CFTC assistance is targeted towards helping member countries acquire knowledge and institutional capacity to address their own development priorities. All contributions to the CFTC are voluntary. Over the past six years, the largest contributors have been Australia, Botswana, Brunei Darussalam, Canada, India, New Zealand, Nigeria and the UK. Some member countries' overseas territories and associated states also contribute. For various special CFTC projects, contributions have been received from non-Commonwealth governments and voluntary organisations.

The European Union resources are of three kinds:

- Traditional own resources (TOR) — these mainly consist of duties that are charged on imports of products coming from a non-EU state. They bring in approximately EUR 14.1 billion or 12 % of the total revenue.
- The resource based on value added tax (VAT) is a uniform percentage rate that is applied to each Member State's harmonised VAT revenue. The VAT-based resource accounts for 11 % of total revenue, or some EUR 14.0 billion. The resource based on gross national income (GNI) is a uniform percentage rate applied to the GNI of each Member State. Although it is a balancing item, it has become the largest source of revenue and today accounts for 76 % of total revenue or EUR 92.7 billion.
- The budget also receives other revenue, such as taxes paid by EU staff on their salaries, contributions from non-EU countries to certain EU programmes and fines on companies that breach competition or other laws. These miscellaneous resources add up to around EUR 1.4 billion, i.e. about 1 % of the budget.

The total EU revenue for 2010 amounts to some EUR 122.9 billion. For 2009/2010, the Secretariat's budget was UK£ 14,995,745 (18.249.598,02 EUR). The CYP's budget was UK£2,815,018 (3,425,832.53 EUR). The CFTC's budget was UK £29,168,723 (35,496,207.25 EUR).

We can draw the following conclusions; the budget of the Commonwealth shows the complexity of the association itself. There is not such a thing as a unique budget for the whole organisation, like the one of the European Union. This is due to the fact that, as we have mentioned previously, the Commonwealth has a "sui generis" legal personality. On the other hand, its Secretariat does have it and so it counts on a budget of its own. What is more, there are two other budgets. The budget receives resources from each member country according to its possibilities. Contributions to the Secretariat budget are compulsory, whereas the rest of the budgets are voluntary and also depend on the possibilities of each country.

The EU budget is less hard to comprehend. It has a unique budget for the whole organisation. According to the "sui generis nature" of the Commonwealth, its incomes come from the contributions of each member state, in accordance with the possibilities of each state. By contrast, the EU system of incomes is more complete and they come principally from three sources: VAT, GDP and duties. And this is so because of the type of organisation the EU is. The Commonwealth budget seems humble if it's compared to the one of the EU. We must bear in mind that the budget which the EU counts on is higher than that of the Commonwealth, in spite of having half of the members that the Commonwealth has. In the EU, the five states that contribute more to the EU Budget are Germany, UK, Italy, France and the Netherlands. While in the Commonwealth, the countries that contributed the most, apart from the so called ABC countries (Australia, Britain and Canada) are Botswana, Brunei Darussalam, India, New Zealand and Nigeria. Therefore, the UK is one of the main states, as far as contributions are concerned, in the budget of both organisations.

3. COMPARATIVE LEGAL APPROACH: THE CONTROVERSIAL LEGAL NATURE OF THE COMMONWEALTH VS THE LEGAL NATURE OF EUROPEAN UNION, BEFORE LISBON

As we have previously said, the Commonwealth includes three different international organisations, the three of which have legal personality. The three organisations are: the Commonwealth of Learning, the Commonwealth Foundation and the Commonwealth Secretariat. This one is well known, since its work has more impact at an international level. Frequently, people confuse the Commonwealth with the Commonwealth Secretariat and speak of them as if they were the same, when in fact the work of the Commonwealth goes beyond the work of the Secretariat. Regarding the Commonwealth itself, as we have already seen, there are different opinions about its legal nature. Broadly speaking, some support the idea that it is an international organisation, whereas others are of the opinion that is a mere association of states that share a network of international relations, a debate we have analysed in depth in previous sections. To my mind, the Commonwealth is just an association, but an organisation that plays a pivotal role in the international arena; a role that goes far beyond a simple platform for international relations. It has objectives and principles that guide its work as an organisation as a whole. However, I am aware that there exist difficulties in verifying some of the requirements that International Public Law demands in order for it to be classified as a bona fide international organisation with an international legal personality. It should be stated that these difficulties do not stem from legal problems; rather, due to a lack of political will on the parts of its members, to clarify what is undeniable, namely, that the Commonwealth could be a subject of international law like any other. Accordingly, the 2009 Report of Eminent Persons Group expressed what we have been referring to, in that it recommended that the member states should unequivocally afford a legal international personality to the Commonwealth. Hence, at present it is an international organisation “sui generis”, but there is no legal impediment to prevent it achieving the status of international organisation.

So, regarding the European Union, the legal personality matter has been solved after the entry into force of the Lisbon Treaty, which confirmed what it was a fact. It expressly conferred international legal personality to the Union, as we have already explained at the first part of the minor thesis; many authors gave their opinions on the subject. Some scholars and researchers considered that that the European Union did already have it as a result of the international practice. In this regard, we can highlight the work of Fernández Sola[273] who stated that in international jurisprudence had been applied the theory of implicit powers, in order to recognise international subjectivity to international organisations (...) "the international subjectivity can be acquired by the explicit will of the parties or implicitly, by the subsequent practice of the organisation. However, the Lisbon express act of conferring legal personality to the EU has clarified and simplified its structure and has facilitated the relationship with other subjects of international law. So, before the Lisbon Treaty was passed, the legal nature of the EU rised the same questions than the Commonwealth currently rises.

The pre-Lisbon legal structure of the EU was very similar to the Commonwealth one. Therefore, as we have already explained, the European Union was made up by three pillars, two of them had an inter-governmental nature and the first one, was the Community one, composed at the beginning by three international organisations with their own and independent legal personality: the ECSC, EEC (later EC) and EURATOM. The Commonwealth has a similar structure. The Commonwealth is made up by three different international

[273] FERNÁNDEZ SOLA, N., “La subjetividad internacional de la Unión Europea”, *Revista de Derecho Comunitario Europeo*, 2002, Num. 11, pp. 87-88.

organisations, each one of them has its own legal personality. These are: the Commonwealth Secretariat, The Commonwealth of Learning and the Commonwealth Foundation. So if readers allow me the simile, the Commonwealth rest on three pillars. The three of them are independent and they are inter-governmental pillars, as member States of the organisation have not transferred part of its national sovereignty. Alongside the Commonwealth covers a wide range of NGOs, known as the Commonwealth Family, this NGOs network is committed to the Commonwealth's pursuits and values.

THE INSTITUTIONAL FRAMEWORK OF THE COMMONWEALTH AND THE EUROPEAN UNION

It is complicated to compare the institutions of both organisations, as they are two organisations with a different origin and work using different methods. **So they do not have too many equivalent bodies or institutions**.

a) **The Headship**: The Queen, H.M. Elizabeth II, in her personal capacity, not the Crown as an institution, is its Head of the Commonwealth. As we have deeply explained in the previous parts of this work and using the words of the Declaration of London,

> "The King was accepted as: the symbol of the free association of its independent member nations and as such the Head of the Commonwealth[274]".

The Commonwealth's Head has a symbolic nature, which means that does not have formal constitutional functions. So, she takes no part in the deliberations and indeed has no other functions as Head, a part from attending the opening of each CHOGM as Head of the Commonwealth and delivering an address. **There is no other institution in the European Union that could be compared to this one.** In fact, "this symbolic headship is unique to the Commonwealth as an international organisation[275]." This is due to the historical roots of the Commonwealth, since the organisation is the result of the evolution or transformation lived by the British Empire. In my opinion, apart from giving unity and cohesion, the Queen represents the long tradition of this organisation, that's why she kept symbolic powers. When Queen Elizabeth II dies a rough debate on the succession of the Commonwealth Headship will come about.

b) **Political guidelines**: The main body of **the Commonwealth is the CHOGM[276], we could state the European Council as the equivalent in the EU scope**. The CHOGM is the biennial summit meeting of the heads of government from all Commonwealth nations. The first meeting was held in Singapore in 1971. Its historical roots date back to the meeting of the leaders of the self-governing colonies of the British Empire. These meetings constitute one of the largest regular meetings of heads of government in the world . However, there is no instrument which states its powers, objectives, procedures and methods of work, due to the fact of their conscious informality.

Meetings are held around the Commonwealth States by invitation amongst its members, and following an informal system of geographical rotation. As we have already mentioned, CHOGM discuss Commonwealth issues, and agree collective policies and initiatives. Thus, in practice, CHOGMs act as the **principal policy and decision-making forum to guide** the strategic direction of the Commonwealth. The decisions which emerge are embodied not in formal

[274] The Commonwealth, "Declaration of London of 1949", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/document/181889/34293/35468/214257/londondeclaration.htm>, (accessed 3/3/2010).
[275] SLINN, P., *The Commonwealth and the Law*, op. cit., p.130.
[276] BROWNLIE, I., *Principles of International Law*, op. cit., p.144.

resolutions but in a final communiqué to which specific declarations or statements may be attached. Decisions are arrived at by consensus.

Regarding the EU, a similar institution to compare with CHOGM is the European Council. Before the Lisbon Treaty entries into force, the European Council's legal status remained uncertain. The first Councils were held in February and July 1961 (in Paris and Bonn respectively). They were informal summits of the leaders of the European Community. The first influential summit was held in 1969 after a series of irregular summits. The Hague summit of 1969 reached an agreement on the admittance of the United Kingdom into the Community and initiated foreign policy cooperation. The summits were only formalised in the period between 1974 and 1988. The inaugural European Council, as it had become, was held in Dublin on 3 October and 3 November 1975 during Ireland's first Presidency of the Council of the European Union. In 1987, it was included in the treaties for the first time (the Single European Act) and had a defined role for the first time in the Maastricht Treaty. With the Lisbon Treaty, art. 13 TEU, the European Council gained the formal status as an institution of the European Union. Thus, the European Council has been gradually defined by all the different Community treaties. However, until the Lisbon Treaty was adopted the nature and power of the Council remained unclear. The Commonwealth is in the same situation that the EU lived before Lisbon. There is not a formal instrument which sets up and clarifies the nature and power of the CHOGMs.

c) **The presidency**: Both organisations have recently adopted the position of a President. In the Commonwealth, this position was established at the 1999 CHOGM. The first CHOGM Chairperson-in-Office was President Thabo Mbeki. As for the EU, the creation of this position is even more recent. It has been one of the novelties and improvements of the Lisbon Treaty in order to simplify EU legal structure and nature. On November 2009, Herman Van Rompuy was chosen as the first President of the European Council. Both Presidents serve a similar term in office. The chairman of the CHOGM has a mandate of two years. While the term in office of the President of the EU, as highlighted in article 15 of the TEU, is two and a half years, renewable once. Both Presidents carry out similar tasks. Basically, at their own level, they assume the external representation of their own organisations and they ensure the continuity of the work of the institution they chaired (the CHOGM, regarding the Commonwealth and the European Council, regarding the EU).

d) The Commonwealth Ministerial Action Group Another Commonwealth's body which is difficult to find an equivalent within the EU's institutional framework is the Commonwealth Ministerial Action Group (CMAG). The fundamental function of this is to assess on the nature of the infringement of any Commonwealth's political value, it also recommends what measures member States have to take in case of a collective action. The CMAG's authority to suspend a member country from the association is quite unique amongst international organisations. We do not find any similar organ in the structure of the European Union.

e) The Commonwealth Secretariat: it is hard to understand the double nature of the Commonwealth Secretariat (CS). On the one hand, it is the main Commonwealth inter-governmental organisation, and on the other hand, it is one of the central institutions of the Commonwealth.

Generally, there is a tendency to confuse Commonwealth with Commonwealth Secretariat (CS), as it happened with the EU and the European Community, whose names are commonly used as synonyms. The Secretariat as a body, is more than an administrative organ of the Commonwealth, since most of the work done by the Commonwealth as a whole is based on the work of the Commonwealth Secretariat. The tasks of the Commonwealth Secretariat have

internal and external character. There is no other organ in the EU like the Commonwealth Secretariat (CS). However, some of the CS characteristics can be found in different institutions of the EU.

The CS is not equivalent to the EU Commission, but it shares some characteristics of it. In both cases, they are in charge of implementing policies adopted by their own organisations and they also have assumed a representative role on the international stage. In this sense, the EU, through the Commission, agreed with the CS the Hubs and Spokes Programme.

Likewise, the principal difference between both institutions is that the Commission has authority to propose laws, whereas the Secretariat does not have it. So, as we have already explained, that is because the Commonwealth is an organisation which its members have not conferred legislative power and the decisions that it adopts are only of political character.

The CS assists and helps the CHOGM with some of its tasks. This task is similar to the assistance that the General Secretariat renders to the European Council. Moreover, the recently created European External Action Service, which is in charge of assisting the High Representative on the common foreign and security policy is another EU body which coincides with the CS concerning the exterior representation of the organisation.

f) The Secretary-General: the functions of the Commonwealth Secretary also coincide with a diverse range of positions that different authorities of the EU carry out. The Secretary of the Commonwealth is perceived as the spokesman of the Commonwealth on the international stage. This task partially coincides with the one developed by the EU High Representative. The Treaty of Lisbon establishes that he/she shall represent the Union for matters relating to the common foreign and security policy, shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

Moreover the position of Commonwealth Secretary coincides with some of the tasks done by the members of the Commission, mainly with the European Development Commissioner. Since they share similar responsibilities is easier for them to meet and discuss issues that may be of common concern. By the way, they have already met and they both have expressed the necessity to intensify these meetings[277]. It also shares some characteristics of the President of the EU Commission. The Secretary General is responsible for representing the Commonwealth publicly; and for the management and good governance of the Commonwealth Secretariat. The President of the EU Commission must try to provide forward movement for the European Union and to give a sense of direction both to his fellow Commissioners and, more broadly, to the Commission as a whole. Their terms in office are very similar. The Secretary General serves for a period of four years term, while the President of the Commission for a five years term.

Finally, the Commonwealth Secretary functions are also comparable to the tasks that the General Secretary of the Council develops on the implementation of the European annual Council programme. The Commonwealth Secretary develops the Strategic Plan - a four-year framework which sets out the Secretariat's main goals and programmes.

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[277] The Commonwealth, "EU Development Commissioner meets Secretary-General", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/news/34580/226931/150710piebalgsmeeting.htm>, (accessed: 3 March 2010).

The great difference, which makes the Commonwealth's Secretary remaining unique is that she, together with the CMAG, deals with violations of Fundamental Values of the Commonwealth (Harare principles).

The Commonwealth Ministerial Meetings Group and the Council of the European Union

Although the Commonwealth Ministerial Meetings Group (CMMG) cannot be considered a body, in the strict sense of the term, the CMMG could be comparable to the meetings that the Ministers of the Member States maintain in the EU Council. Just as it happens with the Council whose members meet in different formations, depending on the subjects they have to be dealt. At the, the Commonwealth Ministries also meet, in different formations. Thus, if they are dealing with sports, then the Ministers of Sport of the 53 member states meet. Nevertheless, according to Commonwealth's conception of informality and flexibility these meetings are not held with the same regularity than the different formations of the councils of the EU, since it will mainly depend on the formation and the current needs. With regard to Sports, meetings are held every two years, coinciding with the Commonwealth's Games; regarding Youth, in 2008 it was agreed that meetings on this issue would be held every four years.

The great difference between the Commonwealth Ministerial Meetings and the EU Council entails that the Council is one of the essential institutions of the EU and has attributed (together with the Parliament) the legislative power. Member States have conferred legislative power to the EU Council alongside the Parliament. Whereas the CMMG, has a political character and acts as a debate forum, as a platform for the participation of different actors, and as a guide for the development of programmes related to the subject for which they meet. Whereas the CMMG, having a political character, acts as forum of debate, as a platform for the participation of different actors, and as a guide for the development of programs related to the subject for which they meet. The Council meets in different formations, depending on the subjects to be treated. The Commonwealth Ministries also meet, in different formations.

The European Parliament and no Parliament for the Commonwealth

The Commonwealth does not have a parliament or an assembly, as other organisations do. In the case of the EU, the Parliament is one of the major institutions, and it is being attributed competencies that are more and more important. Together with the EU Council, it has been conferred legislative powers.

We must say that if we go back to the days of the British Empire, the Westminster Parliament was the central Parliament, responsible for passing laws for the territories of the whole Empire. However, following the Balfour Declaration of 1926, the Statute of Westminster 1931, which established legislative equality for the self-governing dominions of the British Empire and the United Kingdom, and the London Declaration of 1949, on which are laid the foundations of the modern Commonwealth, the British Parliament ceased to have that power.

When I start researching for writing this thesis I find out an institution called the Commonwealth Parliamentary Association, this cannot be confused with the Parliament of the Commonwealth, since this is an association which is part of the so-called Commonwealth Family or Commonwealth Informal Network, dedicated to promote the advancement on parliamentary democracy and to seek further co-operation among Commonwealth's Member States Parliaments and legislatures in in the fields of good governance, of democracy and elections, and of human rights.

The European Court of Justice and the Commonwealth Secretariat Arbitrary Tribunal

One of the main Institutions of the EU is the European Court of Justice, which is responsible for ensuring that EU legislation is interpreted and applied in the same way in all EU countries, so that the law is equal for everyone. It ensures, for instance, that national courts do not give different rulings on the same issue. Moreover it also makes sure that EU member states and institutions do what the European law requires. The Court has the power to settle legal disputes between EU member states, EU institutions, businesses and individuals.

The Commonwealth, in coherence with its philosophy of informality and flexibility, has not a Court of Justice, or any institution which exercises judicial functions. Nevertheless, the Commonwealth Secretariat Arbitrary Tribunal (CSAT), which was established and operates under a Statute agreed by Commonwealth's members in 1995, later amended, settles internal disputes of the Commonwealth, especially issues concerning recruitment. Thus, every contract entered into by or on behalf of the Commonwealth Secretariat which contains a requirement for any dispute arising out of any such contract shall be submitted to the CSAT. In this sense, this body could be compared to the European Civil Service Tribunal, which was created on February 2005, it deals with the disputes between the European Union and its civil service. A stated by the article 2 of its Rules, the Tribunal is composed of seven members, who must have European citizenship, that is, they must be nationals of any Member State. Likewise, the Commonwealth also requires that members of the Arbitrary Tribunal to be nationals of any member state of the organisation. Regarding its composition, there are eight judges, appointed for a four years term, renewable for an additional term, but not exceeding a four years term. The courts of both organisations agree on the fact that their members must be chosen from among legal experts of recognised competence and experience.

The Judicial Committee of the Privy Council

Finally, I would like to point out that as reminiscence of British imperial past, there is the Judicial Committee of the Privy Council, which cannot be comparable to any other institution of the EU, because it is Court of Final Appeal for the UK overseas territories and Crown dependencies, and for those Commonwealth countries that have retained the appeal to Her Majesty in Council or, in the case of Republics, to the Judicial Committee including Jamaica, Barbados, Antigua and Barbuda, Belize and Tuvalu . Slinn[278] remarks that his bold claim does not of course imply that Commonwealth countries are governed by a common legal system, as is demonstrated by the reference above to the diversity of Commonwealth laws. Nor is there a court with a supervisory jurisdiction over member-states on the analogy of the European Court of Justice (EU) or the European Court of Human Rights (Council of Europe). The Judicial Committee of the Privy Council, which once constituted in effect a supreme court for the whole empire, outside the United Kingdom, might perhaps have grown into a Commonwealth Supreme Court if the evolution of Commonwealth institutions had taken a different path. The Privy Council still survives as the final court of appeal, not only for the remaining British overseas territories and the Crown Dependencies, but also for a significant number of independent Commonwealth countries, on what can only be described as an agency basis.

COMMONWEALTH NORMATIVE INSTRUMENTS VS. EUROPEAN UNION LAW

a) **Commonwealth Instruments**: The Commonwealth has the characteristics of a cooperation organisation, whereas the European Union, is an integration organisation, that is, their member States have conferred to the Union the exercise of its sovereign powers. Regarding

[278] SLINN, P., *The Commonwealth and the L*aw, op. cit., p.132.

the Commonwealth, all their actions are developed by the coordination of its members, in order to achieve collective goals. This type of organisation is respectful with the sovereignty of its Member States, since Member States have not conferred to the Commonwealth the exercise of its sovereign powers. So, when it comes to reaching agreements, members use negotiation and inter-state cooperation. The decisions are adopted by the unanimity of Commonwealth members. These decisions are addressed to Member States. However, these are not applicable, if they do not include the previous authorisation of member States. According to Slinn[279] Commonwealth's instrument provide broad guidelines to normative behaviour. This is a description of a category of international instruments within which Commonwealth Declarations, Action Programmes and other statements fit quite comfortably. They influence the conduct of member-states by creating political obligations to conform to standards of conduct, which may prove more compelling than obligations imposed by legal rules. Martin Dixon[280], in a rare citation of Commonwealth practice in a textbook on general international law, observes:

> "Inter-state agreements which are not actually treaties such as the 1977 Commonwealth Statement on Apartheid in Sport (Gleneagles Agreement) and the 1975 Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accords) . . . are not binding in law but have considerable impact on state practice because of their political import . . . creating 'soft law".

Thus, Commonwealth instruments are not legally binding in a conventional sense, but have real normative significance both for relations between member-states and for the wider international community. In keeping with this line Dale[281] remarks that Commonwealth agreements do not impose obligations binding under international law. What this means is simply that non-compliance with the Commonwealth instruments (the Declarations as well as the two agreements) "would not be a ground for a claim for reparation or for judicial remedies. This... is quite different from stating that they would not be observed or that the parties are free to act as if there were no such instruments". The obligations entered into are binding morally and politically, and they will be regarded by governments as controlling their activities. Political and moral obligations may, in the international field be as efficacious as legal obligations.

b) **EU Law**: The main goal of the EU is the progressive integration of Member States' economic and political systems and the establishment of a single market based on the free movement of goods, people, money and services. To this end, its Member States cede part of their sovereignty under the Treaty on the Functioning of the European Union (TFEU) which empowers the EU institutions to adopt laws. The primary source of European law is the Treaties; they are the basis of the European Union and are legally binding instruments. There are secondary sources which can be binding or non-binding instruments. Thus, regulations, directives and decisions are binding on national authorities and also take precedence over national law. While norms such as recommendations and opinions, as well as rules governing how EU institutions and programmes work, are non-binding instruments.

EU Law fulfils two principles. These are direct effect and supremacy of EU law. These principles have been developed by the European Court of Justice (ECJ). Supremacy concerns the relationship between EU law and national law. In case that national law contradicts EU law, EU law would prevail and national law would be inapplicable. The doctrine of supremacy is regarded as "absolutely fundamental for the maintenance and survival of the Communities". It

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[279] Ibidem.
[280] DIXON, M., *Textbook on International Law*, Oxford, Oxford University Press, 2007, p.147.
[281] DALE, W., "Is the Commonwealth an International Organisation?", op. cit, p.466.

would be invalid for Member States to adopt measures that are incompatible with Community provisions. Direct effect is the other basic principle of Community law. Community law not only imposes obligations on individuals but also confers on them rights which they can invoke before national and Community courts. Direct effect allows them to take advantage of Community provisions regardless of national texts which are there to put them into practice. This strengthens the effectiveness of Community law and protects the rights of individuals in that they can plead Community law, regardless of whether national texts exist or not .

Legal obligations vs. Political, Moral commitments

I would like to conclude this section by remarking that policy instruments of each organisation are in consonance with the type of organisation they represent. Commonwealth flexible character is totally opposed to the formal character of the European Union, which is based on the integration model. Therefore, the regulatory instruments of both organisations are completely different. The Commonwealth has no instruments which impose legal obligations to its members. Hence, it has non-binding instruments with a real normative significance, in the sense that they are instruments that create obligations, but from a different nature than the legal one; they can be considered as political or even moral obligations. The main Commonwealth normative instruments are: Declarations, Action Programmes and other statements. As, with regard to the EU, it is made up of a real and complex legal system; similar to the one that states have. It includes three types of sources: primary, secondary and supplementary law. Each category consists of different types of rules. The obligatory nature of these rules will depend on the type of rule, and on the category which they belong to. Thus, the rules of Community treaties, alongside, regulations, directives and decisions are legally binding norms that entail legal obligations for member States. In this regard, the EU has institutions that are in charge of monitoring that Member States meet their Community obligations.

COMMONWEALTH CITIZENSHIP VS. EUROPEAN UNION CITIZENSHIP

a) **From British subjects to Commonwealth citizens**: all inhabitants of the dominions and colonies enjoyed a common status of British subject, the 'imperial' Parliament at Westminster was the supreme legislative authority, and the Privy Council in London was the supreme court of appeal from the courts of the empire. All were bound by a common allegiance to the Crown. Nowadays, a Commonwealth citizen, formerly known as a British subject, is generally a person who is a national of any country within the Commonwealth of Nations, most Commonwealth countries have provisions within their own law defining who is and who is not a Commonwealth citizen. Citizenship of the European Union is dependent on holding the nationality of one of the Member States. In other words, anyone who is a national of a Member State is considered to be a citizen of the Union.

Thus, we can note that the concept of citizenship is similar in both cases. The status of Commonwealth citizen entails holding the nationality of any member state of the Commonwealth, and in the EU, there is a similar situation. Every person holding the nationality of a Member State of the European Union is automatically a citizen of it. In both cases the introduction of the notion of citizenship does not replace national citizenship: it is an addition to it. EU Citizenship is additional to nationality and gives every EU citizen a number of important rights. However, regarding the Commonwealth, each country is free to determine what special rights, if any, are conferred to Commonwealth citizens. In general, citizens of the Republic of Ireland and British protected persons, although not Commonwealth citizens are accorded the same rights and privileges as Commonwealth citizens.

b) **European Citizenship:** Within the framework of the EU, the content of these rights is not variable, since the European citizenship status was established by the Treaty on European Union (EU Treaty), signed in Maastricht in 1992 and entails a determined content of rights and duties lay down in the Treaty establishing the European Community (EC Treaty).

EU Citizens' Rights

In addition to the rights and duties conferred by the mentioned Treaty, Union citizenship confers four special rights:

- The freedom to move and take up residence anywhere in the Union;
- The right to vote and stand in local government and European Parliament elections in the country of residence;
- Diplomatic and consular protection from the authorities of any Member State where the country of which a person is a national is not represented in a non-Union country (Article 20 of the EC Treaty);
- The right of petition and appeal to the European Ombudsman.

Following the entry into force of the Treaty of Amsterdam, the status of "European citizen" also confers the following rights:

- The right to address the European institutions in any one of the official languages and to receive a reply written in the same language;
- The right to access the documents of the European Parliament, the Council and the Commission, subject to certain conditions (Article 255 of the EC Treaty);
- The right to non-discrimination between EU citizens on the basis of nationality (Article 12 of the EC Treaty) and to non-discrimination on the basis of gender, race, religion, handicap, age or sexual orientation;
- Equal access to the Community's civil service.

Commonwealth Citizens' Rights

Regarding the Commonwealth, as we have already remarked, the rights and privileges (if any) for non-national Commonwealth citizens differ from country to country, generally these privileges include:

- Visa-free entry into some countries by citizens of other Commonwealth countries (when arriving as tourists).

- Certain political rights for resident citizens of other Commonwealth countries, e.g. the right to vote in local and national elections and in some cases even to stand for election. These rights are mainly accorded in the United Kingdom and many Commonwealth Caribbean countries. In Australia, some states allow Commonwealth citizens who are permanent residents to vote in State and local government elections while Commonwealth citizens who were enrolled to vote on or before 25 January 1984 are entitled to retain voting rights in federal, state and local elections.

- A few Commonwealth countries allow Commonwealth citizens voting and eligibility rights at all levels, either with or without specific restrictions not applying to local citizens: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Malawi (all foreign residents, not only Commonwealth citizens), Mauritius, Namibia (all foreign

residents, not only Commonwealth citizens), New Zealand (all foreign residents, before 1975 only Commonwealth citizens), Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines.

- The right to work in any position (including the civil service) in some instances, except for certain specific positions (e.g. defence, Governor-General or President, Prime Minister).
- Eligibility for the Commonwealth Scholarship.
- Many Commonwealth countries continue to allow Commonwealth citizens from other countries to become nationals/local citizens by registration rather than naturalisation, upon preferential terms, e.g. with a shorter required period of residency, although this practice has been discontinued in some countries such as New Zealand and Malta.

EU and Commonwealth protection and recognition of their citizens' rights

Finally, concerning the protection and the recognition of rights to their member States nationals, we notice that the Commonwealth has not been empowered to formulate common rights for the citizens of all member states; this competence belongs to the sovereignty of each state, so each State will decide whether its national law formally recognises or not rights to the citizens of the rest of Commonwealth territories. This is consistent with the flexible nature of the organisation and with the cooperation method they use. While, regarding the EU, this is quite the opposite, citizenship of the European Union created a binding relationship between the citizen and the European Union. So, member States have the obligation to recognise them as well as to protect and to guarantee their effective implementation. Protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for its legitimacy. Article 6 of the EU Treaty states that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties .

MEMBERSHIP: THE COPENHAGEN CRITERIA VS THE KAMPALA CRITERIA

Both organisations have developed a list of requirements that any state wishing to join them must accomplish. The Commonwealth and the EU are considered to be restricted international organisations, that is, organisations without a universal character. In this sense, the EU is a regional organisation, while the Commonwealth is a trans-regional one, since it includes states from different continents, so it covers more than a region. In both cases, membership is not open to all member States of the world, on the contrary, a State that wants to join the Commonwealth or the EU has to satisfy some requirements, so they are considered to have neither a universal nor an open character.

The codification of the membership requirements in both cases has taken place quite recently. Regarding the EU, relevant criteria were established by the Copenhagen European Council in 1993 and were strengthened by the Madrid European Council in 1995. More recently, in 2006, the European Commission drew up a report in which reminded EU governments that "the capacity for absorption of the Union [...] remains one of the conditions for the accession of new countries". The European Council in Vienna in June 2006 similarly concluded that "the pace of enlargement must take the Union's absorption capacity into account", and the Enlargement Commissioner Olli Rehn has explicitly stated that absorption capacity would be a

"consideration" in future enlargements but not a formal accession criterion[282] . Apart from this, all candidate member states must comply with the requirements of Articles 49 and the principles laid down in Article 6 (1) of the Treaty on European Union.

As for the Commonwealth, the codification of its membership criteria has been recently done. Authors, such as Te Velde or McIntyre, consider that these statements were reviewed and enunciated following the Patterson Report and were formally adopted at the CHOGM in Kampala in 2007. In 2005, at the Malta CHOGM, Heads of Government asked for High Level Review of Commonwealth membership criteria to be set up. So the eight member Commission chaired by Patterson, former Prime Minister of Jamaica was requested to deveop this task. This Commission wrote a Report which is commonly known by the name of its chairman, the Patterson Report, but it is formally entitled "Report of the Committee on Commonwealth Membership", the mentioned Report listed the membership criteria of the Commonwealth, its content was discussed by Heads of Government, at the 2007 Kampala CHOGM.

Similarities In both cases, these requirements are the result of a historical process. Nowadays, surprisingly, the Commonwealth and the EU share most of its membership requirements. Regarding the political criteria, for both of them, it is essential that any State wishing to join them, must defend the democratic system, as well as, respect the rule of law and the good governance principle. Moreover, they must effectively observe and protect human rights. They also coincide on the legal criteria. Thus, in both cases it is a fundamental requirement for any state which wants to become a member of any of these organisations to accept and observe its rules and values. Regarding the EU, the legal criterion specifically focuses on the acceptance of the *acquis communitaire*, and concerning the Commonwealth, entails the observance of the 1971 Declaration of Commonwealth Principles and other subsequent Declarations.

Differences We can also note some differences. Firstly, a big one regards the economic criterion. Thus, any state that wants to be part of the EU must have a concrete economic system, based on a free market. Moreover, if a state wishes to join the Euro zone, the state must comply with the so-called convergence criteria. While becoming a member of the Commonwealth does not require adopting any economic system in particular. Another difference regards the language. For Commonwealth members it is essential that they recognise English as the working language of the organisation. This is a major historical and cultural bound which facilitates the work of the organisation, as well as transactions and interaction among its members. Whereas, regarding the EU, there is not any requirement similar to the Commonwealth one. The EU has 24 official languages: Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish. However, due to time and budgetary constraints, relatively few working documents are translated into all languages. The European Commission employs English, French and German in general as procedural languages, whereas the European Parliament provides translation into different languages according to the needs of its Members.

In my opinion, the advantages for establishing a single language of communication, within an organisation entail speed and the reduction of economic costs. Nevertheless, there are also many disadvantages. Multiculturalism and the recognition of linguistic diversity enrich an organisation and make its members feel more comfortable and integrated. So, this creates the feeling that no culture is exercising dominion over the others. However, we are not going to

[282] UK Parliament, "Chapter 4: Absorption capacity and the borders of Europe: The Copenhagen accession criteria", Select Committee on European Union Fifty-Third Report, UK Parliament, 2006.

focus on these issues, as this thesis does not cover them. What it can be said is that choosing English as the single language of communication is feasible for the Commonwealth, as all members share a common language heritage. However, for the EU this is not possible, since there are lots of different languages and some of these are broadly spoken around the world.

The biggest difference: the Headship

The most peculiar difference, not only with the EU but also with the rest of international organisations involves the obligation of any member wishing to become part of the Commonwealth to recognise Queen Elizabeth II, as Head of the Commonwealth. We have already referred to this issue in various sections of these pages. So, I will only point out two reflections. Firstly, this requirement, in my opinion, gives unity and solemnity to the organisation and should be interpreted according to the Commonwealth's unique past, although I am aware of the criticism and controversies that this criterion rises, since some states understand it as a colonial remnant. Such is the case of Ireland. The second issue refers to the fact that Queen Elizabeth II, but not the Crown, must be accepted as the Head of the Commonwealth. So, at her death, a debate will be open and this requirement will remain on standby.

The constitutional link and the exceptions

Another specificity which makes the Commonwealth unique is the condition under which, any state that wants to join the organisation; as a rule, must have had a constitutional link with an existing Commonwealth member. This point is the most controversial one. In recent years, interest in membership has been shown by States with no previous constitutional link to the Commonwealth or its members. Rwanda has no constitutional link to any Commonwealth country. Only one country without a constitutional link has been previously admitted in this way – Mozambique in 1995- and that was before there were formal criteria. However, in the Kampala Communiqué this issue was made it more flexible, by adding a second clause.

a) "an applicant country should, as a general rule, have had a historic constitutional association with an existing Commonwealth member, save in exceptional circumstances;

b) **In exceptional circumstances, applications should be considered on a case-by-case basis".**

Kampala CHOGM agreed to receive applications for membership of the Commonwealth from countries that had never been British colonies. After more than a decade of uncertainty about this issue—ever since Mozambique joined in 1995 as an exceptional case—Heads of Government at Kampala approved the Report of the Committee on Commonwealth Membership finally agree into entertain further such applications and providing a procedure for handling them[283]. Rwanda's membership was finally admitted at 2009 Trinidad and Tobago Meeting. The former colony of Germany and Belgium is the second country to be admitted without a British colonial past or constitutional link to Britain. Mozambique is the only other Commonwealth member without historic UK ties.

Geography

Regarding the EU, the membership criteria do not mention that the candidate country should be placed in Europe. However, article 49 of TEU states that "**Any European** State which respects the values referred to in Article 2 and is committed to promoting them may apply to

[283] MCINTYRE, D., *The Expansion of the Commonwealth and the Criteria for Membership*, op. cit, p.282.

become a member of the Union". So, it is clear that the applicant has to be a European State. Nevertheless, the difficulty arises when one tries to interpret what the meaning of European State is. The answer to this issue will depend on the interpretation that one chooses to apply. So, if one takes a restricted or a limited criterion, then it will only be considered the geographical area. That is, the continent (Europe) where the State is located; on the contrary, if one uses a more comprehensive approach it will have to be taken into consideration other aspects beyond the geographical basis, such as strong historical and cultural links to Europe. So, we cannot formulate a statement on this issue. Moreover, the accession of Cyprus and Turkey's candidacy makes things more complicated. The Commonwealth does not have a similar criterion because the members come from different geographical areas. However, as we have already discussed, a constitutional link should exist with at least one of the Member States that form it.

A Big difference: The absorption criteria

The EU criteria are considerably clear. However, their implementation should be analysed on a case-by-case basis. The same holds true for the Commonwealth. In principal they are clear, yet in practice their application differs. One of the most notable differences between the criteria of the two organisations is the issue of the EU's absorption capacity. The Commonwealth, which has more than 50 Member States, does not have any requisite of this kind. While, within the framework of the EU, this criterion is assuming ever greater importance as its membership grows, this fact was specifically mentioned in the Negotiating Frameworks for Turkey and Croatia and was emphasised in the European Council conclusions of 15/16 June 2006.

In short we can conclude that the two organisations share a number of common requirements and differ in others that give them uniqueness. Moreover, membership criteria from both organisations have been formalised, they used to be scattered in different documents and today they are quite well codified. I have no doubt that the requirements will continue to evolve and will be interpreted in a more flexible way, in accordance with international reality, and in some cases it will have to be case-based reasoned (casuistry) , so each membership candidacy will be individually analysed. Therefore, in both organisations, current tendency shows up that the decision accepting new members will be based on a political rather than a legal reasoning.

The withdrawal, suspension and expulsion of Members

Regarding the EU, it is necessary to distinguish between a unilateral and a negotiated withdrawal. It is significant to remark this distinction, since negotiated withdrawals are, in principle, always possible. Unlike the conditions for accession to the EU, which are addressed, even if not exhaustively, in Article 49 TEU, neither the founding treaties (which, with the exception of the European Coal and Steel Community (ECSC) Treaty,) nor the successive amending treaties made, until the ratification of the Lisbon Treaty, any provision for a Member State's withdrawal (negotiated or unilateral) from the EU or EMU. Article 50 of the Lisbon Treaty explicitly **makes provision for the voluntary secession of a Member State from the EU[284].**

Specifically, the exit clause provides that a Member State wishing to withdraw from the EU must inform the European Council of its intention; the Council is to produce guidelines on the basis of which a withdrawal agreement is to be negotiated with that Member State; and

[284] ATHANASSIOU, P., "Withdrawal and Expulsion from the EU and the EMU", *Legal Working Paper Series*, 2009, Num. 10, p.17.

the Council, acting by a qualified majority and after obtaining the consent of the European Parliament, will conclude the agreement on behalf of the EU. The withdrawing Member State would cease to be bound by the treaties either from the date provided for in the withdrawal agreement or, failing that, two years after notification of its intention to withdraw. A former Member State seeking to rejoin the EU would have to follow the same admission procedure as any new candidate country. Regarding the unilateral withdrawals, that is, without negotiation in the absence of any explicit reference to it in the treaties, some authors think that a right of unilateral withdrawal existed since sovereign States were, in any case, free to exercise their sovereign right to withdraw from their international commitments. As Athanassiou suggests, the silence of the treaties produce at least, two significant problems[285]:

> "This exit clause only appears to be appropriate if only one or two Member States were to withdraw at a time, but not if there were to be a mass exit from the EU.
>
> The exit clause contains no special provisions on the requirements for the withdrawal of a Member State which has adopted the euro."

The lack of EU Regulation

Unlike the Charter of the United Nations (UN), Article 6 of which expressly provides for the possibility of a UN Member being expelled for persistently infringing the principles of the Charter, there is no treaty provision at present for a Member State to be expelled from the EU or EMU. The closest that Community law comes to recognising a right of expulsion is Article 7(2) and (3) TEU, allowing the Council to temporarily suspend some of a Member State's rights (including its voting rights in the Council) for a 'serious and persistent breach by a Member State of the principles mentioned in Article 6(1)' of the EU Treaty. This might be thought of as a preliminary step to the expulsion of a Member State, but it is not the same as its definitive expulsion. The idea that the treaties should explicitly provide for a possibility of expulsion was discussed in the 2001-2003 Intergovernmental Conference responsible for drafting the ill-fated Constitutional Treaty, but was abandoned. The same idea resurfaced more recently in the discussions on the Lisbon Treaty, but was once again abandoned.

The Commonwealth casuistry

Concerning the Commonwealth, casuistry is more diverse. Thus, we note that withdrawal is a right that all members have. Unlike the EU, in the course of the Commonwealth life, some member states have exercised this right. The most recent example is the Zimbabwe's one. After being suspended in 2002, Zimbabwe decided to withdrawal in December 2003. Other states also decided to withdraw and later returned to rejoin the organisation. Such is the case of South Africa, which left the Commonwealth in 1961 and rejoined it in 1994.

Regarding suspension of member states, this can happen in two ways. The first one would be a suspension from the Commonwealth's Councils and the second would be a full suspension. It will depend on the nature of the infringement, which shall be determined by the CMAG, it has the power to determine the nature of the infringement and to decide whether a suspension is appropriate. Fiji was suspended from the Commonwealth on December 8th 2006, following the military take-over, since they committed serious violations of the Harare Principles set up in the Millbrook Plan of Action.

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[285] Ibidem.

Lastly, with regard to expulsion, despite the absence of express provisions which regulate the proceedings of this sanction and not having any historical precedent, Commonwealth sources state that expulsion is possible. In this line, various media echoed Fiji's possible expulsion by the CMAG. Fiji has already been expelled from the 16-nation Pacific Islands Forum over its failure to announce a reasonable election date.

4. COMPARATIVE ECONOMIC APPROACH: THE EUROPEAN COMMON MARKET AND THE COMMONWEALTH PREFERENTIAL TRADE AGREEMENT

The highest level of regional economic integration is reached when an economic union is established, which has the characteristics of a common market, but also brings about the unification of economic institutions and the co-ordination of economic policies throughout the member countries. In terms of this scheme, the European Union (EU) is not a full-fledged economic union, in spite of being a monetary union since 2000, as sovereignty of the member states over quite a number of policies still holds fully or partly. The EU is somewhat more than halfway between a common market and an economic union.

According to McCormick, "what we know as the European Union began life as the European Economic Community, and therein lies a fundamental clue to how the process of European integration has evolved: it began life as a limited experiment in economic cooperation, was broadened during the 1960s to become a customs union, wrestled during the 1970s with attempts to build common economic policies and exchange rate stability, launched a new initiative in the late 1980s to complete the single market, and then agreed on the steps that would lead to the adoption of a single currency".[286] In short, European integration progressed from a custom union in the 1950s to a single market in the 1980s and finally to a currency union in 1999 and 2002. The EU has made progress in other policy areas too, but the engine of integration has ultimately been the economy. Economic integration was intended to promote peace and prosperity by generating the wealth and opportunity that would allow Europe to recover from the ravages of war. By no means was the process plain sailing.

Initially, the Six, under the direction of France's Jean Monnet, had invited the British government to participate in this project, albeit on a strictly supranationalist basis. Yet the Attlee government decided to stand aside. The Churchill government signed an association agreement with the European Coal and Steel Community, but the Atlee Cabinet ruled out direct UK membership.

Regarding the Commonwealth, different members from the Commonwealth Secretariat, with whom I have meet, have stressed the fact that is not possible to classify the Commonwealth using the current international legal notions, and the same happens if we use an economic perspective. The Commonwealth can be considered neither a Free Trade Area nor a Customs Union; its members shared some preferential agreements derived from the Empire. Since 1977, authors have used different terms in order to classify it; some prefer to understand it as a Preferential Trade Area and others as an Economic Network. However, it is agreed, that we have to understand it as a structure derived from an imperial system, this means a network which involved the settlement of imperial preferences.

[286] MCCORMICK, J., *The European Union: Politics and Policies*, op. cit., p.183.

Imperial Preferential trading network

In 1698, the British became the largest and most efficient carriers of slaves to the New World. Private merchant houses provided the capital for this business activity, and Jamaica, the largest British slave colony, was also the wealthiest colony in the British Empire. By 1775 Britain possessed far more land and people in the Americas than either the Dutch or the French - who were the two main northern European rivals for international power and prestige. The East India Company's trade also still flourished at this time. The 18th century, was the period in which Britain rose to a dominant position among European trading empires, and became the first western nation to industrialise. In 1700 most foreign commerce, by volume and value, was still conducted with Europe, but during the 18th century British overseas trade became 'Americanised'. By 1797-8, North America and the West Indies received 57 per cent of British exports, and supplied 32 per cent of imports. So, the loss of the thirteen mainland American colonies in the War of Independence was a major blow to British imperial strength, but Britain recovered swiftly from this disaster, and acquired additional territories during the long war years with France from 1793 to 1815. The new colonies included Trinidad, Tobago, St Lucia, Guyana, the Cape Colony, Mauritius and Ceylon. Various Indian states were also subjugated. By 1815, Britain possessed a global empire that was hugely impressive in scale and stronger in both the Atlantic and Indian Oceans, and around their shores, than that of any other European state.

Mollet explains that the trade system used during those years is known as the Imperial Preference system, which would develop into the Commonwealth Preference System. The mentioned system entailed a preferential treatment of British goods in Commonwealth countries for over half a century. Thus, Canada introduced a preferential tariff system in 1898, New Zealand and South Africa in 1903, Australia in 1908 and India in 1927. Eire introduced preference for British exports after the establishment of a separate customs administration in 1923. Britain was receiving preferences in all the important trading countries of the Commonwealth by 1929. These preferences applied to 80 per cent of trade with Australia and New Zealand, over 60 per cent of trade with Canada, but under 30 per cent with South Africa, and less than 10 per cent with India and Eire.

Britain’s imports from Commonwealth countries did not receive preferential treatment, to the same extent, until the 1930’s. Until free trade was abandoned in 1931, there was little that could be offered in the way of special trade privileges. Joseph Cnamberlain had advocated Tariff Reform in 1903 as a way of achieving Commonwealth preference but his appeal was politically premature.

<u>The Ottawa Conference and the Commonwealth Preferential Trade Area</u>

In 1923, an Imperial Conference in Ottawa was held and a Permanent Advisory Committee established to further Commonwealth trade. At that conference a series of agreements were negotiated between the United Kingdom and Australia, South Africa, New Zealand, India, Newfoundland, Southern Rhodesia and Eire, and South Africa made agreements with Eire and New Zealand. The main object of the Ottawa Conference was the formal establishment of a single economic group within the Commonwealth within which trade relations of the member countries could be freely determined. The member countries were not regarded as foreign countries but as British countries. Preference given to them could not be regarded as a breach of most-favored nation treaties and “interests of foreign nations did not have to be taken into account.’’ New agreements made with Canada and India were signed in February 1937 and March 1939, respectively. In April 1938 an agreement with Eire was signed which contained similar provisions to the earlier Ottawa Agreements.

In 1956 roughly one-half of British trade with the Commonwealth (exports and imports) enjoyed preference. However, the average percentage margin on all British trade with the Commonwealth had been greatly reduced since the 1930's. Since, Britain lost its leadership in world shipping after the Second World War and trust ebbed away, the frequency of commercial disputes increased in the Commonwealth Preferential Area (CPA). Several important countries were drawn into economic relationships with other powers, which led to a further weakening of the CPA. Australia's dissatisfaction with the terms of the Ottawa Agreement came to a head in 1956. So, Australian demands coincided with the announcement by six European nations of plans for a customs union. If the British government chose to hold aloof from European economic integration, British industrialists would lose ground to their German competitors, who could now expect free access to other continental markets. European markets, moreover, were growing more rapidly than markets in the Commonwealth.

The role of the UK: between Europe and the Commonwealth

Britain was searching for a compromise between membership of the CPA and of Europe. However, as the French President, Charles de Gaulle, stressed in 1963, when rejecting Britain's first application for membership of the EEC, the UK would have to choose between the Commonwealth and Europe. The EEC was an exclusive economic bloc, especially in the crucial area of agriculture. So, in the immediate aftermath of war British policymakers believed that the country's status as an independent great power was best enhanced leadership of a third force comprising the west European states and their overseas possessions in a tripartite international system. However, the decision of six European countries in 1955 to form a Common Market (the EEC) coincided with a serious deterioration in Britain s relationship with Australia. Britain started, slowly at first, to refocus its external economic strategy towards the rapidly growing European market. In 1955, the British still considered the Commonwealth to be a more valuable economic asset than Western Europe. But they feared that if the EEC were to go ahead, German industry would gain an even more dominant position in Europe, while British industry would face discrimination and marginalization. Harold Macmillan outlined the position in Cabinet in July 1956:

> "The preferences were still of great value to us and it was important that we should retain what preferences we could. It would now be necessary, however, to re-examine, in the light of the Australian attitude, the relative importance and future prospects of our trade with Australia and the Commonwealth, and with Europe and other overseas markets[287]".

As British policymakers were increasingly preoccupied with the potential threat to UK economic and political interests posed by the Community's early success. The situation changed during 1957-8, Britain made efforts to counter this threat centred on gaining acceptance of the British proposal, based on Plan G, for the creation of a European free trade area (FTA) . Thus, other Six European nations had pursued the route to a free trade area only. These were Britain, Norway, Denmark, Sweden Austria and Switzerland. The UK had a particular problem with the large number of preferential arrangements it had with the Commonwealth. Accepting the rules of the EEC would mean a steep rise in UK food prices and would be damaging to the economies of its colonies and former colonies. EFTA was formed in 1960 and eventually rose to ten members with the addition of Portugal, Finland, Iceland and Liechtenstein. The rules of EFTA suited its members very well since they were free to deal externally how they wished, and the basis of the internal free market was industrial with hardly any agricultural trade included. This meant that they could continue their own

[287] Quoted in WARD, S., *Australia and the British Embrace: The Demise of the Imperial Ideal*, Melbourne, Melbourne University Press, 2001, p.50.

agricultural systems unlike the members of the EEC who were under remit to harmonise arrangements under the common agricultural policy. Yet it was clear that the long term economic interests of the EFTA members would be in their trade with the heavyweights of the EEC.

In 1964, Harold Wilson wished to revitalize the Commonwealth as an economic association, by linking the development plans of Asian and African members to the expansion of Britain s capital goods industries. Agreement on the basis of Wilson's project was impossible under the conditions prevailing in the mid-1960s. By 1960, the share of the Commonwealth in British exports was falling, while the shares of Western Europe and the USA were rising.

As Gowland, Turner and Wright point out it also became obvious that EFTA was only of limited value to Britain's economic prosperity[288]. Thus, in 1973, the UK left EFTA to join the European Communities, over 20 years since the project of integration had first begun, and 12 years after it had first applied to join. Nevertheless, before the UK successfully accede to the EEC, the Six insisted that Britain had to scrap Commonwealth food preferences, and adopt the projected Common Agricultural Policy, which incorporated, in Commonwealth Nations Research Society words , it was a "draconian restrictions on imports from non- EEC countries". Some safeguards might have been available for New Zealand dairy farmers, and for some tropical producers, but otherwise the EEC had nothing to offer the Commonwealth beyond a vague undertaking to promote world commodity agreements. Essentially, Commonwealth farmers and manufacturers would forfeit their British markets to European suppliers. Although Canada had less to lose than many Commonwealth countries, New Zealand still consigned over 50 per cent of its exports to Britain, and feared that even partial exclusion from this market would lead to ruination. Apart from Canada, however, the mood in the Commonwealth in 1961-63 was one of sullen resentment rather than outright opposition to Britain. New Zealand could not afford to alienate the British. The Australians effectively washed their hands of the affair, taking comfort from the gathering pace of mineral exports to Japan.

De Gaulle's veto to Britain gave Commonwealth food producers, especially in New Zealand, a reprieve, although there was no suggestion that Britain now planned to withdraw into a strengthened Ottawa bloc. It seemed only a matter of time before Britain submitted another application to join the EEC. Wilson's flirtation with the Commonwealth in 1964-65 was short-lived. In 1965, officials warned that Britain faced political and economic isolation outside the EEC. Britain needed to develop high technology industries in cooperation with other advanced countries, since it could not compete alone with the USA. The Commonwealth had little to offer.

The election: the end of the Commonwealth Preferential Area

A satisfactory alternative [to EEC membership] had to be considered not only in terms of the size of market for a major industrial complex but also in terms of the size of research and development potential for future expansion in a highly technological world. The Commonwealth would not provide a satisfactory alternative; the new Commonwealth was in need of technical assistance and they were in no position to contribute to research and development resources. On the other hand, among the old Commonwealth countries Canada was linked to the United States in research and development, and Australia and New Zealand pursued their own policies. Wilson's approach to the EEC in 1967-68 was rebuffed, but thereafter negotiation was virtually continuous. De Gaulle s departure facilitated success for

[288] GOWLAND, D., TURNER, A., WRIGHT, A., *Britain and European Integration since 1945: On the Sidelines,* London, Routledge, 2009, p.257.

Edward Heath's government in 1970-71. Britain joined the EEC in 1973, having obtained minimal concessions for Commonwealth producers other than New Zealand dairy farmers and Third World sugar growers. The Commonwealth Preference Area ceased to function in 1977. It is debatable whether Britain after 1973 was better off as a member of the EEC than it could have been under the various alternative arrangements. During the 1960s the British convinced themselves that it was preferable to join the EEC than to lead a much looser Commonwealth economic community. Once the British had made their decision, the rest of the Commonwealth could do nothing to change their minds.

The institutions of Europe were well established - and unsurprisingly, they had not been designed with the UK's economy in mind. So, as we have already explained, painful concessions had to be made by the British, particularly over agriculture and trade with the Commonwealth.

Thus, when Labour returned to office in 1974 it did so with the commitment to hold a referendum on whether to continue the UK's membership. EEC referendum result: "Yes" 17.300.000, "No" 8.400.000. However, Britain never found itself in the vanguard of Europe and as the 70s ended the UK showed no inclination to begin preparations for a currency union. European economic integration kept on, once the customs union was established, next step was to achieve a common market. By 1992, about 90% of the issues concerning the single market had been resolved and in the same year the Maastricht Treaty set about to create Economic and Monetary Union. The internal market meant the world's largest in terms of the purchasing power of its 370 million consumers.

THE EUROZONE VS. THE STERLING AREA

In April 1989 the report of the Delors Committee envisaged the achievement of Economic Monetary Union in three stages: the objective set for the first stage, between June 1990 and January 1992, was to step up cooperation between central banks; the second stage included the establishment of a European System of Central Banks (ESCB) and the progressive transfer of decision-making on monetary policy to supranational institutions; in the third stage, the national currencies would have their convergence rates irrevocably fixed and would be replaced by the European single currency. By 1 January 2002, euro banknotes and coins began to circulate alongside national currency banknotes and coins. Verdun[289] points out that in spite of the introduction of banknotes and coins, EMU is still incomplete as, compared with mature currency unions, it lacks an important component: an economic government. Seen that a transfer of sovereignty to such a 'would be supranational institution' is politically undesirable, budgetary and fiscal policies remain subject to coordination and final responsibility lies with member state governments.

The sterling area came into existence at the outbreak of the Second World War and it was a wartime emergency measure. There was no single imperial currency used throughout the British Empire. In 1825 however, the British government did try to introduce British coinage to all its colonies. The implementation method was largely ineffectual so stricter measures were introduced in 1838. As a result of these measures some areas of the British Empire adopted sterling as their local currency. These were notably Australia, the southern and western African countries, Jamaica, Bahamas, and Bermuda. India was unaffected by these measures because at that time it was ruled by the East India Company. Hence a large Rupee zone prevailed within the British Empire involving India, Burma, Ceylon, East Africa and the Persian Gulf. A Dollar zone operated within the British Empire principally in Canada and the Far East.

[289] VERDUN, A., *Economic and Monetary Union*, Princeton, Princeton University, 2005, p.113.

When Britain left the gold standard in September 1931, its policy was to encourage the chief suppliers of raw materials to peg their currencies against the pound in order to facilitate trade. Those colonies that had currencies pegged to the pound immediately followed Britain off the gold standard. By the end of 1932 the unplanned result was a 'sterling area' of currencies linked to the pound in which exchange controls were discouraged. The British Pound Sterling was at that time the world's leading reserve currency. This group of countries became known as the sterling bloc. When the Second World War broke out, the sterling bloc countries within the British Empire shared a mutual desire to protect the external value of the Pound Sterling. Legislation was therefore passed throughout the empire formalizing the British sterling bloc countries into a single exchange control area.

a) The Euro Zone is the result of a well-designed process which dates back to 1969, when the Heads of State and Government decided at the Hague Summit that the Community should progressively transform itself into an economic and monetary union. However, till the internal market was not established, in 1988, the Project was not revived. In 1989 Delors Committee proposed that economic and monetary union should be achieved in three discrete but evolutionary steps. The Eurozone came into existence on 1 January 1999. This occurred through the irrevocable fixing of the Exchange rates of the currencies of those 11 EU Members States which qualified not only economically, but also legally, for the adoption of the Euro. These Members States were Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain. On the day each country joined the euro area, its central bank automatically became part of the Eurosystem. Greece adopted the Euro as from 1 January 2001, while Denmark and Sweden turned down membership of the euro in national referendums.

THE UNITED KINGDOM AND THE EURO

Regarding the UK, the debate about whether or not to join remains an unsolved question. For the moment, there are no signs that United Kingdom has any intention of adopting the Euro. The Blair government established five criteria that would have be met and insisted that a national referendum would have to be held on the issue. To date this has not happened and no government seems overly enthusiastic about proposing it.

The five tests are as follows:

1. Are business cycles and economic structures compatible so that we and others could live comfortably with euro interest rates on a permanent basis?
2. If problems emerge is there sufficient flexibility to deal with them?
3. Would joining EMU create better conditions for firms making long-term decisions to invest in Britain?
4. What impact would entry into EMU have on the competitive position of the UK's financial services industry, particularly the City's wholesale markets?
5. In summary, will joining EMU promote higher growth, stability and a lasting increase in jobs?

In addition to these self-imposed criteria, the UK would also have to meet the EU's economic convergence criteria ("Maastricht criteria") before being allowed to adopt the euro. One criterion is two years' membership of ERM II, of which the UK is currently not a member. Under the Maastricht Treaty, the UK is not obliged to adopt the euro.

b) The sterling area: was a wartime emergency measure which involved cooperation in exchange control matters between a group of countries, mostly dominions and colonies of the

former British Empire (and Commonwealth). These countries either used sterling as their own local currency, or else their own local currency was at a peg to the British pound. And even in the cases where member countries used their own local currency, these countries would still hold large sterling balances in London for the purposes of conducting overseas trade. The purpose of the sterling area was to protect the external value of the pound sterling. All of the British Empire except for Canada, Newfoundland and Hong Kong joined the sterling area in 1939. Hong Kong originally declined to join due to its position as a centre for open market activities, but after the Second World War, it joined. Southern Rhodesia was expelled from the sterling area in 1965. During the 1930s other non-Empire countries, most of which had Britain as a major trading partner, joined the sterling area - notably the Scandinavian and Baltic countries, and Argentina. The reason why Canada and Newfoundland didn't join the sterling area was because their dollar had effectively been the US dollar until they were forced of the gold standard in 1931 along with Britain. But where countries like Australia, New Zealand and South Africa responded to the end of the gold standard by pegging their pounds to the pound sterling, Canada and Newfoundland responded by pegging their dollars to the US dollar. As such, Canada and Newfoundland would have had no vested interest in joining an exchange control bloc of which the purpose was to protect the external value of sterling. Canada did nevertheless introduce its own exchange controls on the outbreak of war and these lasted until 1953. Canada's exchange controls were 'sterling area friendly' in that they were aimed more at preventing capital flights to the USA rather than at preventing capital flights to the sterling area.

The end of the sterling area

The sterling area in effect came to an end in June 1972 when the British and Irish governments unilaterally applied exchange controls to the other sterling area countries with the exception of the Isle of Man, and the Channel Islands. (Gibraltar was re-included in the new miniature sterling area on 1st January 1973). It was up to the other sterling area countries to respond in a manner of their own choosing. In fact some of these countries had already taken similar measures throughout the 1950s and 1960's.

Following the British government's decision, some countries immediately copied the British government, and others did so over the next few months. Singapore continued operating sterling area exchange controls till as late as 1978, and Brunei didn't alter its sterling area exchange controls until the year 2001. Today, the only territories that use sterling currency outside the British Isles are Gibraltar, Falkland Islands, South Georgia, British Antarctic Territory, St. Helena, and Ascension Island. While, Gibraltar, St. Helena, and the Falkland Islands, all issue their own sterling bank notes and coins. The St. Helena versions are used on Ascension Island, and the Falkland versions are used on South Georgia. British Indian Ocean Territory officially uses sterling but in practice the US troops based there use US dollars. Within the British Isles, but outside the UK, sterling note and coin varieties are issued by the governments of Jersey, Guernsey, and the Isle of Man.

Our reflection is clear, if the Commonwealth today were an economic bloc, it would be equal in size to the United States; it would have thirteen of the world's fastest growing economies; it would possess most of the world's leading knowledge economies outside of the US; it would have one third of the world's population; and would represent forty percent of the membership of the World Trade Organisation. If an agreement were achieved and it could bring per capita incomes up to a level comparable with the developed world, the Commonwealth would have an economy valued at over US$45 trillion- the equivalent of adding the combined GDP's of the European Union with that of NAFTA - then doubling it.

There is no doubt that in this field the Commonwealth is letting a vast commercial and monetary/economic potential slip by. For a group of nations that share a remarkable number of attributes such as language, legal architecture, and a myriad of other bilateral and multilateral relations it has always seemed remarkable that the topic of Commonwealth free trade has not taken a more prominent place in their public debate. In this sense, a study commissioned for the CHOGM in 1997 found that Commonwealth economies experienced an average of ten to fifteen percent lower costs in doing business with another Commonwealth nation than with a non-member state. The various shared attributes created what the study's authors named the 'Commonwealth Effect.

In November of 2005, at the Commonwealth Business Summit in Malta, the final communique stated that countries should consider 'the possibility of establishing a Commonwealth preferential, or free trade area' should the WTO's Doha Round prove fruitless. Four years on, the success of that round has been as elusive as the action to make good on that statement.

"We may not see a Commonwealth Free Trade Agreement, with full participation, any time in the immediate future. On the other hand, the promotion of a CFTA pushes the debate for freer trade among Commonwealth countries. That, in itself, is worth some discussion."

I have also raised this question with many Commonwealth experts, Secretariat members and teachers of the Institute of Commonwealth Studies. None of them denies the commercial and economic potential of the Commonwealth, but they stress the difficulties involved in setting up a homogeneous commercial area, among these regulating trade rules. I, for my part, am aware of these problems but they do not seem to be insurmountable. There are many examples of trading blocs that, created from scratch, have taken decades to attain successful commercial harmonisation, as was the case of the European Union. The different states that make up the EU have gradually had to adopt the acquis communautaire and this has implied harmonisation in trade. The Commonwealth has the advantage of its history, as it already was a trading and economic area sui generis, and a very powerful one. Moreover, if it did form a uniform trading area, it could sign trade agreements with other commercial areas.

CHAPTER III: THE ROLE AND STATUS OF THE COMMON MEMBERS

CHAPTER III: THE ROLE AND STATUS OF THE COMMON MEMBERS

In this chapter, we examine the "common members", those countries that belong to both international organisations. As we have already examined at length in first chapter of this thesis, the historical process and the different treaties and EU laws that had to be gradually incorporated into the internal legal order – acquis communautaire – as one of the requirements for EU accession, we omit the historical and legal approaches here in order to avoid repetition, although we continue to follow, as far as possible, the same methodology used in this thesis.

The rest of the approaches remain the same. In the political approach we examine several questions of great importance for the contents of this thesis, such as the feasibility of a fourth common member; or, regarding the three current common members, we analyse individually how each country underwent the accession process into the European Union and its situation at present, the obstacles it came up against, if any, that are hampering its relations and how they have affected its membership of the Commonwealth in this regard. Lastly, in the economic approach, the thesis focuses on trade matters.

1. POLITICAL APPROACH: THE COMMON MEMBERS

In this category we analyse the cases of the United Kingdom, Malta and Cyprus as well as the possibility of the Republic of Ireland becoming the fourth common member, since the Republic of Ireland is a member of the European Union and was a member of the Commonwealth, which it left and never re-joined.

A) IRELAND: COULD IT BECOME A FOURTH COMMON MEMBER?

There are three states that are members of the two organisations: the United Kingdom, Malta and Cyprus. However, in the minor thesis we suggested the possibility that the Republic of Ireland might become the fourth common member. In fact, Ireland, a former Commonwealth member, withdrew from the organisation in 1949, and to date it has not requested readmission.

On a formal level, we are not aware of the existence of any official statement to substantiate this possibility and it is an option that we can rule out in the near future. From the interviews I have conducted since 2009 with staff members of the Commonwealth Secretariat and of the Institute of Commonwealth Studies, I have concluded that the historically conflictive relationship between the United Kingdom and the Republic of Ireland is one of the main obstacles that have prevented this possible eventuality, above all, the fact that all new members are bond to recognise Queen Elisabeth II as Head of the Commonwealth. Such an acknowledgement would be, at the very least, a controversial option, which Irish society would find difficult to swallow. Nonetheless, it should be noted that relations between the two countries have improved significantly, as was demonstrated by the state visit to the Republic of Ireland by Queen Elizabeth II and the Duke of Edinburgh, from 17 May to 20 May 2011, at the invitation of the President of Ireland, Mary McAleese. The visit was seen as a symbolic normalisation of Anglo-Irish relations following the signing of the 1998 Good Friday Agreement.

Nevertheless, we should point out that on a formal level Ireland has already begun to re-establish closer ties with the Commonwealth and that some sectors of the Irish political view membership as an interesting idea. Accordingly, we should underscore the opinion of David Wilson Boyd Burnsid, who is a former Member of the Parliament for South Antrim and member of the Northern Ireland Legislative Assembly at Stormont, and currently Chairman of

the communications consultancy, New Century, which published the following newspaper article in 2012 in which he clearly favours this option.

> “The old Fianna Fail Republicanism of De Valera, who withdrew the Irish Republic from the Commonwealth after the Second World War, should now be replaced by the independent Irish Republic rejoining the Commonwealth, where many thousands if not millions of Commonwealth citizens of Irish descent now live. Ireland rejoining would benefit and be good for Ireland, good for the Commonwealth and finally symbolize (…) the restoration of full diplomatic and friendly relations between the United Kingdom, including Northern Ireland, and all our Commonwealth friends from around the globe.
>
> How wonderful it would be if she could (…) welcome an announcement from the Irish Republic that it wanted to rejoin the Commonwealth[290]”.

In the same vein, the favourable opinion of various political leaders has also struck a chord with the Irish press. The Ulster Unionist Party leader, Tom Elliott, stated:

> “The success of that visit (referring to the 2011 Quen visit) may encourage the Republic of Ireland to look at the possibility of rejoining the Commonwealth”. “It would be helpful if that happened[291].”

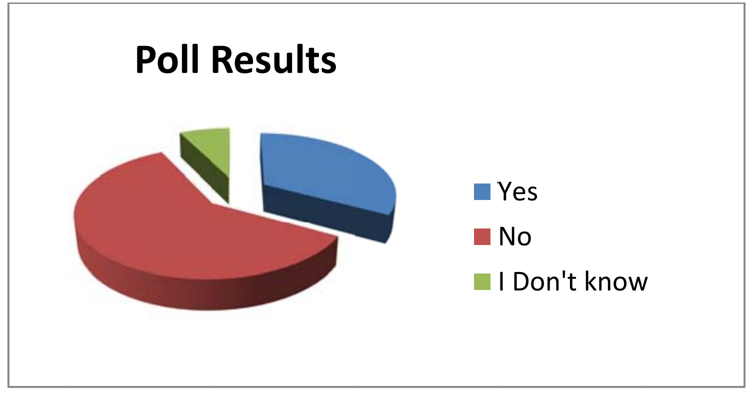
In the same article, two candidates in last year’s Irish presidential election, David Norris and Gay Mitchell said:

> “They favoured rejoining the Commonwealth, which now exists as a political association of members encouraging free trade with each other[292]”.

David Norris has been a longtime supporter of the idea, while Gay Mitchell said:

> “He would rejoin the association as a quid pro quo for securing a United Ireland[293]”.

The same Irish newspaper conducted an opinion poll in February 2012 in which more than 1,800 respondents were asked: “**Should the Republic of Ireland re-join the Commonwealth**?”**[294]** The results were clear, 60% responded no, while 33% were in favour of Ireland’s re-joining the Commonwealth.



[290] BURNSIDE, D.W.; “Now is the time for Ireland to rejoin the Commonwealth”, Daily Mail, 9 March 2012.
[291] The Journal of Ireland, “Republic of Ireland should rejoin Commonwealth”, The Journal of Ireland, 7 February 2012.
[292] Ibidem.
[293] Ibidem.
[294] Ibidem

In short, there is no doubt that the Queen's visit in 2011 has reignited the debate about the eventual return of Ireland to the Commonwealth. Thus, we observe that both the political class and Irish society are divided on this issue. Some view membership as a definitive step in the renormalisation of ties between the two states, whereas others consider it an unthinkable option.

We shall take a closer look at the three members that currently belong to both organisations: the United Kingdom, Malta and Cyprus. In the first part of this thesis, we conducted a historical analysis of the United Kingdom, Malta and Cyprus's entry into the European Union. In this section, we examine the current state of their respective relationships.

B) THE EUROSCEPTICISM OF MALTA

We should briefly recall that Malta was the only state among the accession countries with an electorally strong Eurosceptic party actively campaigning against the EU membership[295]. Malta applied to join the EU as early as 1990 and although the European Council's reaction was cautiously positive such that the accession negotiations were expected to commence in early 1997, the return of the Malta Labour Party (MLP) to power in 1996 led to a suspension of the application as well as the closure of the political dialogue with the EU[296]. Later, when the Nationalist Party (PN) won the elections in 1998 they reactivated the application and the accession negotiations between the EU and Malta finally began on February 15th, 2000. The negotiations have been successfully concluded in December 2002 and a referendum was held in March 2003 where 53.6% of the valid votes were in favor of the accession. The MLP – which was starkly opposed to EU membership during the referendum campaign –, however, did not concede defeat and claimed that it would accept membership only if it was decided in a general election[297]. Upon this, the general elections were held in April 2003 which resulted again in a success for the PN and paved the way for Malta to become a full member of the EU as of May 1st, 2004.

The Euroscepticism that prevailed during the process leading up to Malta's accession to the European Union has been successfully overcome and, at present, we find no significant signs to suggest a desire to hold referendum on this country's continuity or renunciation of its membership. The figures indicate the opposite; Malta forms part of the group of enlargement states of 2004 that best delivered on the acquis communautaire. Moreover, it was the first and only EU member state to adopt the euro and join Schengen simultaneously, and in record time, only four years after its admission. According to Molly Bordonaro, the United States Ambassador to Malta,[298] Malta's success in planning for and implementing these changes can serve as a model for other EU member states who have yet to adopt the common currency or accede to the Schengen visa regime.

Thus, we may conclude that: **Malta is a fully integrated member of the European Union, forms part of the Schengen Area, and adopted the euro five years ago**. At present it has six Members of the European parliament:[299] Simon Busuttil and David Casa from the Group of the

[295] AYTAÇ, E. S., SABRI KIRATLI, O., "EU Accession Process and Euroscepticism in Candidate Countries", Riga, University of Latvia, Paper presented at the Fourth Pan-European Conference on EU Politics ECPR Standing Group on the European Union (25-27 September), 2008.
[296] CINI, M., "The Europeanization of Malta: Adaptation, Identity and Party Politics", *South European Society and Politics*, Vol. 5, 2000, Num. 2, pp. 261-276.
[297] PACE R., "The Maltese Electorate Turns a New Leaf? The First European Parliament Election in Malta", *South European Society and Politics*, Vol. 10, 2005, Num. 1, pp. 121-136.
[298] BORDONARO, M., "A Mediterranean Success Story: Malta's EU Integration", *The Ambassadors Review*, 2008, p.37.
[299] European Parliament, "Members of the European Parliament, Full list", European Parliament, from:

European People's Party (Christian Democrats). John Attard- Montalto, Joseph Cuschieri, Louis Grech and Edward Scicluna from the Group of the Progressive Alliance of Socialists and Democrats in the European Parliament. It also has Tonio Borg, who is a member of the European Commission, responsible for Health and Consumer Policy.

MALTA 1/1/2008	IMPLEMENTATION OF THE SCHENGEN AREA
MALTA 1/1/2008	ADOPTION OF THE EURO
MALTA	6 MEMBERS OF THE EUROPEAN PARLIAMENT
MALTA	TONIO BORG, Member of the European Commission, responsible for Health and Consumer Policy

C) <u>THE IMPACT OF THE CYPRUS ACCESSION TO THE EUROPEAN UNION</u>

In the case of Cyprus, the process of accession to the European Union was a complex, which we could even describe as an anomaly; not so much for the island's notable euroscepticism as for the on-going conflict that this state is experiencing. We have examined this conflict in depth both in the minor thesis and in the first part of this thesis. In short, following Turkey's invasion of Cyprus in 1974, the country was split into two parts that are governed by two separate administrations. Southern Cyprus, known as the "Republic of Cyprus" is governed by a Greek Cypriot administration, and Northern Cyprus, known as the Turkish Republic of Northern Cyprus (TRNC), is governed by the Turkish Cypriot administration. As a result, the displaced Greek and Turkish Cypriots have long been rehabilitated in their respective communities. While the Greek Cypriot administration in the South is internationally recognised as a state, the Turkish Cypriot administration is recognised as a state only by Turkey[300].

In 2004, a plan, supported by the EU and the international community, for a comprehensive settlement by way of a bi-zonal, bi-communal federation (the Annan Plan), although accepted by Turkish Cypriots, was rejected by the Greek Cypriot governed "Republic of Cyprus", **which thus alone acceded to the EU**. As the Turkish Cypriots were excluded by this rejection, Article 1(1) of Protocol 10 to the Accession Treaty 2003 suspended the application of the EU acquis in North Cyprus pending a comprehensive settlement.

<u>LEGAL SYSTEM IN NORTHERN CYPRUS</u>

According to the Turkish Republic of Northern Cyprus Prime Minister's Office European Union Coordination Centre, The Turkish Cypriot area:[301]

- **Has its own separate, distinct and effective legal system.**
- **EU law does not apply**: Taxes such as VAT (see VAT Directive 2006/112/EC) do not apply to the part of Cyprus which is not under the effective control of the Government of the "Republic of Cyprus", for such purposes the territory of North Cyprus is under Turkish Cypriot administration and, like Gibraltar, is treated as a third territory.
- **<u>The 'Green Line' Regulation 866/2004</u>** notes that North Cyprus is "temporarily outside the customs and fiscal territory of the Community and outside the area of freedom,

<http://www.europarl.europa.eu/meps/en/search.html;jsessionid=86DCA1A95B2FCEBB902CD33642227F4E.node1>, (accessed 5 December 2014).

[300] Turkish Republic of Northern Cyprus Prime Minister's Office European Union Coordination Centre (EUCC), "ECC Response to the Commission's Green Paper", The Review of Council Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, European Union, from: <http://ec.europa.eu/justice/news/consulting_public/0002/contributions/other_governments/turkish_republic_of_northern_cyprus_en.pdf>, (accessed 5 December 2012).

[301] Ibidem.

justice and security." This is also evidenced by the fact that EU exports to North Cyprus are eligible for an export refund.

- In addition to this, the EU is currently working in collaboration with the Turkish Cypriot administration **to align the laws applicable under this administration with EU Law**.

Cyprus, like Malta, adopted the euro on 1 January 2008. The Cyprus pound, which was the legal tender since 1960, ceased to exist and was replaced by the common European currency.

Nevertheless, unlike Malta, the current economic downturn has had a greater impact on Cyprus, which in June 2012 formally requested a bailout[302] as a result of the knock-on effect of the economic crisis in Greece and an explosion at a power plant that knocked out half of the island's energy supply. This economic assistance meant it would have to agree to a wide-ranging package of reforms for the Cypriot economy.

Due to its political, historical and geographic particularities, Cyprus has not signed up to the Schengen agreement, nor does it have a date to do so. Furthermore, we do not see much prospect of this happening in the near future. Back in 2010, the Foreign Minister, George Lillikas said that. "it is not projected that Cyprus will be able to join the Schengen area due to political considerations and to the absence of the appropriate infrastructure[303]". The main obstacles preventing this are**:**

1. 1974 Turkish occupation and division of Cyprus into two zones: the division of the territory and the accession of Republic of Cyprus to the EU in 2004 left one part of the island's territory outside the Union. The division of the territory and lack of agreement between the two communities make it difficult for the island state to comply with the obligations of the Schengen Agreement.

For its part, the Republic of Cyprus is unwilling to lift its border controls with the Turkish zone. In particular, the former Minister of Foreign Affairs of Cyprus, Gerogios Lillikas noted that strict border controls would remain in force in:

> "The ceasefire line, the points of entry and exit or the checkpoints we have opened[304]".

Cypriot government policy is to exercise this control as long as the Turkish occupation continues, or until a satisfactory agreement is reached between the two communities. Accordingly, Lillikas also reiterated that the on-going conflict was pending a satisfactory solution, and that Cyprus needed help from the EU in order to draw up fresh proposals.

> ''We will never accept for Schengen or any other treaty that the borders of the Republic of Cyprus are considered to be the Green Line or the ceasefire line.''
>
> ''These are political aspects and delicate handling in talks with the EU will be needed, and they bring to the forefront the issue of the continuing occupation and strengthen our conviction that a solution is necessary the soonest possible[305].''

British Sovereign Bases in Cyprus: as previously mentioned, Cyprus was under British rule until 1960, when it became an independent Republic. The Treaty of Establishment was signed between the United Kingdom and Cyprus whereby two Sovereign Base Areas at Akrotiri and

[302] WILSON, J., DOMBEY, D., "Cyprus requests Eurozone bailout", Financial Times, 25 June 2012.
[303] Cyprus Government, "Foreign Minister says Cyprus no to join Schengen before 2010", Cyprus Government: Embassy of the Republic of Cyprus in Berlin, from: <http://www.mfa.gov.cy/mfa/Embassies/BerlinEmbassy.nsf/0/9E3EA74BCAD066E5C125727D00493F03?OpenDocument&print>, (accessed 10 December 2012).
[304] Ibidem.
[305] Ibidem.

Dhekelia were identified as real estate that would remain British sovereign territory and be subject to British jurisdiction. We will examine this question at length in the section on British Overseas Territories, Crown Dependencies and Sovereign Base Areas.

However, it should be noted at this point that the existence of British military bases in Cyprus **further complicates the possibility** that the entire territory of this island may one day form part of the Schengen Area. Hence, parts of Cypriot territory under British jurisdiction and sovereignty means that:

a) **Based on UK's 1972 Accession Treaty** and the implementation of the provisions of Protocol No.3 to the 2003 Act of Accession on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus: The Sovereign Base Areas (SBA) — the Akrotiri Base (Western SBA) and the Dhekelia Base (Eastern SBA)[306]:

> "Have the status of a British Overseas Territory, having been retained by the UK when the Republic of Cyprus became independent in 1960".
>
> **"They do not form part of EU territory, as stipulated in the UK's 1972 Treaty of Accession"**.
>
> **"**However, Protocol 3 puts in place special arrangements for the SBAs regarding certain provisions of the treaties and related EU law. The purpose is to ensure that Cypriots within the SBAs enjoy the same EU benefits as those resident in the Republic".

b) **Based on Cyprus' 2003 Accession Treaty**, the Bases are not European territory and have been left outside the EU. Protocol No 3 on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus states that:[307]

> "The Accession Treaty which the Republic of Cyprus signed with the European Union shall not apply to the British Sovereign Bases in Cyprus, except to the extent necessary to ensure the implementation of agreed arrangements".
>
> "According to the Protocol persons resident or employed in the territory of the Sovereign Base Areas, who are subject to the social security legislation of the Republic of Cyprus, shall be treated as if they were resident or employed in the territory of the Republic of Cyprus".
>
> "The Protocol notes that the Republic of Cyprus shall not be required to carry out checks on persons crossing their land and sea boundaries with the Sovereign Base Areas and any Community restrictions on the crossing of external borders shall not apply in relation to such persons and the United Kingdom shall exercise controls on persons crossing the external borders of the Sovereign Base Areas".

c) The geographical situation of the bases that allow exit from the occupied areas further complicates the situation since it connects to and has direct access with Turkish Cypriot territory, which restricts access and free movement to the Greek zone.

We can conclude that **the situation sui generis of Cyprus has made the membership of this State unique at the least. There is no doubt that the conflict poses an obstacle to the full**

[306] UK Parliament, "Commission Report: implementation of the provisions of Protocol Num. 3 to the 2003 Act of Accession on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus", EU law and the Sovereign Base Areas (31586), The Parliament of the United Kingdom, 1 October 2010, 9284/10.
[307] European Union, "The Protocol on Cyprus, attached to the Treaty of Accession to the European Union" signed by the Republic of Cyprus, 16 April 2003.

integration of Cyprus and until this matter is adequately resolved, neither the totality of its territory can accede to the EU nor will it be able to comply with the requirements of the Schengen Agreement and guarantee a common area of Freedom, Security and Justice. Moreover, the non-resolution of this conflict also has a direct impact on Turkey's membership, which is on hold until it puts more effort into resolving the situation. In all other aspects, Cyprus has adequately adopted the acquis communautaire and, since 2008, the euro, despite the harsh economic situation it is experiencing.

Today Cyprus, like Malta, has six MEPs:[308] It also has three members from the Group of the European People's Party (Christian Democrats), Panayiotis Demetriou, Ioannis Kasaoulides and Ioannis Matsis. Two members of the Confederal Group of the European United Left- Nordic Green Left, Adamos Adamou and Kyriakos Triantaphyllides and a member of the Group of the Alliance of Liberals and Democrats for Europe, Marios Matsakis. Likewhise it has Androulla Vassiliou, who is a member of the European Commission responsible for Education, Culture, Multilingualism and Youth.

CYPRUS	NO IMPLEMENTATION OF THE SCHENGEN AREA
CYPRUS 1/1/2008	ADOPTION OF THE EURO
CYPRUS	6 MEMBERS OF THE EUROPEAN PARLIAMENT
CYPRUS	ANDROULLA VASSILIOU, Member of the European Commission responsible for Education, Culture, Multilingualism and Youth.

D**) <u>THE DIFFICULTIES OF THE UNITED KINGDOM MEMBERSHIP</u>**

The United Kingdom's membership of the European Union, as we have already discussed, is the most controversial of all the EU memberships at present. This is largely a result of its Eurosceptic stance. Unlike Malta, British Euroscepticism has been unrelenting and evident throughout the entire process of European integration. Even today, it continues to be one of the essential hallmarks governing the relations between United Kingdom and the EU. It is worth recalling that the UK did participate in the Messina conference in 1955, but chose not to sign the Treaty of Rome and join the European Economic Community (EEC). General de Gaulle' twice vetoed UK membership largely due the United Kingdom's lack of real interest in the European project, preferring to focus on its old empire and its special relationship with the United States. Moreover, only two years after it finally acceded to the EEC in 1973, the UK held a referendum to decide whether to remain in the then European Economic Community and the Common Market. Therefore, this section is given over to the most important milestone in the current relations between the United Kingdom and the European Union, and we examine British Euroscepticism and its influence on these relations.

[308] European Parliament, "Members of the European Parliament, Full list", European Parliament, from: <http://www.europarl.europa.eu/meps/en/search.html;jsessionid=86DCA1A95B2FCEBB902CD33642227F4E.node1 >, (accessed 5 December 2012).

Milestones that have marked the relationship between the United Kingdom and the European Union:

1. **Referendum of 1975**: On 5 June 1975 a referendum was held in the United Kingdom in which the British were asked the following question: "Do you think the UK should stay in the European Community (Common Market)?" Almost 70% voted yes. Strange though it seems now, at that time the Conservative Party was generally in favour and the Labour Party generally against. Labour leader Harold Wilson promised a nationwide referendum on whether or not to stay in the EEC provided that he was able to renegotiate more favourable terms. (Ireland, Denmark and Norway had all put the issue to the popular vote - unlike the UK - before joining, Norway voting against)[309].

> **1975: UK embraces Europe in referendum**[310]
>
> "British voters have backed the UK's continued membership of the European Economic Community by a large majority in the country's first nationwide referendum. Just over 67% of voters supported the Labour government's campaign to stay in the EEC, or Common Market, despite several cabinet ministers having come out in favour of British withdrawal.
>
> The result was later hailed by Prime Minister Harold Wilson as a "historic decision".
>
> For him the victory came after a long and bruising campaign against many in his own party, following Labour's promise to hold a vote in its general election manifesto last October.
>
> Faced with the referendum question, "Do you think the UK should stay in the European Community (Common Market)?" Britons voted "Yes" in most of the 68 administrative counties, regions and Northern Ireland. Only Shetland and the Western Isles voted against the EEC.
>
> When the result was beyond doubt, the leaders of the pro-Europe camp emerged from private celebrations to thank campaign workers for their efforts.
>
> Home Secretary Roy Jenkins said: "It puts the uncertainty behind us. It commits Britain to Europe; it commits us to playing an active, constructive and enthusiastic role in it."
>
> The Conservatives were also campaigning to stay in the Common Market. Margaret Thatcher, elected Tory leader last February, said the "Yes" vote would not have happened without the Opposition's support for it.
>
> Former Prime Minister Edward Heath said: "I've worked for this for 25 years, I was the prime minister who led Britain into the community and I'm naturally delighted that the referendum is working out as it is."
>
> Members of the "No" campaign accepted their defeat and promised to work constructively within the EEC.
>
> Industry Secretary Tony Benn, who had come under criticism from the prime minister during the campaign, said: "When the British people speak everyone, including members of

[309] Northern Ireland Access Research Institute, "5 June 1975: The Common Market Referendum", Northern Ireland Access Research Knowledge Reports, from: <http://www.ark.ac.uk/elections/fref70s.htm>, (accessed 11 December 2012).
[310] British Broadcasting Corporation (BBC), "1975: UK embraces Europe in referendum", BBC News, 6 June 1975, from: <http://news.bbc.co.uk/onthisday/hi/dates/stories/june/6/newsid_2499000/2499297.stm>, (accessed 11 December 2012).

> Parliament, should tremble before their decision and that's certainly the spirit with which I accept the result of the referendum."
>
> The trade union movement led by the TUC was also opposed to remaining in Europe and had boycotted key advisory positions in Brussels and Luxembourg since Britain joined in 1973.
> TUC General-Secretary Len Murray said the boycott would be lifted but he remained adamantly opposed to the EEC. "Many of the most important decisions about our future can only be taken here in Britain."

2. **<u>The British Rebate</u>**

In this section, we analyse the reason behind the British rebate, whether the motives for which it was granted are still valid and defensible. Given the huge controversy surrounding the rebate, we will also examine its consequences for the United Kingdom's relations with other EU members.

As we have previously mentioned Britain joined the EU in 1973 (at that time called the EEC) the relationship between Britain and the EU has been troublesome for numerous reasons. From the start, it was foreseen that Britain was going to be a net-contributor to the EU budget, but the small agricultural industry in Britain caused imbalances between the size of Britain´s contributions and how much the country received from the EU[311]. At the same time, the British people felt their former worldwide influence being constrained by European laws and institutions. As a former imperial power and with its close relationship with the USA, Britain has found it particularly difficult to adjust and narrow its political interests to only Europe. Many British Prime Ministers have disliked having a supranational authority above the nation-states represented by the High Authority. So from the very start, Britain was a "reluctant" member, skeptical and discontended; and this discontent was to culminate a mere decade after entry[312].

The legal basis and system for financing the EC Budget, which also includes the provision for the UK rebate, lay down in the Decision (ORD) (2000/597/EC), and the implementing regulation (2028/2004). The British rebate was established by the European Council at Fontainebleau in 1984 as a result of Prime Minister Margaret Thatcher's negotiation, but as early as 1979, Prime Minister James Callaghan and his government began to agitate for a reduction in Britain´s contribution. After successive meetings of the European Council and demanding "my money back", Margaret Thatcher had her way, and Britain was given a substantial rebate for the years 1980-83[313].The other member countries reluctantly agreed to grant Britain a rebate of 66% on its contributions to the EU, but since the formation of the agreement, most EU leaders have argued for the rebate (called "cheque Britannique" by French politicians) to be scrapped, claiming that Britain today is one of the wealthier countries in the EU[314].

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[311] MORRISON, D., "The EU: The British rebate", *Labour & Trade Union Review*, 8 August 2005, from: <http://www.david-morrison.org.uk/eu/british-rebate.htm>, (accessed 16 December 2012).

[312] For further information see BATTEN, G., "How much does the European Union cost Britain?", UK Independence Party Report, from: <http://www.molevalleyepsom.ukip.org/media/pdf/cost_of_eu.pdf>, (accessed 16 December 2012) and Arhaus University, "The UK Rebate or rethinking the EU Budget?", Arhaus University, from: <http://pure.au.dk/portal-asbstudent/files/36186903/UK_rebate_or_rethinking_the_EU_budget.pdf>, (accessed 16 December 2012).

[313] Ibidem.

[314] CUTHBERT, J., CUTHBERT, M., "The wrong sort of rebate: the need to reform the UK budget adjustment", *Quarterly economic commentary*, Vol. 30, 2005, Num. 2, pp.1-16.

The special situation of the UK was characterised by two factors:

• A small agricultural sector resulting in very low Community agricultural spending in the UK. The Common Agricultural Policy (CAP) took up more than 70% of the EU budget, but Britain had a relatively small agricultural industry, most of the CAP subsidies were allocated to other agricultural countries such as France and Italy.

- A large contribution to the financing of the Community budget because of the large proportion of the country's GNP (Gross National Product) accounted for by the VAT base.

The growing wealth of Britain has given rise to discontent with the UK rebate among the other EU countries demanding the rebate to be abolished in order to treat all countries equally. This discontent has resulted in harsh negotiations over the budget, but Britain has so far been able to retain its rebate. In fact, it has survived for two decades[315]. And once again, the question of the UK rebate is now very near the top of the EU political agenda. Thus, in the recent round of budget negotiations (in 2006), the rebate came under particularly close examination, with demands from all Britain´s EU partners to give up the rebate in the interests of fairness and European solidarity[316].

Constant pressure on the British Government, forced Prime Minister Tony Blair to accept giving up 20% of the rebate for the period 2007-2013 (Council of the European Union, 2007). So, the question is, whether Britain, completely isolated from the other EU countries in the issue of the rebate, will be able to continue to defend the UK rebate. The partial concession on the rebate might be construed as a possible sign of the beginning of the end for the rebate. However, the agreement about the UK rebate can only be changed by unanimity in the European Council, and if Britain rejects to change the agreement, no one can force them.

Those States that are against British rebate argue that, since 1985, when the UK rebate was negotiated, Britain has used the argument that the UK rebate is fair, because Britain, due to its relatively small agricultural industry, does not receive a substantial part of the CAP. Even though the size of the CAP has decreased to only 40% of the EU budget, Britain still uses the same arguments as in 1985.

The rebate question has drawn widespread and constant criticism over for years, largely from France and Germany, yet also from the EU institutions themselves. Indeed, the rebate continues to generate considerable controversy to this day and it is still having a direct impact on the United Kingdom's relations with the rest of the EU member states. Below we highlight some recent criticism:

- In 1999, the German chancellor, Gerhard Schröder, urged the British government to take a more flexible approach to the rebate. Faced with these statements, Prime Minister Tony Blair´s spokesman said:

> "We are making clear the abatement is justified on its own merits. It exists because British government had to pay an unfair share. It is still justified[317]".

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[315] Ibidem.

[316]WATERFIELD, B.,"Britain to lose EU rebate as Coalititon faces split on treaty changes",The Telegraph, 19 October 2010.

[317] Arhaus University, "The UK Rebate or rethinking the EU Budget?", Arhaus University, from: <http://pure.au.dk/portal-asbstudent/files/36186903/UK_rebate_or_rethinking_the_EU_budget.pdf>, (accessed 16 December 2012).

- In the spring of 2005, the French President, Jacques Chirac described the rebate as "unjustified", forecasting that unless it was reviewed agreement on future financing would be impossible. The Foreign Secretary, Jack Straw, replied:

> "There can be no deal on future financing which does not protect the rebate[318]"

- At the London School of Economics in May 2005, the EU Commission President Jose Manuel Barroso said, that:

> "The rebate is no longer justified[319]".

> Again Tony Blair´s spokesman replied:

> "The rebate was hard-won by Margaret Thatcher and saves British taxpayers billions of pounds a year. The rebate is fully justified, full stop[320]"

- At the European Council meeting in Brussels in June 2005, Tony Blair refused to make any modification to the rebate for the budget period 2007 – 2013 without a reduction in CAP spending[321].

- In December 2005, the British Foreign Secretary, Jack Straw said that Britain was prepared to reduce its rebate by £1 billion a year in the period 2007-2013.

- In April 2006, Blair agreed to give up approximately 20% of the rebate for the period 2007-2013, on condition that the funds were only to the new member countries, and that the European Commission should conduct a full review of all EU spending.

- September 2010 saw another row over the disputed UK rebate, when the new budget commissioner Janusz Lewandowski said that:

> "The rebate for Britain has lost its original justification[322]".

According to Lewandowski, the much smaller CAP share of the budget (about 40%) compared to 71% in 1984 weakens the British case for a rebate, when the EU budget for the period 2014-2020 has to be negotiated. The budget commissioner said, that "The level of farm subsidies in 2020 has to be lower than today[323]".

The response from a British spokesman did not come as a surprise:

> "The rebate remains fully justified. It´s a matter of fairness[324]."

[318] PATTERSON, B., "The UK rebate issue", European Movement, 2005, from: <http://www.euromove.org.uk/fileadmin/files_euromove/downloads/Rebate.pdf>, (accessed 20 December 2012).
[319] Ibidem.
[320] Arhaus University, "The UK Rebate or rethinking the EU Budget?", op. cit., Arhaus University, from: <http://pure.au.dk/portal-asbstudent/files/36186903/UK_rebate_or_rethinking_the_EU_budget.pdf>, (accessed 16 December 2012).
[321] MORRISON, D., "The EU: The British rebate", *Labour & Trade Union Review*, 8 August 2005, from: <http://www.david-morrison.org.uk/eu/british-rebate.htm>, (accessed 16 December 2012).
[322] Ibidem.
[323] HEWITT, G.; "EU budget commissioner calls for UK rebate to end", BBC News, 6 September 2010.
[324] Ibidem.

The spokesman made it clear, that:

> "The UK´s net contribution (in percentage of GNI) would be twice as big as France´s because of expenditure distortions from policies such as the CAP, which still accounts for more than 40% of the EU budget[325]".

Moreover, the British government has not only been under attack from its EU partners, also within the political parties in Britain criticism has been raised. On the issue about the UK rebate, some parties in the House of Lords fear that the government will recreate the politics of confrontation in Europe, since it will not take a more flexible approach on the rebate. We have to remind that no other country has a similar rebate.

In the period 2007-2013 the UK rebate will amount to 7.5 billion Euro annually, and the rebate is financed by all the other member countries. Moreover, Britain´s contributions to the EU budget are not corresponding to its current level of prosperity. The other member countries argue that the rebate must be abolished, since Britain is one of the richest countries in the EU and no other country has a similar rebate. They also argue that the rebate is a distortion of EU resources; the CAP share has decreased from 71% in 1984 to 40% in 2010; and, that all member countries should contribute equally to the financing of the EU budget.

It is important to be noted that since 2000 Germany, Austria, The Netherlands and Sweden have all been given a rebate of 75% on their share of the financing of the UK rebate (EU-oplysningen, 2010). These rebates will also have to be financed by the other member countries through an increase in their contributions.

Regarding UK's stance, the British Government rejects to abolish the rebate on the grounds that Britain would pay far more to the EU than it receives due to the distortion of the CAP; the size of the CAP must be downsized and the countries should (to a certain extent) finance their own agricultural industries; it is only fair that the new countries who are net recipients pay to the UK rebate; and, some countries have a rebate on their contribution to the UK rebate.

Likewise, France and Italy finance almost half of the UK rebate, and Germany is, despite its rebate, a large contributor to the UK rebate as well. The countries advocating most strongly for an abolishment of the UK rebate are also the greatest recipients of the CAP: France, Italy, Germany and Spain. On the other side, these countries also want to maintain the current level of spending from the CAP.[326]

In 2004, the European Commission proposed a generalized correction mechanism which should be triggered if a country´s net contribution exceeds 0.35% of its GNI. Contributions above this would be refunded by 66% (Europa.eu, 2004). But Britain was apparently not interested in a system where all member countries have the same conditions and access to refunds, meaning that every country would be treated equally. The proposal was rejected by Britain who once again demanded reforms of the CAP. If the rebate is abolished completely, Britain would double its contribution to the EU without receiving subsidies corresponding to those of other member countries. On the other hand, all countries would be treated equally in terms of calculation of the contribution to the EU coffers.

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[325] Ibidem.

[326] HAUSNER, K. H., "The European Budget in the Years 2007 to 2013 and the Common Agricultural Policy", *Intereconomics: Review of European Economic Policy,* Vol. 42, 2007, Num. 1, p. 58.

In the proposal it says:

> "Despite the very positive evolution of its relative prosperity, the UK continues to receive a partial refund of its contributions. Other net contributors with similar or lesser prosperity do not. The enlargement of the EU to 10 new – on average less prosperous - Member States will justifiably shift expenditure to these new partners.
>
> Only the UK will be largely shielded from the extra cost thanks to the rebate, funded by all its partners including by the poorest Member States[327]."

The proposal from the commission did not question the prosperity of Britain, but political commentators did not expect Britain to accept this proposal, since France would continue to benefit from the CAP. It was expected that Britain would demand further reform of the CAP in exchange for accepting the new correction mechanism[328].

Finally, the negotiations on the rebate and the CAP have therefore reached a deadlock, and only flexibility from British side can solve the problem. The French and German negotiators on the other side must also show some willingness to reduce the size of the CAP to break the deadlock. The new poor Eastern European countries might also put pressure on for reform of the CAP – and the UK rebate. Likewise, it is difficult issue to assess the fairness of how much each country should contribute and receive from the EU. On the British side the arguments for retaining the UK rebate are:

- The rebate is fully justified. It is a matter of fairness. Without the rebate Britain would pay far more into the EU than it receives due to the distortion of the CAP – in fact twice as much as France[329]
- The size of the CAP must be downsized and the national governments should (to a certain extent) finance their own (agricultural) industries[330]
- It is only fair that the new countries who are net recipients pay to the UK rebate[331].
- Germany, Austria, the Netherlands and Sweden have a rebate on the rebate, i.e. their contribution to the UK rebate is limited to only 25% of the original contribution[332]

The other member countries argue:

- Britain is one of the richest countries in the EU;[333]
- No other country has a similar rebate;[334]

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[327] Arhaus University, "The UK Rebate or rethinking the EU Budget?", Arhaus University, from: <http://pure.au.dk/portal-asbstudent/files/36186903/UK_rebate_or_rethinking_the_EU_budget.pdf>, (accessed 16 December 2012).
[328] The Economist, "Too rich for a rebate; EU rebate", The Economist U.S. Edition, 10 July 2004, p. 2.
[329] HEWITT, G.; "EU budget commissioner calls for UK rebate to end", BBC News, 6 September 2010.
[330] British Broadcasting Corporation (BBC), "EU says UK rebate "not justified", BBC News, 20 May 2005.
[331] Ibidem.
[332] Ibidem.
[333] BEUNDERMAN, M., "London faces fresh pressure to give up EU budget rebate", EU Observer, 2 February 2007.
[334] European Union, "Preventing excessive budgetary imbalances in the EU", The European Union, (14 July 2004), from: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/908&format=HTML&aged=1&language=EN&guiLanguage=en>, (accessed 22 December 2012).

- The British cheque is a distortion of EU resources;[335]
- The CAP share has decreased from 71% in 1984 to 40% in 2010;[336]
- All member countries should contribute equally to the financing of the EU budget;[337]

3. **<u>No Euro – 5 TEST</u>**

During the 1980s the issue of Britain's membership of the European Monetary System's Exchange Rate Mechanism was a constant source of political controversy. As is well known, Britain entered the ERM in 1990, only to exit from it in 1992[338].

In the early 1990s the leaders of Continental European countries decided to embark on monetary union. In the Maastricht Treaty Britain negotiated an opt-out from this. In January 1999 the euro was launched in virtual form; and in January 2002 the euro materialised as notes and coins[339].

Protocol (No 25) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland (1992), annexed to the Treaty establishing the European Community[340]. This Protocol specifies the provisions of the United Kingdom's opt-out from moving to the third stage of economic and monetary union (EMU), meaning that it has not introduced the euro for the time being. The United Kingdom is still in the second stage of EMU. The opt-out clause was a condition for the United Kingdom to approve the Treaty as a whole.

In short the Protocol states that certain articles of the Treaty do not apply to the United Kingdom:

- Its powers in the field of monetary policy are not affected by the Treaty (the United Kingdom retains its powers in the field of monetary policy under national law).
- It is not subject to the provisions of the Treaty relating to excessive deficits.
- It is not concerned by the provisions of the Treaty relating to the European System of Central Banks (ESCB), the European Central Bank (ECB) or the regulations and decisions adopted by those institutions[341].

Nowadays, the debate in Britain has been focused by the knowledge that joining the euro is in large measure irreversible, unlike joining the ERM. It is of course not impossible to leave the euro; anything in politics is possible. But joining does put enormous barriers in the way of leaving: for example, there is no provision in the Rome Treaty (as subsequently amended by Maastricht and other 20 treaties) for doing so and therefore it would involve a violation of the Treaty with unpredictable ramifications. The question of joining has therefore been considered

[335] BEUNDERMAN, M., "London faces fresh pressure to give up EU budget rebate", EU Observer, 2 February 2007.
[336] POP, V., "'UK rebate no longer justified,' Brussels says", EU Observer, 6 September 2010.
[337] PEDERSEN, K.,"Britisk finansminister slår Hjorts EU-drøm til jorden", *Økonomi*, Vol. Politiken, 2011, p. 12.
[338] Her Majesty Treasury, "The five tests framework: EMU Study", UK Government official Document, 2003, from: <http://news.bbc.co.uk/2/shared/spl/hi/europe/03/euro/pdf/1.pdf>, (accessed 22 December 2012).
[339] Ibidem.
[340] European Union, "Treaty on European Union", European Union, 29 July 1992, Official Journal C 191, from: <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0087000012>, (accessed 22 December 2012).
[341] European Commission, "United Kingdom: EMU opt-out clause", Summaries of EU Legislation, European Commission, from: <http://europa.eu/legislation_summaries/economic_and_monetary_affairs/institutional_and_economic_framework/l25060_en.htm>, (accessed 27 December 2012).

of such importance, both practical and constitutional, that it has forced politicians to offer the people a referendum.

The UK has stated that if and when it decides that joining is something it would recommend to the country, it will then hold a binding referendum on entry. It has also let it be known that its decisions would be highly dependent on the economics of joining; it has admitted that there are political and constitutional considerations but has suggested that these are secondary. The Chancellor of the Exchequer drew up the Five Economic Tests for entry with the full authority of the government; it was said that they must be met 'clearly and unambiguously'.

Britain's Chancellor of the Exchequer specified five economic tests to help in the crucial economic decision as to whether or not Britain should adopt the euro in place of the pound. They must, the government has said, be met 'clearly and unambiguously'.

The five economic tests define whether a clear and unambiguous case for UK membership of EMU can be made and they must be met before any decision to join can be taken. The tests were set out in full in the Treasury's first assessment of the five tests which accompanied the Chancellor's statement to Parliament in October 1997. The five economic tests are as follows[342]:

- Are business cycles and economic structures compatible so that we and others could live comfortably with euro interest rates on a permanent basis?
- If problems emerge is there sufficient flexibility to deal with them?
- Would joining EMU create better conditions for firms making long-term decisions to invest in Britain?
- What impact would entry into EMU have on the competitive position of the UK's financial services industry, particularly the City's wholesale markets?
- In summary, will joining EMU promote higher growth, stability and a lasting increase in jobs?

Importance of the test

HM Treasury justifies the importance of implementing this test using the following arguments:[343]

1.1 The Maastricht Treaty rightly emphasises the importance of achieving a high degree of sustainable convergence, if a country is to participate in EMU.

1.2 In joining EMU, interest rates in the UK would no longer be set in response to domestic economic conditions. Rather, the ECB would set interest rates to achieve price stability in the EMU area as a whole. If economic conditions in the UK were similar to those in the EMU area then the ECB's monetary policy would be appropriate for the UK. But if conditions in the rest of the EMU area were very different from those in the UK euro interest rates could often be too high or too low for the UK, making economic conditions less stable. So it is important that the UK cycle is broadly in line when we join EMU and that this convergence is sustainable.

1.3 Variations in the exchange rate can play a beneficial role in dampening the cycle in divergent economies. The monetary authority of an economy that is growing rapidly will tend to run a relatively tight monetary policy, causing the exchange rate to appreciate, thus reducing demand.

[342] The UK National archives, "Speech by the Chancellor of the Exchequer, Gordon Brown MP on EMU", The UK National archives, 27 October 1997, from: <http://webarchive.nationalarchives.gov.uk/+/http:/www.hm-treasury.gov.uk/speech_chex_271097.htm >, (accessed 27 December 2012).

[343] HM Treasury, "The five tests framework: EMU Study", Government official Document, op. cit.

> Conversely, if demand is slack, interest rates will be relatively low and the currency is likely to depreciate, thereby increasing demand. If the UK were in EMU this adjustment mechanism would no longer apply to the UK. This would be a potentially serious loss if the UK economy had not converged with other Member States.
>
> 1.4 If the UK were to enter monetary union without durable convergence, then the loss of domestic monetary policy and lack of exchange rate freedom could make the UK cycle more volatile. This lack of stability would damage investment and the underlying rate of growth and employment would suffer.
>
> 1.5 It is not safe to assume that the act of joining monetary union would automatically trigger convergence. That depends, for example, on whether the lack of convergence arises from different monetary policies or other factors. We therefore need to understand, as best we can, the reasons for current and past cyclical differences and why there has not been convergence in the past.

Hence, the debate on the possible adoption of the euro by the United Kingdom remains an open question and it is having an effect on relations between United Kingdom and the EU. In this connection, we hold that as the latest member states adopt the euro, the pressure for the United Kingdom to join the common currency will increase.

Numerous studies have analysed the benefits and drawbacks that the adoption of the euro would have for the United Kingdom. Most authors against this possibility stress as the main reason that the adoption of the euro by the United Kingdom would involve a loss of sovereignty and, therefore, monetary competence, meaning the UK would lose direct control of aspects such as interest-rate-setting. Similarly, another of argument against the euro centres on the harmonisation of monetary policy for the United Kingdom, which would surely imply among other things the raising of taxes. Thus, the arguments against joining the euro are clearly founded on economic and political questions.

According to Minford[344] the core of the pro argument is the elimination of exchange rate risk against the euro. But the euro is a regional currency which has fluctuated considerably against the dollar, and it is by no means certain that total exchange rate risk would be lowered by joining the euro zone. In any case, financial markets can diversify away such risks.

As regards costs, a major problem, according to the mentioned author, is the loss of interest-rate-setting powers, since a single currency implies a single interest rate. It is true that, under optimal currency conditions, the variability of British output, employment and prices in response to shocks might not increase. But those optimal conditions do not appear to pertain. Both economic analysis and econometric modeling suggest that such variability would probably be much greater in the euro zone than with a separate currency.

Harmonisation is another problem. Minford argues that there is a harmonisation agenda which is implicit in the EMU project and which is likely to involve increases in tax rates, social support and regulation. The author demonstrates, from the results of econometric modeling, how damaging such harmonisation could be for the British economy. Moreover, we should be very concerned at the serious projected state pension deficits in Germany, France and Italy – amounting to the equivalent of one-third of Britain's GDP. As EMU becomes more integrated, these 'potentially explosive state financial liabilities' could well fall partly on the British taxpayer.

[344] MINFORD, P., "Should Britain Join the Euro?", Cardiff University Business School: Centre for Economic Policy Research (CEPR), *IEA Occasional Paper*, 2005, Num. 126, pp. 1-80.

This author concludes that the driving force behind monetary union is political. However, political preferences should not be dressed up as economic arguments. The economic costs and benefits of Britain's membership can be assessed. He comes down strongly on the 'no' side of the argument. In his estimation, the likely benefits are insubstantial and are far exceeded by the likely costs.

The current economic context, marked by the economic crisis that having a direct effect on the Eurozone, above all, on those countries that have already adopted the euro, such as Greece, Cyprus, Portugal, Spain or Ireland, which have been forced to request bailouts from the EU. This has done little to arouse the UK's enthusiasm to adopt the single currency in the short or medium term.

The arguments in favour of the euro mainly concern the UK's loss of influence if it remains outside the common monetary policy given that this will evolve and improve with time, and that new EU member states will adopt the euro in the near future. Moreover, although the United Kingdom has not adopted the European single currency, there should be no doubt that decision–making on monetary policy and any positive and negative developments affecting the euro, will have a direct political and economic impact on the United Kingdom In fact, the UK is already feeling the effects of the Eurozone crisis, with Chancellor George Osborne stating, "There's no doubt that growth in Britain, jobs in Britain, have been hit by what's going on in the Eurozone[345]."

Redmond[346] notes that over 50% of trade in the UK is done with the EU. The figure speaks for itself, and although it is impossible to quantify the exact amount of trade which will be lost if the EU collapses, it would be significant. This is one aspect that demonstrates the extent to which the UK's economy and business interests are directly dependent on and influenced by the EU's economy. In short, the United Kingdom has a vested interest in the recovery of the EU economy and the single currency and its return to the good times. As the British prime minister, David Cameron puts it:

> "It's in Britain's interests that the eurozone is a success, that the euro is a successful currency that the eurozone economies recover[347]."

For the United Kingdom, it is equally important that EU monetary policy moulds or, at least, takes into account British monetary policy since there is a strong interdependence between the two currencies and economies. Nevertheless, should the British decide to stay out of the euro they will find it difficult to influence the latter aspect.

In this regard, Kenen underscored this point in the title of his article, "No economy is an island". To his mind, it is clear that if the United Kingdom does not adopt the euro it stands to lose any potential it has to influence a question as important as monetary policy. Moreover, the author points out there is no doubt, in the light of recent experiences, that the design of European monetary policy and EU institutions responsible for Economic and monetary aspects will undergo reforms entailing significant improvements. Below we cite some of the author's arguments in favour of the euro:

> "Britain's influence will be reduced if it has not yet decided to adopt the euro".

[345] TAMPLIN, D., "The Euro-Crisis And The Impact On UK Business", UK Money Market, 5 December 2012, from: <http://ukmoneymarket.co.uk/investments/the-euro-crisis-and-the-impact-on-uk-busines>, (accessed 3 January 2013).

[346]He is Partner of Don Gilliard Finance Group, independent financial advisor and financial planner.

[347] British Broadcasting Corporation (BBC), "Cameron defends staying out of euro as he meets Sarkozy", BBC News, 20 May 2010.

> "During the next few years, moreover, the ECB (European Central Bank) will acquire the experience and confidence required to reform its policies and practices. But it will then be slow to alter them again. Hence, Britain should join soon. It should not stay outside, waiting for perfection, but should get inside, working for improvement".
>
> "As a member of the euro area, Britain would still be exposed to fluctuations in the dollar-euro rate. But it would enjoy more exchange-rate stability, measured in terms of the trade weighted value of its currency[348]".

Political opinion is divided; whereas some politicians, including the former prime minister, Tony Blair, defend the idea of the United Kingdom's joining the euro once the economic downturn, which is especially affecting the Eurozone, has been resolved.

> "Former Prime Minister Tony Blair said the UK must keep open the option of joining the euro if the current crisis is resolved"
>
> "He said that looking at the "broad sweep of history" in the long term "the European integration project" was going to go ahead, "like it or not".
>
> "The UK, as a "small island nation", had to be part of it to have influence [349]".

Others like the current Prime Minister, David Cameron, insist that the decision not to join the euro was the right one, taking into account how it is affecting the crisis in those countries that have adopted the single currency and decided to cede sovereign control over their own currencies.

> "I think we were right not to join the euro and I think were right to stay out of the euro[350]".

In short, the question of the United Kingdom's entry into the Eurozone and its subsequent adoption of the euro continue to be the one that arouses most controversy in the relationship between it and the European Union. Academics, the media, economists and politicians alike are deeply divided and have many arguments for and against. In any case, as we have already explained, it is clear to us that for the UK to adopt the Euro, it must pass the 5 tests.

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[348] CALDWE LL, K., "Blair: UK should not rule out joining euro when crisis eases", Investment and analysis for investment advisors and wealth managers Week-News, 25 June 2012.

[349] British Broadcasting Corporation (BBC), "Tony Blair: UK may face 'interesting choice' over euro", BBC News, 24 June 2012.

[350] British Broadcasting Corporation (BBC), "Cameron defends staying out of euro as he meets Sarkozy", BBC News, op. cit.

4. **No Schengen**

Source: Map of the Schengen Countries <http://www.axa-schengen.com/en/schengen-countries>

Brief historical approach: The Schengen Area, as it is known at present, is the result of a historical process that began in 1985 with the adoption of the Schengen Agreement, which was signed in the Luxembourg village of Schengen, it was an attempt to create a passport-free travel area in Europe. This entailed that passport controls would be abolished at the borders between the members of the Schengen Area but they would jointly ensure that on the external borders (and on international flights into any Schengen Area airport from outside the area) tough controls would be maintained on third country citizens wishing to enter the Schengen Area[351].

Five years later, the Schengen Convention of 1990 extended the concept of passport-free travel to air and rail passengers and introduced common visa rules and police and judicial co-operation; Italy joined at that time. Other countries joined the Schengen Area later, including the Nordic countries in 1996.

The legal basis for the Area was incorporated in the EU Treaties through the Treaty of Amsterdam in 1999. This Treaty incorporated the Schengen agreements (the Schengen acquis) into the law of the European Union. The Schengen acquis is the body of law which governs the lifting of internal border controls between those countries that form the Schengen area. All Member States accepted the Schengen concept and agreed they would join save **for opt-outs given to the United Kingdom and the Republic of Ireland**. Other exclusions were agreed for certain specific territories such as the Faroe Islands.

Four non-Member States of the EU are participants in Schengen – Iceland, Liechtenstein, Norway and Switzerland – and are bound by the rules agreed under EU law that apply to the Schengen Area but cannot participate in the Council of Ministers meetings that approve the legislation. So, the area in 2013 is made up by 22 EU Member States and four other European countries[352].

One of the main problems facing the member states of the Schengen Area concerns the control of Greece's porous border with Turkey, the largest source of illegal overland immigration into the EU. However, due to the crisis that erupted between France and Italy

[351] UK European Movement, "The Schengen Area", The UK European Movement Publications, from: <http://www.euromove.org.uk/index.php?id=18538>, (accessed 7 January 2013).
[352] Ibidem.

during the "Arab Spring" of 2011, when a huge influx of immigrants from North Africa, mainly from Tunisia, arrived on Italian territory, in Puglia and on the small island of Lampedusa.

Italian authorities warned of the gravity of the situation, calling it a "human tsunami,"[353] and requested help from the EU to deal with the influx. Nevertheless, authors such as Brady consider that the then interior minister, employing grand rhetoric exaggerated the situation, because the "The number of arrivals was large but manageable, eventually peaking at around 48,000 immigrants",[354] in order to pressure France to take in Francophone migrants from their former colonies. France responded "by re-instating border checkpoints between the two countries and halting trains travelling from Ventimiglia, the last Italian town before the French border."[355]

The crisis between Italy and France over the Tunisian immigrants in 2010 led to a review of the rules governing the Schengen and changes are being proposed, among other things, the evaluation and monitoring mechanism to verify the application of the Schengen acquis as well as the rules governing the movement of persons across borders (Schengen Borders Code) and the Convention implementing the Schengen Agreement"[356].

<u>The British opt-out</u>

The United Kingdom and the Republic of Ireland, who have a common travel area of their own created before Schengen came into being, have an opt-out from the Schengen Area agreement. None of these states adopted the Schengen Agreement and were given opt-outs from it when the Schengen acquis when was incorporated into EU Law in 1999.

> "The UK's decision to stay out of the Schengen Area partly reflects the fact that it only has one land border with another country – the Republic of Ireland – and passport-free travel has largely operated between the two countries since Ireland achieved independence in the 1920s. That arrangement, known as the Common Travel Area, enables citizens of the British Isles (UK, Republic of Ireland, Channel Islands and the Isle of Man) to move freely between the different parts of the British Isles without the need for a passport or identity card. In practice, the existence of the Common Travel Area makes it difficult for Ireland to join the Schengen Area as long as the UK does not do so[357]".

Protocols 19 and 21[358] regulate the opt-out of the United Kingdom and the Republic of Ireland.

> Article 1 of Protocol 21[359] states that "the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union (Judicial cooperation in civil matters)".

[353] BRADY, H., "The Schengen Crisis in the Framework of the Arab Spring, Culture and Society: Migrations", *IEMED Observatory Journal*, 2012, Num. 275, pp. 1-4.
[354] Ibidem.
[355] Ibidem.
[356] The Council of the European Union, "Schengen enlargement: Liechtenstein to become 26th member state", The Council of the European Union Press Release, 18446/11, Brussels, 13 December 2011, PRESSE 489, from: <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/126860.pdf>, (accessed 10 January 2013).
[357] UK European Movement, "The Schengen Area", The UK European Movement Publications, from: <http://www.euromove.org.uk/index.php?id=18538>, (accessed 7 January 2013).
[358] European Union, "Protocol (Num. 19) on the Schengen acquis integrated into the framework of the European Union", European Union: Council of European Union, from: <http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01.en08.pdf>, (accessed 12 January 2013).
[359] European Union, "Protocol (Num. 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice", European Union: Council of European Union, from:

That said, at the same time, as we will shortly see, these protocols, under certain conditions and within certain requirements, allow the parties to participate in proposing and implementating certain measures concerning the Schengen acquis and EU legislation on Justice and Home Affairs (JHA).

Thus, Protocol 19 permits the United Kingdom to opt out of the Schengen acquis, known as the opting-out clause. In fact, the UK chose not to participate in the border control policy, but it is allowed to opt in to specific measures of the acquis where it considers pertinent.

Article 4 of the Protocol allows the UK to opt in to some or all of the decisions made regarding the Schengen acquis, but the Council must unanimously approve acceptance of such participation:

> "(Preamble) TAKING INTO ACCOUNT the fact that Ireland and the United Kingdom of Great Britain and Northern Ireland do not participate in all the provisions of the Schengen acquis; that provision should, however, be made to allow those Member States to accept other provisions of this acquis in full or in part[360]."

In fact, the United Kingdom takes part actively in judicial and police cooperation in the Schengen framework:

> "The UK does participate in some parts of Schengen, as recorded in Council Decision 2000/365/EC (OJ L 131, 1.6.2000, p. 43–47), i.e. the police and judicial cooperation elements of Schengen[361]".

For its part, Article 5 of the Protocol provides that "the UK is deemed to be in any measures which build on those parts of the Schengen acquis in which it already **participates unless, within three months of the publication of the proposal or initiative, it notifies the Council that it does not wish to take part in the measure – "an opt-out**". If the UK does not opt out within that three-month period, it is automatically bound. If the UK opts out, the Commission and Council can decide to eject the UK from all or part of the rest of Schengen to the extent considered necessary if such non-participation seriously affects the practical operability of the system, but **the Protocol states explicitly that it must seek to retain the UK's widest possible participation[362]"**.

As in the case of Protocol 19, Protocol 21 of the Treaty on European Union offers the United Kingdom various possibilities to adopt and enforce measures relating to justice and home affairs.

According to the Home Office of the UK Government:[363]

a) "The UK may choose, **within three months of a proposal** being presented to the Council pursuant to Title V of Part Three of the TFEU (the part of the Treaty governing

<http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01.en08.pdf>, (accessed 12 January 2013).

[360] Unión Europea, "Protocolo (Num. 19) sobre el Acervo de Schengen integrado en el marco de la Unión Europea", Noticias Jurídicas, from: <http://noticias.juridicas.com/base_datos/Admin/protocolo19.html>, (accessed 12 January 2013).

[361] UK Government, "Report to Parliament on the Application of Protocols 19 and 21 to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) ('the Treaties') in Relation to EU Justice and Home Affairs Matters 1 December 2010 – 30 November 2011", UK Government: Ministry of Justice, January 2012.

[362] Ibidem.

[363] MILLER, V., "UK Government opt-in decisions in the Area of Freedom, Security and Justice", Commons Library Standard Note, The UK Parliament Official Documents, 19 October 2011, Standard notes SN06087.

JHA matters), whether it wishes to participate in the adoption and application of any such proposed measure".

"So if the UK notifies the President of the Council of its intention to participate within that three month period, **there is no possibility of opting out later**. **If the measure is adopted, the UK would be bound**, the European Court of Justice (ECJ) will have jurisdiction over the measure and the Commission will have the power to enforce in respect of any failure to implement properly the measure".

b) **If the UK does not opt in by the three month point**, "it is still entitled to a seat at the negotiating table, **but has no vote and, as a result, has reduced negotiating weight** with which to shape the proposal". "The Government does not, however, need to inform the Council if it decides not to opt in to a legislative proposal[364]."

c) Finally, the Treaty provides the UK with the possibility that "**at any stage after a measure has been adopted, indicate its wish to participate**, though the Commission has to approve and the Commission and Council can impose conditions".

The result of the provisions specified in Protocols 19 and 21 that allow the United Kingdom to adopt the decisions its deems pertinent (known as "opt-in") establishes a complex system in which the United Kingdom does not form part of the Schengen acquis (opt-out), yet we should examine which of the decisions adopted by those states that are party to the Schengen Area the UK has decided to incorporate into its legislation.

The Council Decision of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland[365] to take part in some of the provisions of the Schengen acquis (2000/365/EC) develops the mentioned protocols and allows the United Kingdom to participate in specific provisions of the Schengen acquis, which are specified in the first article of this Decision. .

In a general sense, the UK has opted in[366]:

a) To the Schengen Information System and the improved version (SIS II). British police and border control staff can access the SIS through the Police National Computer.
b) The UK also supports the Commission's proposal to establish a special agency of the EU to manage all the IT systems connected with justice and home affairs work at EU level.
c) The UK also supports the Frontex border agency and has made strengthening it one of the eleven priority points for the new Government's EU policy set out in the Strategic Defence & Security Review.

The Report to Parliament on the Application of Protocols 19 and 21 to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) ('the Treaties') in

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[364] UK Government, "Report to Parliament on the Application of Protocols 19 and 21 to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) ('the Treaties') in Relation to EU Justice and Home Affairs Matters 1 December 2010 – 30 November 2011", UK Government: Ministry of Justice, January 2012.

[365] European Union, "Council Decision of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis" , 1 June 2000, 2000/365/EC, Official Journal L 131.

[366] UK European Movement, "The Schengen Area", The UK European Movement Publications, from: <http://www.euromove.org.uk/index.php?id=18538>, (accessed 7 January 2013).

relation to EU Justice and Home Affairs Matters (1 December 2010 – 30 November 2011)[367] include the following tables:

1. The table of all JHA opt-in decisions and Schengen opt-out decisions taken from 1 December 2010 until 30 November 2011.
2. The table of all opt-in and Schengen opt-out decisions expected in 2012.

Reasons against

At present, while the Irish Government has expressed an aspiration to join the Schengen Area at some point in the future, the UK Government has no official plan to do so in the short or medium term. What seems certain is that a **referendum would be required** under Section 6 of the European Union Act 2011 if a UK Government wished Britain to join the Schengen Area.

The British Government's main objections to joining the Schengen Area largely centre around political questions since entry into the Schengen Area would involve a loss of sovereignty in the areas of immigration, security and justice, powers that the UK is unwilling to relinquish.

Given its imperial history, its island status and the weight it carries on the international stage, the United Kingdom has always received the highest levels of immigration and ranks among the first EU states to receive the highest number of requests for political asylum. For these reasons, the UK has a long tradition and consolidated experience in designing its own immigration policy and applying its own legal provisions, which we do not believe the United Kingdom is willing to renounce.

These aspects aside, we should add that the United Kingdom fears that recognition of the legal framework of Schengen would result in increased levels of immigration and a rise in asylum requests. Furthermore, the British believe that this legal framework "does not reflect the UK's needs and the rules of which can be decided by qualified majority voting".[368] Lastly, the UK has misgivings as to the type of immigration controls being carried out by certain EU states, which are less stringent than the United Kingdom's in their interpretation and implementation of immigration policies; "the difficulties in maintaining the external borders of the Schengen Area are such that the UK lacks faith in the ability of its fellow Member States to prevent an increase in illegal migration to the UK if it joined Schengen."[369] This is borne out by the crisis between France and Italy in 2011 over the influx of migrants from Tunisia, to which we referred above or to the on-going problems of illegal immigration across the border between Greece and Turkey.

In addition to these objections, there is the question of Gibraltar since United Kingdom's entry into the Schengen Area would also include Gibraltar's entry. Gibraltar joined the EU as a European territory for whose external relations Britain is responsible. Thus, Gibraltar, like the UK, does not form part of the Schengen Area and the result is an external Schengen border with Spain. As we have already discussed, the United Kingdom and, therefore, Gibraltar as well does participate in certain police and judicial cooperation aspects of the Schengen acquis.

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[367] UK Government, "Report to Parliament on the Application of Protocols 19 and 21 to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) ('the Treaties') in relation to EU Justice and Home Affairs Matters 1 December 2010 – 30 November 2011", UK Government: Ministry of Justice, January 2012.

[368] UK European Movement, "The Schengen Area", The UK European Movement Publications, from: <http://www.euromove.org.uk/index.php?id=18538>, (accessed 7 January 2013).

[369] Ibidem.

> "A decision on this request shall be taken by the Council acting with the unanimity of its Members referred to in Article 1 of the Schengen Protocol and of the representative of the Government of the United Kingdom".

Regarding Gibraltar, the Second paragraph of article 5 sets out which of the provisions shall apply to Gibraltar, thus not all the provisions contained in Article 1 are applied. The list of provisions for Gibraltar is shorter than those for the United Kingdom.

Moreover, the decision of the United Kingdom to join the Schengen Area must meet with unanimous approval of the Schengen member states and the question of Gibraltar could pose an obstacle given that it would need Spain's approval.

> "Should the British Government decide to join the Schengen Acquis in the future, the unanimity requirement in the Amsterdam Treaty could mean that entry by Britain, and by extension Gibraltar, would be blocked by the Spanish government, unless Britain agreed to exclude Gibraltar. This could create further obstacles to free movement to and from the Rock[370]".

The United Kingdom's interests in Schengen do not seem to concur with those of Gibraltar and Spain. While the United Kingdom does not seem overly interested in consenting to Schengen acquis

> "The Conservative Government did not intend to join Schengen because of its incompatibility with the UK's policy on the need to retain border controls. The Labour Government has expressed similar views and has said that it has no intention of joining. The Foreign Secretary said in an exchange in the Commons in November 1997".
>
> "… there is no intention on the part of Her Majesty's Government to enter the Schengen acquis. On the contrary, the main gain from the Amsterdam treaty for Britain is that it has achieved a clear legal foundation for our border controls, which was never obtained by the Conservative party in 18 years".

It is reasonable to assume that Gibraltar would have an interest and good reason to join the Schengen Area since it shares a physical border with Spain and its entry would entail enormous advantages in technical and operational questions.

> "The Gibraltar Government, on the other hand, is for economic reasons extremely keen to join Schengen and be free of both official and unofficial border controls[371]".

Informally, the Gibraltarian daily, "Panorama"[372] reported that:

> "The Trading circles say that the frontier has to be brought up to the operational levels of all other European ones, with red and green channels, and elimination of unnecessary queues."

We have been unable to locate a Spanish official to comment on this, but a Gibraltarian press report claimed "The Spanish Government would not object to Gibraltar Joining Schengen",[373] for two main reasons, because it would be viewed as a rapprochement towards Gibraltar's interests and for reasons of operability, which would facilitate business interests, avoid long queues of traffic into and out of Gibraltar and avoid passport controls in airports.

[370] House of Commons – UK Parliament, Gibraltar, the United Kingdom and Spain, House of Commons RESEARCH PAPER, 22 April 1998, HC 98/50.
[371] Ibidem.
[372] GARCIA, J.; "Spain would not object to Gibraltar joining Schengen", Gibraltar News Panorama, December 2012.
[373] Ibidem.

However, it would be difficult for Gibraltar to join the Schengen Area because since it is not a decision for Gibraltar to take unilaterally because the United Kingdom is responsible for Gibraltar's foreign affairs.

> "Shortly after the Amsterdam summit, the Europe Minister was asked what arrangements had been made for Gibraltar to enter the Schengen area if it decided that it was in its interest to do so, to which the minister replied that it was "for the United Kingdom to decide whether or not to apply to join in any, or all, of the Schengen arrangements". Since Gibraltar is part of the UK for most EU purposes, there could be no question of unilateral decision-making in this area by the Gibraltar government".

Any agreement reached between the United Kingdom and Spain to authorise the entry of Gibraltar alone into the Schengen Area would bring about a paradox, in that passengers arriving from Britain would have to go through passport control, even if the Spanish do not. Such a situation would be interpreted, as the daily reports, to what we referred to as:

> "Joining Schengen without Britain could be construed as entering Schengen with Spain[374]."

In addition, it would give rise to political speculations, which Spain could use to its advantage but which would harm the interests of the United Kingdom and, above all, the Gibraltarian government's, which rules out any idea of forming part of Spain. Thus, we conclude that for the present, historical and geopolitical interests prevail over the operability and efficiency of lifting the border.

In short, the historical, political and geopolitical factors that explain United Kingdom's refusal to form part of the Schengen Area do not seem easy to resolve, therefore we can conclude that it will not join said area in the short or medium term. The possibility of accepting certain provisions as laid down in the TEU are sufficient to adequately meet the interests of the United Kingdom.

5. <u>The campaign against the Charter of Fundamental Rights</u>

The analysis of the United Kingdom's approach to the Charter of Fundamental Rights reveals three key aspects: the adoption of the Charter in 2001, the incorporation of the Charter into the failed draft constitutional treaty signed in 2004, and the entry into force of the Lisbon Treaty in 2009.

The Charter of Fundamental Rights signed at the EU's Nice Summit in December 2000 was adopted without being included in any treaty. As a political declaration, it was not legally binding; national law courts and the European Court of Justice could consider the Charter in their rulings, but they were not bound by its content, therefore it was declaratory in nature. In fact, the then British Minister for Europe, Keith Vaz, mocked the nature and status of the Charter, claiming it had as much legal value as "The Beano", a famous British children's comic.

> "The Charter as agreed in Nice but not incorporated into the Treaties would exist as a mere a declaratory document.[375]"
>
> 'The Charter of Fundamental Rights will be no more binding than the Beano or the Sun' (…) "It will not be legally enforceable.[376]"

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[374] Ibidem.
[375] See the written question P-3997/00 by Charles Tannock, MEP, to the Commission, 13 December 2000.
[376] Open Europe, "The EU Charter of Fundamental Rights: Why a fudge won't work", Open Europe, June 2007, from:

Hence, given that it was not legally binding, the United Kingdom did not put up any significant opposition to the adoption of the Charter in 2000. Nevertheless, on 10 July 2003, the European Convention finalised the draft treaty establishing a Constitution for Europe and submitted it to the President of the European Council. The draft of the Constitutional Treaty incorporated the EU Charter of Fundamental Rights as Part Two of the text, so as a result of this inclussion the Charter's status changed from being a mere political declaration[377] to acquiring a legal status and thus making it legally binding.

Politicians' opinions regarding the doctrine at the time were blunt, considering that by no means should the Charter be included as part of the Constitutional Treaty, and even less so make it legally enforceable.

> "Apart from anything else, the UK Government could not allow the Charter to be incorporated into EU law under the new constitutional treaty or made legally binding because it would be an obvious retreat from the Government's earlier promises" (...) "Part of the British argument, put in the Convention that drew up the Constitutional Treaty, was that the Charter had been written as a political text and it needed to be adjusted to make it a legal one. In the event the Charter was added to the Constitutional Treaty with little change to its original wording and accepted by the British Government, although this caused some political difficulties[378]."
>
> "Our case is that it should not have legal status, and we do not intend it to. We will have to fight that case.[379]"

Despite these opinions, which up to then were consistent with United Kingdom's during the first round of negotiations on the Constitutional Treaty, the British , surprisingly, did not object to the inclusion of the Charter in the body of legislation of the Treaty or to the recognition of its legal status. The British government only called for the inclusion in the text of "safeguard" clauses that expressly states that the Charter would not affect the national law of the member states. In opinion of legal experts, this made little sense because if the Charter were recognised as being legally binding, it would affect national legislation.

> "Open Europe's legal analysis, based on interviews with judges at the European Court of Justice, shows that there is a powerful body of evidence that even with such "safeguards", the Charter would still come to change national law[380]".

In subsequent talks, the United Kingdom adopted a more reticent stance towards the inclusion of the Charter in the constitutional text, which was more in line with the official position the UK had maintained until then. Therefore, London opposed both the inclusion and recognition of its legal status. Nevertheless, and curiously, in the draft text of the Treaty that was presented at the Intergovernmental Conference in 2004, the text of the Charter was included the Constitutional Treaty.

> "The draft mandate for the forthcoming Intergovernmental Conference circulated by Angela Merkel on 19 June proposes that "the article on fundamental rights will contain a cross

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<http://www.openeurope.org.uk/Content/Documents/PDFs/charteranalysis.pdf>, (accessed 23 January 2013).

[377] See: European Union, "The Charter of Fundamental Rights of the Union", 16 December 2004, Official Journal of the European Union C 310/41.

[378] Open Europe, "The EU Charter of Fundamental Rights: Why a fudge won't work", Open Europe, June 2007, from: <http://www.openeurope.org.uk/Content/Documents/PDFs/charteranalysis.pdf>, (accessed 23 January 2013).

[379] House of Commons, Official Report [Hansard] House of Commons, 11 December 2000, col. 354.

[380] Open Europe, "The EU Charter of Fundamental Rights: Why a fudge won't work", Open Europe, June 2007, from: <http://www.openeurope.org.uk/Content/Documents/PDFs/charteranalysis.pdf>, (accessed 23 January 2013).

> reference to the Charter on Fundamental Rights, giving it legally binding value and setting out the scope of its application[381]."

Whereupon, with the text of the Charter incorporated into the body of the Treaty, a number of amendments in the form of safeguard clauses were proposed at the conference in order to limit the effects of the Charter on the national legislation of the member states.

> The amendments to the Charter proposed in the 2004 IGC would have made the following three changes[382]:
>
> Article II-111: "This Charter does not extend the scope of application of Union law beyond the powers of the Union".
>
> Also added are two new paragraphs to Article II-112 of the Charter:
>
> "II-112(4) Insofar as this Charter recognises fundamental rights as they result from the Constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions."
>
> "II-112 (5) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."

The proposed wording of the legal safeguards had several obvious flaws, and EU judges believed they would not prevent the Charter from affecting national laws.

Finally, on 20 April 2004 the then British prime minister, Tony Blair, unexpectedly promised a referendum, a proposal he had previously rejected. Nevertheless, there was no time to hold it because France and the Netherlands both rejected the Constitutional Treaty in their respective referendums in 2005, thereby bringing the ratification process to an end.

Unlike the United Kingdom' position on the Constitutional Treaty, it was adamant that it would not accept the inclusion of the Charter in the Lisbon Treaty's body of legislation, hence it was not included. However, although it was not included, the Lisbon Treaty very ambiguously attributed it the same legal value as the Treaties.

Article 6 of the Treaty on the European Union states:

> "The Union recognizes the rights, freedoms, and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007, which shall have the same legal value as the Treaties".

In that sense it should be regarded as part of 'primary law' of the EU with which EU legislation should be in compliance. Some clarifications were done, such as article 51 (2) of the Charter and article 6(1) TEU, which state that the Charter does not extend the competence or powers of the EU.

Some academics, such as the constitutionalist expert Leczykiewicz,[383] hold that "neither the Treaty nor the Charter, which both apparently lay down that the Charter does not establish any new power or task for the EU, nor the UK/Polish Protocol will be able to prevent this

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[381] Ibidem.
[382] Ibidem.
[383] LECZYKIEWICZ, D., "The EU Charter of Fundamental Rights and its effects", *UK Constitutional Law Group Review*, 2011, p.3.

expansion". We will have wait and see what interpretation and clarity the European Court of Justice will make of it.

Likewise both the United Kingdom and Poland managed to negotiate a Protocol on the scope of the Charter's implementation, in which the rest of the parties insisted that the provisions included in protocol must clearly refer to specific aspects of the implementation of the Charter and that these must not affect the rest of the obligations contained in the Charter, to which both the United Kingdom and Poland are bound to. In this regard, the Protocol has two articles, and in its preamble,[384] it states that:

> "(…) NOTING the wish of Poland and the United Kingdom to clarify certain aspects of the application of the Charter;
>
> DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of Poland and of the United Kingdom and of its justiciability within Poland and within the United Kingdom;
>
> REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;
>
> REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States;
>
> REAFFIRMING that this Protocol is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally."

The interpretation of this protocol is not consistent. Some authors maintain that the protocol should be understood as an opt-out granted to the United Kingdom, while others believe it should not be interpreted as such since it is designed only to explain or clarify the scope of the Charter's implementation. In this thesis, we understand it in the latter sense; the protocol merely clarifies that the Charter will not serve as a justification or as an excuse to extend the powers of the European Union. In any case, the question of whether the protocol bites as an opt-out will only be settled in the courts.

> "Like many points of European law, the question whether the UK and Polish protocol to the EU Charter of Fundamental Rights amounts to a full opt-out is mired in confusion and political prejudice.
>
> Its characterisation as an opt out or a mere "clarification" depends on where one stands on the eurosceptic/europhile spectrum (…) **The status of this instrument is controversial, with pro-EU lawyers clustering on the "clarification" side and the eurosceptic press on the "full opt-out" side**. In her paper on the Charter Demetriou concludes that the protocol does nothing more than confirm that the Charter does not extend judicial powers. This is because the 8th and 9th recitals refer to "clarifying" the application of the Charter. This chimes with other advice from high places which characterises the function of the Protocol as interpretative only. Not entirely surprisingly, the **EU House of Lords' Select Committee** has declared that the Protocol is not an opt-out from the Charter. The Charter will apply in the UK, even if its interpretation may be affected by the terms of the Protocol.
>
> On the other hand, the Protocol taken at face value seems to bear out Tony Blair's declaration at the 2007 summit that the Charter was never going to be justiciable in British courts.

[384] European Union, "Protocol on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom", 17 December 2007, Official Journal of the European Union C 306/157.

Article 1 is worth quoting in full: "The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms[385]."

6. **The European Union Bill**

The European Union Bill is an Act of the United Kingdom Parliament, introduced in the House of Commons by Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, William Hague on 11 November 2010, after including the amendments on 13 July 2011. The text of the Bill was agreed by the House of Commons and the House of Lords and received Royal Assent on 19 July. The Bill is now an Act of Parliament (law) which entered into force the 21 July 2011.

According to the UK Parliament[386], "the Bill aims to strengthen the UK procedures for agreeing to or ratifying certain EU decisions and Treaty changes. The Bill has been drafted in the context of new EU methods of approving Treaty changes and calls for more public and/or parliamentary involvement in such decisions".

The key areas of this Act are the following ones:

- ✓ Provides for a referendum throughout the United Kingdom on any proposed EU treaty or Treaty change which would transfer powers from the UK to the EU
- ✓ Ensures that an Act of Parliament would have to be passed before a 'ratchet clause' or a passerelle (bridging clause) in the European Union Treaty could be used. In addition, if the passerelle involved a transfer of power or competence from the UK to the EU, this would also be subject to a referendum before the Government could agree to its use
- ✓ Enables the UK to ratify a Protocol to allow additional European Parliament seats for the UK and 11 other Member States during the current European Parliament term, and to legislate for the extra UK seat
- ✓ Provides for a clause that affirms that EU law takes effect in the UK only because Parliament wills that it should. This confirms the principle that Parliament is sovereign.

Although the press and the media paid little attention to the European Act 2011, when this was enacted in the UK[387], it should not viewed as a simple law as it is of utmost importance given the impact it will have on the relationship between the United Kingdom and the European Union since it redefines said relationship. The Act involves two highly significant novelties: The so-called sovereignty clause and the consultation obligation or referendum.

A) The sovereignty clause is set by Section18 of Part 3 of the General Act European Union Act 2011, which regulates the status of EU law. In principle, the aim of this was to strengthen the sovereignty of the United Kingdom Parliament relating to EU law, but in its final draft this objective was not achieved since it only confirms the principle of primacy of EU law over national law given that the Parliament of the United Kingdom decided so in 1972, through the European Communities Act.

Section 18 states "It is only by virtue of an Act of Parliament that directly applicable or directly effective EU law (that is, the rights, powers, liabilities, obligations, restrictions, remedies and

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[385] ENGLISH, R.; "The EU Charter: are we in or out?", UK Human Rights Blog, 1 March 2011, from: <http://ukhumanrightsblog.com/2011/03/01/the-eu-charter-are-we-in-or-out/>, (accessed 3 February 2013).

[386] UK Parliament, "Government Bill: European Union Act 2011", The UK Parliament Official Documents, from: <http://services.parliament.uk/bills/2010-11/europeanunion.html>, (accessed 3 February 2013).

[387] CRAIG, P., "The European Union Act 2011: Locks, limits and legality", *Common Market Law Review*, 2011, p. 1936.

procedures referred to in section 2(1) of the European Communities Act 1972) falls to be recognised and available in law in the United Kingdom[388]".

Gordon[389] likewise stated, "The provision contained in section 18 of the EUA was originally projected to be a 'sovereignty' clause, intended to reaffirm the sovereign character of the legislative power of the UK Parliament. **Yet the final text of the provision enacted in the EUA is no 'sovereignty' clause at all**".

If we examine the groundwork by the House of Commons European Scrutiny Committee,[390] regarding "the EU Bill and Parliamentary sovereignty"[391]published on 7 December 2010 and which would be taken as recommendations for the final draft of the European Act 2011, we observe that most of the experts that were consulted (the Committee received 14 written submissions and took evidence from five expert witnesses)[392] agreed that clause 18 is nothing more at most than a restatement of the doctrine of dualism. If it can be properly called a sovereignty clause at all, it is "sovereignty as dualism".

Thus, to better understand this idea of sovereignty as dualism, we must refer to "The European Union Act 2011: Locks, limits and Legality,[393] by Craig, one of the experts who participated in this Committee". In his study, we observe that the author sees two ways of understanding sovereignty: "sovereignty as dualism" and "sovereignty as primacy". In this case, section 18 corresponds to the first conception of sovereignty, since the United Kingdom is a dualist country, meaning there must be an Act of the Parliament that adopts or transforms the EU Treaty into UK law. **Viewed from this perspective there is nothing novel about section 18**. The European Communities Act 1972, and in particular section 2(1), is the gateway for EU Law becoming part of UK law.

Likewise, it seems interesting to note Craig's clarification that dualist systems, such as that which exists in the United Kingdom, are not contrary to the EU principal of direct applicability. The principle of directly applicable EU Law does not affect the relationship between UK law and EU law could be premised on dualism since the UK in 1972 expressly agreed to the Treaties, including the idea that regulations were directly applicable.Thus, insofar as rules of the EU law can have effect without the foundation of a particular statute this is because the EU Treaty and case law there under affirmed that this was so, and the UK agreed to this regime when joining the EEC via the European Communities Act of 1972.

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[388] UK Parliament, "European Union Act 2011", UK Government, from: <http://www.legislation.gov.uk/ukpga/2011/12/contents/enacted>, (accessed 5 February 2013).

[389] GORDON, M., "The European Union Act 2011", *The UK Constitutional Law Review*, 12 January 2012, p.3.

[390] The European Scrutiny Committee was appointed under Standing Order No.143 to examine European Union documents and to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected; to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and to consider any issue arising upon any such document or group of documents, or related matters.

[391] House of Commons European Scrutiny Committee, "The EU Bill and Parliamentary sovereignty", Tenth Report of Session 2010–11, London, The House of Commons, Vol. 1: Report, together with formal minutes, 7 December 2010, HC 633-I.

[392] Professor Paul Craig, Professor in English Law, St John's College, Oxford; Professor Trevor Hartley, Professor Emeritus of Law, London School of Economics; Professor Trevor Allan, Professor of Jurisprudence and Public Law, Pembroke College, Cambridge; Professor Adam Tomkins, Chair of Public Law, University of Glasgow; and Professor Anthony Bradley, Research Fellow, Institute of European and Comparative Law, University of Oxford.

[393] CRAIG, P., *The European Union Act 2011*, op. cit., pp.1-5.

Craig rules out the second conception, sovereignty as primacy, arguing the section 18 does not say what would happen in the event of a clash between the laws of the UK the EU. Indeed, the Explanatory Notes state that Section 18 was not intended to affect the primacy of EU Law.[394]

Hence, it shows that the European Scrutiny Committee, which by mentioning the UK's legal relationship with the EU, indicates that:

> "10. The UK is a 'dualist' state, unlike many continental European countries, which are 'monist'. In dualist states a treaty ratified by the Government does not alter the laws of the state unless and until it is incorporated into national law by legislation. This is a constitutional requirement: until incorporating legislation is enacted, the national courts have no power to enforce treaty rights and obligations either on behalf of the Government or a private individual.
>
> 11. Under the European Communities Act 1972 (ECA) Parliament voluntarily gave effect to the UK's obligations and duties under the former Community and now EU Treaties in national law. The ECA defines the legal relationship between the two otherwise separate spheres of law, and without it EU law could not become part of national law.
>
> 12. Section 2(1) of the European Communities Act 1972 provides:
>
> All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression "enforceable EU right" and similar expressions shall be read as referring to one to which this sub-section applies.
>
> 15. Section 3(1) provides:
>
> For the purpose of all legal proceedings any question as to the meaning or effect of any of the Treaties, or as to the validity, meaning or effect of any EU instrument, shall be treated as a question of law (and, if not referred to the European Court, be for determination as such in accordance with the principles laid down by and any relevant decision of the European Court).
>
> 16. **Section 2(4) and 3(1) give effect to the doctrine of the supremacy of EU law, as interpreted by the Court of Justice, over national law; and where EU law is in doubt, requires UK courts to refer the question to the Court of Justice. As a consequence of the rule of construction in section 2(4) all primary legislation enacted by Parliament after the entry into force of the ECA on 1 January 1973 is to be construed by the courts and take effect subject to the requirements of EU law. This obliges the courts to disapply legislation which is inconsistent with EU law**[395]".

Finally, all the experts witnesses of the mentioned Committee agreed that this clause is declaratory (but consequently not constitutive of a right).

In short, we agree with both Gordon and Craig, in that section 18, in its final draft, cannot be taken as a real sovereignty clause, especially if we understand it as a primacy clause. Accordingly, if a UK law had included a sovereignty clause as primacy it would have been contrary to the principles of EU law, such as the principle of direct effect or the principle of primacy of EU law. On the other hand, the interpretation of clause understood sovereignty as

[394] UK Parliament, "Government Bill: European Union Act 2011", The UK Parliament Official Documents, from: <http://services.parliament.uk/bills/2010-11/europeanunion.html>, (accessed 3 February 2013).
[395] UK Parliament: The European Scrutiny Committee, "The EU Bill and Parliamentary Sovereignty -The UK's legal relationship with the EU", The UK Parliament Official Documents, 2010.

dualism is consistent with type of system of reception of International law that the UK has, and with the above-mentioned principles of EU law.

B) The consultation or referendum obligation is contained in sections 2, 3 and 6 of the Act of 2011.[396]

Section 2 dealing with the Ordinary revision procedure, states that ratification of any Treaty that amends or replaces the TEU or TFEU will require a statement to be put before Parliament in accordance with section 5, approved by an Act of Parliament, and be put to a referendum, if it meets the following conditions:

> (a) the Act providing for the approval of the treaty provides that the provision approving the treaty is not to come into force until a referendum about whether the treaty should be ratified has been held throughout the United Kingdom or, where the treaty also affects Gibraltar, throughout the United Kingdom and Gibraltar,
>
> (b) the referendum has been held, and
>
> (c) the majority of those voting in the referendum are in favour of the ratification of the treaty.
>
> The second section also incorporates a condition for exemption of the holding of a referendum, which would be in the event that the Act providing for the approval of the treaty stipulates that the treaty does not fall within section 4.

Section 4 contains a list of areas that requires the holding of a referendum. Some of the examples in which this is required provide that it involves one or more of the following areas, are: for the extension of the objectives of the EU as set out in Article 3 of TEU; for the conferring on the EU of a new exclusive competence; for the extension of an exclusive competence of the EU; for the conferring on the EU of a new competence shared with the member States; or for the extension of any competence of the EU that is shared with the member States (…)

Section 3 refers to Amendment of TFEU under simplified revision procedure in Article 48(6) TEU. As in the second section, it requires the holding of a referendum if it is listed in section 4. The conditions for the holding of a referendum are the same as in the previous case.

Section 6 regulates those EU Decisions requiring approval by Act and by referendum related to the following main areas:

(a) Common EU Defence.
(b) Article 4 of Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to TEU and TFEU which relates to participation by the United Kingdom in a European Public Prosecutor's Office or an extension of the powers of that Office.
(c) Provisions for the adoption of qualified majority voting.
(d) Provisions regarding the ordinary legislative procedure in place of a special legislative procedure.
(e) Provisions regarding enhanced co-operation.
(f) Provisions regarding the "Schengen acquis."
(g) Provisions which would make the euro the currency of the United Kingdom.

[396] UK Parliament, "European Union Act 2011", UK Government, from: <http://www.legislation.gov.uk/ukpga/2011/12/contents/enacted>, (accessed 5 February 2013).

Similarly, for certain issues, although a referendum is not required, parliamentary approval is, as in the case of sections 7, 9 or 10.

Without any doubt, the European Union Act 2011 has direct repercussions for relations between the United Kingdom and the European Union, redefining and subjecting them to new national conditions, such as the requirement for a referendum or for parliamentary approval for certain questions. In part, we understand that Act 2011 completes and develops not only the European Communities Act 1972; it also seeks to make a formally written and solemn record through a Parliamentary Act of the place the United Kingdom holds, but above all that of its Parliament and nationals, in the drafting and implementation of the EU law, thus rejecting the role of passive recipient and committing itself to an active involvement in the process. At the same time, it lays claim the sovereignty of the British Parliament, understanding sovereignty as dualism, in which the United Kingdom accepts the principle of the direct effect or direct applicability in EU law, because there was a prior act of consent from the United Kingdom itself, through its parliament in 1972. We have already explained that all this is contained in the so-called sovereignty clause, in section 18 of Act 2011, but it has a declaratory nature. Therefore, this means that rather than contribute anything new, it only reproduces in writing something that is evident. Nevertheless, the inclusion in Act 2011 of a mandatory popular consultation in order to pass any amendment or change of those provisions that are stated in the Act is truly a new development.

The Report by the European Scrutiny Committee[397] clearly points to the importance of Act 2011 concerning UK-EU relations and mentions its implications:

> "(…) Given the complexity of the subject matter which it addresses, this Report sets out in some detail the legal relationship between the United Kingdom and the European Union and the current debate on the scope of Parliamentary sovereignty, before evaluating the Parliamentary sovereignty clause in the light of the evidence received and coming to our conclusions.
>
> 6. European legislation has a profound impact on the daily lives of the voters and the people of the United Kingdom in virtually every sphere of activity. The quantitative impact is significant. According to the House of Commons Library note of 13 October, "The British Government estimated that around 50% of UK legislation with a significant economic impact originates from EU legislation." But as the note also indicates, the qualitative effect is deeper, particularly with EU Regulations which automatically become part of national law as soon as they are adopted in Brussels.
>
> 7. All this is reflected in the immense range and impact of the myriad and specific competences and powers derived from the Lisbon Treaty. These can be judged by the several pages of the table of contents to the Treaty covering such matters as external action, foreign and security policy, security and defence policy, citizenship, internal market, agriculture, fisheries, free movement, border checks, asylum and immigration, civil and criminal and police matters, justice and home affairs, transport, competition, tax, economic and monetary policy, employment and social policy, public health, consumer protection, industry, the environment, energy, commercial policy and financial provisions.
>
> 8. All of these are regulated within a framework of European Union law within the jurisdiction of the Court of Justice of the EU with implications for Parliamentary sovereignty. Recent vivid examples of the application of European Union law and jurisdiction include provisions relating to the City of London, European economic governance and the Irish bailout, to name but a few".

[397] House of Commons European Scrutiny Committee, "The EU Bill and Parliamentary sovereignty", Tenth Report of Session 2010–11, London, The House of Commons, Vol. 1: Report, together with formal minutes, 7 December 2010, HC 633-I.

7. **Announcement of referendum for 2017**

At the time of drafting this chapter, I have just learned that the British Prime Minister, David Cameron has announced the holding of a referendum by the end of 2017. We find ourselves at one of the most crucial junctures in UK-EU relations since 1975, when United Kingdom held a nationwide referendum to decide whether to continue membership of the then European Community.

This demonstrates some similarities between the current situation we are experiencing and the global socioeconomic context in 1975, which was marked by the so-called petrol crisis and the banking and financial crisis following the collapse of the Bretton Woods fixed exchange rates.

The United Kingdom was never really in agreement with a large part of the terms of the main policies of the Communities, which were at odds with the United Kingdom's own interests. In fact, many of the reasons that led to this dissatisfaction remain valid to this day. These include the common agriculture policy or trade policy and the United Kingdom's wish to enlarge the common market, instead of focusing on the path of closer integration or its unwillingness to work towards political union or a European federal state. It is important to recall that the United Kingdom joined the European Communities for two main reasons: first, because "The Six" were making swift progress in the economic and trading areas that did not include the UK, and second, because it was losing its capacity to influence; not least after the fiasco of the EFTA, when the UK knew it would be unable to compete with the European Communities, and while it did not share Monnet and Schuman's federal goals, London knew that once inside the project it would be easier to bring its influence to bear in order to steer the EEC towards a course more in line with its own interests, which were essentially trade. However, things did not turn out this way.

In this climate dissatisfaction, not long after joining the Common Market, the prime minister of the day, Harold Wilson, decided to hold a referendum on whether the United Kingdom should remain in European Community. Nearly 70% of British backed the UK's continued membership.

Nevertheless, Wilson pledged that whatever the outcome, he would negotiate the terms of its membership. It is important to note the United Kingdom's constant preoccupation with redefining its relationship with the European Union, which is precisely due to its disagreement on the organisation's medium- and long-term goals as well as the design of the project itself, the British often criticised for its protectionist policies, such as the common agriculture policy, which were consistent with the interests of determined states. To our mind, as long as the British interests in the European project are not settled or a new formula is not found that would meet with the United Kingdom's approval, referendums on continued membership will be rather constant; that is, of course, if it does not decide to leave the project beforehand. Any new formula would involve a more flexible form of membership, which would enable those states that so desire to involve themselves as much as they wish, or it would involve withdrawing its membership and establishing an ad hoc agreement that would essentially afford them trade benefits.

As the British press stated, David Cameron announced:

> "The objective of an "ever closer union" which was the founding principle of the EU should no longer apply to Britain. (…) "We understand and respect the right of others to maintain their commitment to this goal. But for Britain – and perhaps for others – it is not the objective".
>
> "Power must be able to flow back to member states, not just away from them," he said. "Nothing should be off the table." He added: "The biggest danger to the EU comes not from those who advocate change, but from those who denounce new thinking as heresy (…)[398]".

Nonetheless, we also have noted major differences between the 1975 referendum and the one to be held by the end of 2017. There is no doubt that the current situation in which the United Kingdom finds itself regarding the European Union is quite unlike the situation it was experiencing in 1975; not only for the fact that the European project has undergone profound changes since then, but also because the United Kingdom has forged important ties with the European Union. European legislation has a profound impact on the daily lives of the voters and the people of the United Kingdom in virtually every sphere of activity. "The quantitative impact is significant." According to the House of Commons Library note of 13 October "The British Government estimated that around 50% of UK legislation with a significant economic impact originates from EU legislation." But as the paper also indicates, the qualitative effect is deeper, particularly with EU Regulations which automatically become part of national law as soon as they are adopted in Brussels[399]".

In trade and economic terms, the United Kingdom is strongly dependent on the EU market, hence severing ties with the European Union would not be easy now that they are at a more advanced stage than in 1975, when it had just joined. The current trend of the United Kingdom, however, is towards breaking away since our examination of the recently passed European Union Act 2011 shows how the United Kingdom is "shoring up its sovereignty", incorporating complex mechanisms for the transfer of further competencies or the adoption of reforms that would imply changes in the European project through, for example, the holding of popular consultations to decide on the matters established in the Act.

In 1975, the then prime minister, Harold Wilson, was a Labour Party member, while the current Prime Minister, David Cameron is a Conservative. This difference further corroborates the idea of popular discontent with the European project en general, and its relationship with the United Kingdom in particular, which cannot be identified with a single school of thought.

There have been few details about the proposed referendum. On 23 January 2013, Cameron officially announced his pledge to hold a nationwide referendum by the end of 2017 on remaining or leaving the EU. What is clear is that, as Harold Wilson did 1975, Cameron advocates a fundamental change in Britain's relationship with the European Union. Therefore, even if the result of referendum is favourable to retaining membership, there is no doubt, as in the previous referendum, that there will be a renegotiation of the terms of its membership. The precise question that will be put to the British electorate has yet to be decided, but Mr Cameron has said it will be an in/out referendum, therefore there will be little scope as to the type of question, which will be along the lines of the one in 1975: "Should the UK stay in the European Community (Common Market)?", although adapted to the new EU structure, set by the Lisbon Treaty, namely, instead of European Community, it will use the term European Union.

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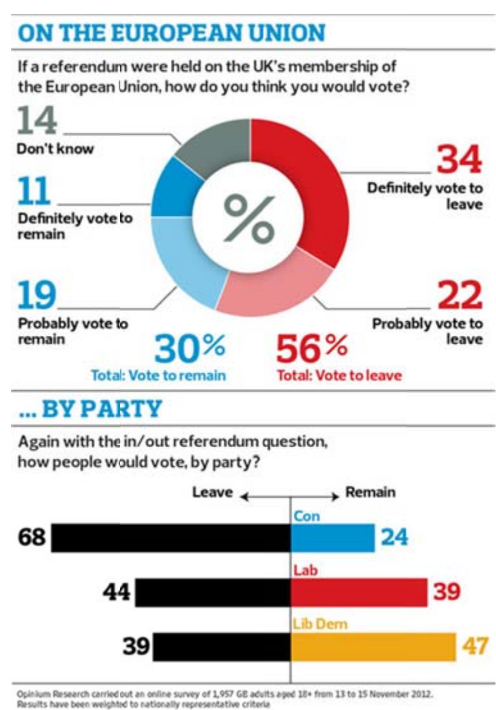
[398] GRICE, A., "It is time for the British people to have their say': David Cameron promises EU exit vote by 2017", The Independent News, 23 January 2013.

[399] House of Commons, "How much legislation comes from Europe?", House of Commons Library, 13 October 2010, RESEARCH PAPER 10/62.

The latest official opinion polls published in late 2010 showed that the 47% of the British people would favour leaving the UE. "The older generation appears particularly keen for Britain to leave its EU days behind. A substantial 57% of those over 60 say they would vote to leave the EU, compared to 31% of the younger 18-24 age group[400]."

The British press published the results[401] of a survey in November 2012 showing that 56% of the population would favour abandoning the UE. The most relevant aspect of the survey is that the majority of both Conservative and Labour voters are in favour of leaving the EU. Only the Liberal Democrat voters would be against.

> "The Opinium/Observer survey finds that 56% of people would probably or definitely vote for the UK to go it alone if they were offered the choice in a referendum. About 68% of Conservative voters want to leave the EU, against 24% who want to remain; 44% of Labour voters would probably choose to get out, against 39% who would back staying in, while some 39% of Liberal Democrats would probably or definitely vote to get out, compared with 47% who would prefer to remain in the EU."



We can see that in the two-year period between the first and the second survey, the percentage in favour of leaving the EU has raised from 47 % to 56%. Nevertheless, the outcome is uncertain; the election is some years away and the socio-economic context and situation of the EU may change significantly. Moreover, although Cameron has announced his intention to hold a referendum by the end of 2017, he will first have to be re-elected in 2015. Therefore some see Cameron's announcement as a Conservative electoral ploy strategy for the 2015 election "to minimize UKIP impact and put Labour on the spot with the traditionally Eurosceptic swing voters of middle and Southern England." [402]

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[400] HART, N., "EU Referendum, The UK Government", (September 2010), from: <http://yougov.co.uk/news/2010/09/10/eu-referendum/>, (accessed 15 February 2013).

[401] BOFFEY, M., HELM, T., "56% of Britons would vote to quit EU in referendum, poll finds", The Guardian, 17 December 2012.

[402] The Economist, "Britain and the EU: Muscles in Brussels", The Economist, 14 January 2013.

outcome is uncertain; the election is some years away and the socio-economic context and situation of the EU may change significantly. Moreover, although Cameron has announced his intention to hold a referendum by the end of 2017, he will first have to be re-elected in 2015. Therefore some see Cameron's announcement as a Conservative electoral ploy strategy for the 2015 election "to minimize UKIP impact and put Labour on the spot with the traditionally Eurosceptic swing voters of middle and Southern England." [403]

8. British Euroscepticism:

We have left until last the main stumbling block hindering relations between the UK and the EU, which has been long present even prior to the UK accession process and which is more evident than ever today. Therefore, we will examine this point in greater depth by referring to leading experts in this field. Accordingly, Menno Spiering [404] analyses in depth the meaning of Euroscepticism. First of all, the above-mentioned author explains that the term was coined in Britain in the mid-1980[405]s, and has since been widely used in the media and has been adopted by many individuals and organisations, in as well as outside Britain. Almost all studies on 'Britain and Europe' which have appeared since the early 1990s mention the term Euroscepticism, and tend to do so in relation to the entire postwar period. In his monumental *This Blessed Plot: Britain and Europe from Churchill to Blair* Hugo, Young[406] labels the former Labour leader Hugh Gaitskell (1906-1963) 'the first Eurosceptic'. Stephen George[407] grants the honour to another Labourite of the 1960s, James Callaghan.

In short, in origin, the word Euroscepticism is evidently journalese and was coined in the 80s, this is beacuese Anglo-European relations did not start, nor did they start to be troublesome at this time. Thus, Spiering sets up that although the term Euroscepticism might be relatively young in Britain what it appears to denote goes back a long time. Nowadays, the term seems only to gain in currency in Britain and elsewhere, and is increasingly attracting academic attention.

Spiering goes on to try to define the term. So, in his opinion, there is clear consensus that the 'Euro' in Euroscepticism refers to the European Union and its precursors, while 'sceptic' means 'doubtful'. Thus, the majority of scholars and commentators leave it at that, and consequently regard every British doubt, past and present, about the European institutions as a sign of Euroscepticism. Forster[408], together with many others, employs the term in a non-specific way, as a portmanteau for every British reservation ever expressed about postwar European cooperation and integration. Winston Churchill, Harold Wilson, Margaret Thatcher, they were all Eurosceptics, albeit in their own ways.

Evidently for Spiering a broad interpretation of British Euroscepticism is possible and popular, but it renders the concept almost meaningless. Very occasionally more specific definitions have been suggested. For Spiering, a very valid one is the Stephen George's[409] definition: 'it has to be said that in Britain the term has come to refer to a rather stronger position which is hostile to British participation in the European Union'. Thus, coined at a time of great tensions

[403] Ibidem.
[404] SPIERING, N., "British Euroscepticism", *Journal of European Studies*, Vol. 20, 2004, pp. 127-149.
[405] The earliest citation in the Oxford English Dictionary is from *The Times* of 30 June 1986. In fact the same newspaper used the word some months earlier, on 11 November 1985.
[406] YOUNG, H., *This Blessed Plot: Britain and Europe from Churchill to Blair*, London, Macmillan, 1999, p. 34.
[407] GEORGE, S., "Britain: Anatomy of a Eurosceptic State", *Journal of European Integration*, Vol. 22, 2000, Num. 1, pp. 15-33.
[408] FORSTER, A., *Euroscepticism in Contemporary British Politics: Opposition to Europe in the British Conservative and Labour Parties since 1945*, London, Routledge, 2002, p.104.
[409] GEORGE, S., "Britain: Anatomy of a Eurosceptic State", op cit, p.15.

between Margaret Thatcher and the European Commission, Euroscepticism immediately acquired connotations of extremism. In *The Times*, in the first articles that mention the term, 'Euro-sceptic' is freely mixed with 'anti-Marketeer', the word reserved for those who had altogether rejected continued EEC membership.

Spiering regards that in the following years the word became solidly associated with Mrs. Thatcher's famous 'No, No, No' (pronounced in 1990 in respect of moves towards more European integration). Finally Spiering thinks that there are further indications that British Euroscepticism is at heart about rejecting UK membership. First, the term is sported as a badgeof honour by those who actively seek to withdraw Britain from the EU. The Internet[410] bristles with British organisations calling themselves Eurosceptic and demanding that the UK 'get out'.

Spiering regards that British Euroscepticism has two special qualities. First, it has an emotiveness only matched perhaps in some of the Scandinavian countries, where perceived differences between a 'Nordic'[411] and more southern European identity have also led to impassioned arguments. There is little doubt that Hugh Gaitskell's words about the British not being Europeans were genuinely felt. Equally, Margaret Thatcher's face showed conviction when in the 1993 BBC series *The Downing Street Years*, she declared: 'There is a great strand of equity and fairness in the British people. This is our characteristic. There is no strand of equity and fairness in Europe. They are out to get as much as they can. This is one of those enormous differences.' Second, and perhaps more importantly, because Anglo-European relations can so easily stir emotions about 'enormous differences', Euroscepticism is a resource to be exploited by politicians and the press alike. Many of the tabloids routinely carry reports about nation-threatening directives which are dreamt up not just by 'Brussels', but by 'the Europeans'.

In conclusion, though Euroscepticism can and is used in a general sense, as a label for all views more-or-less critical of the EU, in Britain the term has always had radical connotations. Following Paul Taggart's and Aleks Szczerbiak's[412] suggestion, British Euroscepticism must be classified as 'hard', in other words, a British Eurosceptic 'promotes the idea that Britain withdraw'.

In this same line, Leonard Ray regards that clearly there is a range of possible attitudes which can fall under the Eurosceptic label. For Flood, [413]euroscepticism "carries the meaning of doubt and distrust on the subject of European integration." Flood goes on to indicate that the degree of this distrust can range from moderate "European integration has gone as far as it should go" to extreme "outright rejection of membership in the EU". Paul Taggart and Aleks Szczerbiak[414] distinguish between at least two types of Euroscepticism- hard, and soft. I repeat their definitions below:

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[410] From <www.euro-sceptic.org> (accessed 2/09/2010) *devoted to critical debate on Europe and helping others continue the debate.* One of the best searchers engines on Euro-sceptic websites.

[411] See Milena Sunnus' article on Sweden elsewhere in this volume. SPIERING, M., "British Euroscepticism", op. cit., p. 149.

[412] TAGGART, P., SZCZERBIAK, A., "The Party Politics of Euroscepticism in EU Member and Candidate States: Opposing Europe Research Network", Sussex European InstituteM Working Paper 6, 2002, from: <sussex.ac.uk/Units/ SEI/ pdfswp51.pdf>, (accessed 3 March 2013).

[413] CHRISTOPHER, F., *The Challenge of Euroscepticism*, in GOWER, J ed., *The European Union Handbook*, Chicago, Fitzroy Dearborn Publishers, 2002, pp. 73-84.

[414] TAGGART, P., SZCZERBIAK, A., "The Party Politics of Euroscepticism in EU Member and Candidate States: Opposing Europe Research Network", op cit, p. 73.

> *"Hard Euroscepticism is where there is a principled opposition to the EU and European integration and therefore can be seen in parties who think that their counties should withdraw from membership, or whose policies towards the EU are tantamount to being opposed to the whole project of European integration as it is currently conceived."*

> *"Soft Euroscepticism is where there is NOT a principled objection to European integration or EU membership but where concerns on one (or a number) of policy areas lead to the expression of qualified opposition to the EU, or where there is a sense that 'national interest' is currently at odds with the EU's trajectory*."

After explaining the meaning of British Euroscepticism, the following paragraphs will seek to clarify why Britons are the most eurosceptic people in Europe. A Eurobarometer[415] survey published by the Comission in June 2008 asked wether membership of the EU was a good thing. The average response of citizens across the EU was that 52% thought it a good thing. But in the UK the answer was 30%, with only Latvia on 29% scoring lower.

According to Grant five reasons explain Britain's Euroscepticism, three of which are easily understood[416]. The first one is a geographic reason. For Grant, the fact that British people live on an island on the edge of the continent makes that they have always been inspired by the oceans. Thus, the British talk of Europe as another place. Britain's history has been very different to that of most continental powers. Its colonies, trade, investments and patterns of emigration and immigration have been focused on North and South America, Africa Africa and Asia as much as on Europe. To some extent France, Holland, Spain and Portugal shared this maritime experience, while the other European states sought to build empires or wield influence mainly in their neighbourhoods. Although Britain has been involved in countless European wars, its history has been more orientated to other continents than that of any continental power. Even France, which had colonies all over the world, has focused its ambitions on Europe for much of its history. Churchill famously told de Gaulle that faced with a choice between the continent and *le grand large*, the British would always choose the wide open seas. Today, London is by far the most cosmopolitan city in Europe; more than 30 per cent of its population was born outside the UK.

Secondly, in Grant's opinion, Britain's History helps to explain British Euroscepticism. The above-mentioned author explains that Britain's relatively glorious role in the Second World War plays a potent role in nourishing euroscepticism. Virtually every other major European nation has something to be ashamed of in that war. A lot of countries were on the wrong side. Others were conquered. And others stayed neutral. British popular culture is still heavily focused on the Second World War.The British do not want to forget the history of which they feel proud. Whereas other countries want to forget this part of the history and have moved on supporting the EU as means of ensuring that the horrors of the Nazi period can never be repeated. Memories of the war give Britons a smug sense of moral superiority. Margaret Thatcher often said that the continent of Europe has been the source of most of Britain's ills, and that the Anglo-Saxon nations, and in particular the Americans, have repeatedly rescued Britain from those ills. Many Britons, especially the older generation, would agree with her.

In keeping with Grant, Spiering [417]regards that Euroscepticism has been present in Britain longer, and is stronger than in the other member states. In his opinion, it is widely recognised that after the Second World War British governments perceived the international position of their country to be dissimilar to that of the Continental countries. Having won the war and

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[415] European Commission, "Eurobarometer 69 Public Opinion in the EU", European Commission: Directorate General Communication, June 2008.

[416] GRANT, C., "Why is Britain eurosceptic?", Center for European Reform Essays, December 2008, pp. 1-8.

[417] SPIERING, M., "British Euroscepticism", op cit., pp. 377-399.

with some of their Empire still intact the British suffered from delusions of grandeur and regarded the Continental with condescension[418]. By way of illustration it is often recalled that Britain deigned to send a 'mere' undersecretary of the Board of Trade to the discussions following the 1955 Messina Conference where plans for a European Economic Community were first launched.

According to Grant the third reason is Economics. In the 1970s, Britain was regularly described as the sick man of Europe; nowadays that epithet is most often applied to Italy. In the 1980s, many British politicians had argued that Britain had a lot to learn from the way that France and Germany ran their economies. By the late 1990s the predominant view in the UK was that the rest of Europe had a lot to learn from the British. So, since the mid- 1990s, the UK economy has out-performed the leading economies of Western Europe – France, Germany and Italy – by most measures. Britain has had relatively high growth and low unemployment. Britain has appeared to benefit from the structural reforms of the Thatcher period, such as the liberalisation of labour markets, the openness to foreign investment and – though this is now open to some challenge – the fostering of vibrant financial markets. In the late 1990s and early 2000s the unemployment rate in Spain, Italy, France and Germany was around twice that of the UK. Grant points out that the contrast in economic fortunes between Britain and the eurozone is the biggest reason why Tony Blair's government never found the courage to fight a referendum on joining the euro.

Finally the above-mentioned author explains that the financial crash of 2008, and the fact that Britain is entering a particularly severe recession, is likely to diminish the hubris of Britain's political class about their economic model. It is no longer self- evident that an economy benefits from being as orientated to services and financial markets as is Britain However, even if the British economy performs less well than its continental peers for a few years. Grant doubts that many Britons will yearn to adopt the euro or demand that their economy be run like those on the continent. And despite the recent financial and economic turmoil, political leaders in countries such as France, Germany and Italy know that their economies suffer from serious structural problems and that they need to copy many of the reforms that the British (and the Nordic countries) have implemented in recent decades. However, if the British economy underperformed, compared with its peers, for a prolonged period, in Grant's opinion, one cause of British euroscepticism would be removed.

According to Grant and regarding the latter financial crash, several newspapers as the Financial Express, the Economist or the New York Times, compare Iceland's financial situation to the British one. Thus, they talk about "Reykjavik on Thames"[419] and as the European Commission[420] sets up, in its official website, in 2008, Iceland has been particularly hard hit by the financial crisis with a collapse of the banking system and the Icelandic krona. Iceland, which has never applied for membership in the European Union, is currently reviewing its relationship towards the EU and the Euro. So if Iceland finally joins the EU and the Euro, this will make everybody thinks about the possibility of the United Kingdom joining the EU coin.

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[418] PORTER, B., *Britain, Europe and the World 1850-1986: Delusions of Grandeur*, London, George Allen and Unwin Pbl., 1983, p.26.

[419] "An island nation that bulked up on debt and lived beyond its means. A plunging currency. And a financial system edging toward nationalization. With the pound at a multidecade low and British banks requiring ever-larger injections of taxpayer cash, it is no wonder that observers have started to refer to London as "Reykjavik-on-Thames." The New York Times, "Reykjavik-on-Thames", The New York Times, 21 January 2009. For further information, see the following web sites:
<http://www.financialexpress.com/news/reykjavikonthames/418229/1>,
<http://www.economist.com/world/britain/displaystory.cfm?story_id=13021969>, and
<http://www.nytimes.com/2009/01/22/business/worldbusiness/22pound.html?_r=1&hp>

[420] European Union, "Iceland", European External Action Service, from:
<http://ec.europa.eu/external_relations/iceland/index_en.htm>, (accessed 27 November 2012).

Grant points out the fourth reason which explains Euroscepticism is Britain's media.This reason, which is not often understood outside the UK, is analysed in depth by the author. Thus, Britain has a uniquely powerful and eurosceptic popular press, but, ironically, some of the best media organisations that cover the EU, such as the *Financial Times*, *The Economist* and Reuters, are UK-based. In the eurosceptic newspaper groups, journalists are expected to write stories that knock the Union. Articles which attempt to present a balanced account of an EU issue are unlikely to be published. The Times and the Daily Telegraph, two serious newspapers, almost never print an opinion piece that is supportive of the EU or what it is trying to do. The national written press is particularly influential in Britain, compared with other EU states, and the internet has not yet changed this. The total circulation of national titles is much larger than in France: 11 million against 2.5 million. Moreover, the ownership of the UK written press is also very concentrated.The competition among national titles is also very strong. This encourages bold, striking and often inaccurate front pages.

To be fair to the British tabloids,in Grant's opinion, the EU sometimes does its best to help them portray the Union in a sinister light. So does the fact that the Common Agricultural Policy still accounts for nearly half the EU budget, still causes great damage to farming in developing countries, and is still spent mainly on rich farmers rather than poor ones. The inability of the EU institutions to explain simply and clearly why they do what they do, and how EU policies and programmes help ordinary citizens, is legendary. Nevertheless, in no other European country is it acceptable for leading journalists to report tendentiously on, or even lie about, the EU. In t David Rennie's view, the current Economist correspondent in Brussels: "The EU has become the equivalent of the fat boy with glasses who is bullied each break time: it is just what happens, it is cost free."

The above-mentioned author points out that journalists get away with writing factual inaccuracies because they are accountable to no one but their bosses and they face no sanction. The British system of press regulation – run by the Press Complaints Commission – is a voluntary body that has no teeth and does virtually nothing to encourage truth-telling or balance. Politicians are too scared to ask for a more rigorous system of press regulation; for they know that anyone who did so would become a bête noire for the tabloids. Journalists also get away with writing lies about the EU because it does not, as a policy, sue in the courts. Moreover, Grant poins out that strangely, the most eurosceptic newspapers do not bother to have full-time correspondents in Brussels. Currently, of the national dailies, only the Financial Times, The Guardian and Times have staff correspondents in Brussels.

Grant's point of view about the broadcast media and the BBC in particular, is that these tend to report more fairly than the tabloids. But, the BBC journalists are prone to follow an agenda set by tabloid stories, because it is often accused of elitism, especially by eurosceptic lobbies. So it tends to bend over backwards to avoid the charge by making extra efforts to accommodate populist and eurosceptic viewpoints.

Moreover, the author explains that not everyone believes everything they read in the press. But the steady drip of anti-EU propaganda over many years, having permeated deep into Britain's political culture, has made a major contribution to the shift in British public opinion since the late 1980s: the country has become more eurosceptic.

In accordance with Grant, Spiering[421] and Tunstall[422] regard that the situation of British press, "differs from the rest of Western Europe". First, In the UK an intense rivalry between mass-produced dailies has been a long established phenomenon. At the end of the twentieth

[421] SPIERING, N., "British Euroscepticism", op cit., pp. 127- 149.
[422] TUNSTALL, J., *Newspaper Power: The New National Press in Britain*, Oxford, Oxford Claredon Press, 1996, p.93.

century, with the rise of the electronic media, this rivalry quickly developed into 'super competition'[423].Second, there is a concentration of newspaper ownership in a few mega concerns. Third, the pressure to sell is only intensified because in Britain few papers are sold by subscription. So, every day the reader has to be captured again. Fourth, the tabloids in particular cannot afford to lose sales as they are primarily dependent on circulation, rather than advertising revenue. Hence, for tabloids and newspapers in general, Euroscepticism is nevertheless grist to their mill. After all, the proposal that Britain might be better off outside the EU can easily be reduced to stories about foreigners trying to lord it over 'us', or about absurd rulings imposed on the UK by alien institutions. Selling such stories is all the easier as in Britain knowledge of the EU is the lowest of all member states[424]. It makes interesting reading, the story that rocked the tabloids in 1992 (that fishing boats would be forced to carry condoms), turns out to be based on a liberal interpretation of Council Directive 91/ 493 which aims at ensuring that 'strict hygiene conditions are met in fish processing plants.'

A fifth reason for British euroscepticism is focused on the ruling classes; this reason is not easily understood outside the UK. In accordance with Grant, the ruling classes – because of the four reasons already mentioned – hold attitudes to the EU that are not common in other member-states. So, the result is that few political, media or business leaders have sought to lead and educate the British people on how they benefit from the European Union. Grant is very critical of British politician. In his opinion, only four or five of the 23 members of Labours Cabinet could be described as pro-European, with an interest in and some knowledge of the EU (though some others know about particular areas of EU policy). The Conservative shadow cabinet is worse. Grant does not believe that any of its members has devoted much time or attention to learning about the EU.

The Liberal Democrat party is something of an exception. Both the current leader, Nick Clegg, and the rival he defeated to get the job, Chris Huhne, are former MEPs with a profound knowledge of the EU. The previous leader, Menzies Campbell, is also a pro-European. So, in Grant's own words, if you want to succeed in politics or the media in Britain, make sure you do not know too much about Europe. If you know too much you risk being branded as a nerd who is out of touch with what most British people think. About the worlds of bussines and finance, Grant admits that it is true that many business leaders are broadly pro-European. But few of them are prepared to speak out on the EU. Some of them campaigned for the euro, but became bitter when the Labour government was too cowardly to ever make a forceful case for the single currency. Now many of these business leaders say that it is up to politicians to give a lead on Europe. In any case, in business circles, it is increasingly fashionable to argue that the EU is an out-of-date, failing project that will not survive the era of globalisation. Small businesses have always tended to be eurosceptic. Many of them see the EU not as an instrument for making it easier to trade and invest abroad, or to import cheaper workers, but rather as a source of burocracy.

Moreover, Grant admits that the EU is the source of some bothersome financial and business regulations, but the author reminds that British government has often voted in favour and then implemented them in an over-detailed manner. Bankers and business people sometimes forget that if the EU did not set common standards on, say, the use of industrial chemicals or bank capital requirements, they could not benefit from the EU's single market.

[423] Ibidem.
[424] That is, 'self-perceived knowledge of the EU'. In the *Eurobarometer* surveys the British score lowest when asked how much they feel they know about the European Union.

Finally, Grant explains that business people are particularly hostile to attempts to set social or labour market norms in Brussels. That is why the Confederation of British Industry (CBI) campaigned so vehemently against the charter of fundamental rights, a non-binding set of principles that was included in both the constitutional treaty and the Lisbon treaty. That charter contains aspirations such as the right to strike and the right to join a trade union. Because of the CBI, the Labour government insisted on amendments to the Lisbon treaty to clarify that the charter will have no effect in Britain. But that in turn upset Britain's trade unions. They had become broadly pro-European in the 1990s, thanks to Margaret Thatcher's hostility to the EU and Jacques Delors's advocacy of social Europe. Now many British trade unions are fairly eurosceptic, viewing the EU as an organisation designed to promote the interests of business.

In keeping with Grant, Spiering explains that In British politics Euroscepticism is evident in individual MPs, (sometimes organised in cross-party pressure groups like the 'EU Referendum Campaign'), in the single-issue United Kingdom Independence Party (UKIP), and in a host of extra-parliamentary campaigns of which the Campaign for an Independent Britain (CIB) is probably the oldest and biggest.

When the first European cooperation projects were discussed in the 1950s neither of the main parties (Conservatives and Labour) favoured participation. After the UK finally acceded to the EC in 1973, these parties remained ambivalent. In their 1983 manifesto the Labour party pledged 'to extricate ourselves from the Treaty of Rome and other Community treaties'. In the 1990s the Conservatives moved in a similar direction, culminating in a policy of non-cooperation with the EU pronounced by the Major government.

David Baker[425]points out that the issue of Europe has never offered a core election-winning strategy for either Labour or the Conservatives. Europe has also been an elite project of high politics and has always proved difficult (and dangerous) to translate into an electoral issue. In some ways little seems to have change for Britain in its uneasy relations with Europe since John Major's defeat in 1997. After a brief flurry of Europhilia by the Blair government, enacting the Social Chapter into British law, pushing the agenda of closer defence cooperation and partially supporting the proposed EU immigration changes, things cooled noticeably.

Thus, after Major's negotiated "Opt Out" from the Euro currency in January 1999, every Prime Minister has avoided any recommendation on entering the euro for triggering a referendum could awaken a mass populist British Euroscepticism. So Blair and Brown have opted for a cautious "wait and see" policy. Regarding the anti-European groups and single-issue parties that have emerged recently. Some are pro-European but anti-euro like New Europe and Save the Pound and Business for Sterling. Other ares are anti-euro and against any further loss of sovereignty to the EU. These include the Institute of Directors, the European Research Group, the European Foundation, the Bruges Group, the main organisation behind Lady Thatcher's famous speech condemning federalism.

Anthony Forster[426] argues that Euroscepticism must be seen as the latest manifestation of opposition to Europe, albeit for different reasons in the Conservative and Labour parties, which in the 1940s and 1950s was anti-European in nature. In the 1960s opposition to Europe transformed into an anti-Market position. In the 1980s, opposition to closer European integration centred on opposition to the Political and Economic and Monetary Union agenda.

[425] BAKER, D., "Britain and Europe: The Argument Continues", Hansard Society for Parliamentary Government, Vol. Parliament Affairs, 2001, Num. 54, pp. 276-288.
[426] FOSTER, A., *Euroscepticism in Contemporary British Politics: Opposition to Europe in the British Conservative and Labour Parties since 1945*, op. cit, p.108.

More recently the appearance of groups like New Europe - explicitly anti-euro, but not anti-EU - heralds a new era of opposition to closer European integration.

Spiering adds two more reasons that can and have been supplied to explain the British rejectionist impulse. The first one is the psychological reason. Hugo Young[427] regularly refers to the peculiar workings of the "national psyche" or the "British mind". Spiering explains that a common way to account for early, postwar Euroscepticism is to diagnose this psyche as having been in a state of arrant aloofness. It is widely recognised that after the Second World War British governments perceived the international position of their country to be dissimilar to that of the Continental countries. For the latter, cooperation and even integration was a dire necessity, but the UK was different. It could pursue other options, notably, to continue its association with the Commonwealth, or to cultivate the 'special relationship' with the USA. Thus, Britain could afford to be Eurosceptic because the **European choice was but one of many.**

In Spiering's opinion, Euroscepticism of later years has been linked no so much to aloofness, as to national feelings of resentment and even to Germanophobia sentiment. So, Britons cannot understand how it can be that the countries which had only recently been liberated by Britain and its allies, now are so prosperous. And why Germany, the agressor, now was rapidly gaining a position of leadership. It is, indeed, not difficult to illustrate that feelings of resentment, but also of downright Germanophobia, form an important aspect of British Eurosceptic discourse.

The Eurosceptic press regularity insinuates that the EU is but the Third Reich in disguise. Under the headline 'THE BATTLE FOR BRITAIN' the *Daily Mail* of 15 April 1997 exclaimed 'How long will it be before our mortgage rates are set in Frankfurt? A unified European VAT and income tax system is imposed on Britain? Our gold reserves shipped to Germany to ensure the dubious stability of the single currency?' In a book called *E urope's Full Circle,* Rodney Atkinson[428] (a brother of 'Mr Bean') unfolds the theory that the European Union is in fact a plot of former Nazis to restore Germany to its rightful place at the heart of Europe: What the Nazis said and planned before, during and after the war, is now to be seen in the present activities of the German state, in the words of its leaders, in the philosophy of its collaborators in Belgium and France and in the power of the European Union, which Nazis designed and which 'democratic' Germans have forced on the once free peoples of Western Europe.

Urban[429] and Spiering point out other examples of this germanophobia sentiment, the secret seminar at Chequers in 1990 where Margaret Thatcher is alleged to have claimed that the Germans were trying to achieve through economic imperialism what they could not attain through world wars. They could not do otherwise, it was in their 'unreliable character'. Shortly afterwards her thoughts were echoed in public by her Secretary of State for Industry, Nicolas Ridley, who in *The Spectator* of 14 July 1990 suggested that the European Community was just 'a German racket'. 'I'm not against giving up some sovereignty in principle, but not to this lot. You might as well give it to Adolf Hitler.' That the EU is the Reich reborn, finally, is a stock theme of British Eurosceptic novels. In Graham Ison's *Division,* the British traitor who devastates his country during a chaotic time of Euro-riots was trained in Germany. Similarly, in *The A achen Memorandum,* Andrew Roberts portrays Britain in the year 2044 as an insignificant province of a European Union ruled no longer by Brussels but by Berlin; even the

[427] YOUNG, H., *This Blessed Plot: Britain and Europe from Churchill to Blair,* op cit, p.67.
[428] ATKINSON, R., *Europe's Full Circle: Corporate Elites and the New Fascism*, Newcastle Compuprint Publishing, 1997, p.164.
[429] URBAN, G. R., *Diplomacy and Disillusion at the Court of Margaret Thatcher: An Insider's View*, London, I.B. Tauris, 1996, p. 149.

English language is on its way out as the British Europhile elite starts to imitate the tongue of its masters.

The second reason that Spiering uses for explaining British Euroscepticism is British national identity and British sentiment of "diferentness", both are linking concepts. According to Spiering, frequently British Euroscepticism is regarded as a product not just of postwar delusions or resentment, but of deep-rooted national attitudes. Eurosceptics who seek to vindicate their cause, as well as academics who try to explain it, often do so with reference to a British identity which is (again) 'different'. Hugh Gaitskell's exclamation 'we are not Europeans' (in his previously cited 1962 Party Conference speech) was widely echoed during his own time and has been ever since. It is not hard to trace similar statements in later Eurosceptic discourse, predominantly of the right. In a bid to explain why the UK does not belong in the EU, the former Conservative Party chairman Norman Tebbit[430] declared in 1990: 'different as our Continental neighbours are from each other, we are even more different from each of them'.

Spiering remarks that scholars, too, have linked British Euroscepticism with the question of national identity. Many mention a national 'identity crisis', brought about by a too sudden loss of empire. The demotion from world power to middle ranking European state left the British baffled and bewildered about who they really are. Their Euroscepticism, their rejection of active participation in the 'New Europe', is thus diagnosed as the product of a traumatised national sense of being. Dean Acheson[431], the US Secretary of State between 1949 and 1953, is usually quoted to illustrate the point. 'Great Britain', he famously claimed, 'has lost an empire and not yet found a role'. It is not just the postwar crisis in British national identity that scholars have marked as a root cause of Euroscepticism.

There is also a broad acceptance of the Eurosceptic thesis that the British identity *per se* is different. They are (or at least perceive themselves to be) so unlike 'the Europeans' that non-membership appears the only option. The fact that 'British politicians and voters of all partisan persuasions find it difficult to accept the dictates of the EEC', says Linda Colley[432], 'indicates how rooted the perception of Europe as the Other still is'. In his study of 'Britain and the Continent' Jeremy Black[433] concludes that Britain's reluctance to embrace the Union is in part due to the determination of its politicians to 'defend the configuration and continuity of British practices (...) of their own society and identity'. Anthony Forster[434] argues in his *Euroscepticism in Contemporary British Politics* that the matter of identity – 'hating Europeans and championing British' – has persistently dogged postwar Anglo-European relations. Finally, Richard Weight[435] also constructs a direct link between British Euroscepticism and national feelings of differentness.

Thus, Spiering regards that in Britain the tendency to see Europe as an undifferentiated "abroad" is deepely ingrained As of the sixteenth century in the English language the terms 'Europe' and 'European' began to be used also to denote an outside, even alien entity, reflecting a growing national trend to contrast the English (or British) with 'the Europeans'. There is nothing special about definingone's identity vis-à-vis an outgroup. To be French means not to be German, and so forth. What is special about the British case is that one of these out-

[430] JENKINS, L., TEBBIT, N. (Foreword), *Disappearing Britain: The EU and the Death of Local Government*, New York, Orange State Press, 2005, p. 77.
[431] YOUNG, H., *This Blessed Plot: Britain and Europe from Churchill to Blair*, op. cit., p. 83.
[432] COLLEY, L., *Britons: Forging the Nation 1707-1837*, New Haven, Yale University Press, 1992, p.25.
[433] BLACK, J., *Convergence or Divergence: Britain and the Continent*, London, Macmillan, 1994, p.57.
[434] FORSTER, A., *Euroscepticism in Contemporary British Politics: Opposition to Europe in the British Conservative and Labour Parties since 1945*, op. cit., p. 136.
[435] WEIGHT, R., *Patriots: National Identity in Britain 1940-2000*, London, Macmillan, 2002, p.184.

groups is, and has been for a long time, the Europeans *en masse*. In other European countries such a differentiation makes no sense.

In my opinion, another cause inferred from the above-mentioned reasoning, which explains British Euroscepticism, is the lack of interest and knowledge towards the European Union. As stated above, people in general does not have deep knowledge about the European Union. As in the *Eurobarometer* surveys the British score lowest when asked how much they feel they know about the European Union. This general ignorance is caused by several reasons. In my opinion, the main one is the lack of appeal that Britons feel about it. So, as in Britain, knowledge of the EU is the lowest of all member states, British press and politicians can manipulate more easily the facts. However, if Britons were more interested in European Union's issue, it would be more difficult to manipulate them or even lie to them. This lack of interest is caused by different considerations. The main one is British feeling of diferentness. Many Britons feel different from their Continental neighbours.

This lack of interest is also stimulated by the press. So, in Grant's opinion, only a few political, media or business leaders have sought to lead and educate the British people on how they benefit from the European Union.

Ignorace towards the EU also affects political and media leaders. So, accoording to Grant, the most eurosceptic newspapers – the ones which claim that Brussels bureaucrats exercise increasing power over Britain – do not bother to have full-time correspondents in Brussels. Regarding the political class, Grant sets up that "if you want to succeed in politics or the media in Britain, make sure you do not know too much about Europe". Therefore, we can consider that not only do they consciously avoid EU information, but they feel proud of this lack of knowledge.

2. ECONOMIC APPROACH: ESPECIAL FOCUS ON TRADE

TRADING DATA OF CYPRUS

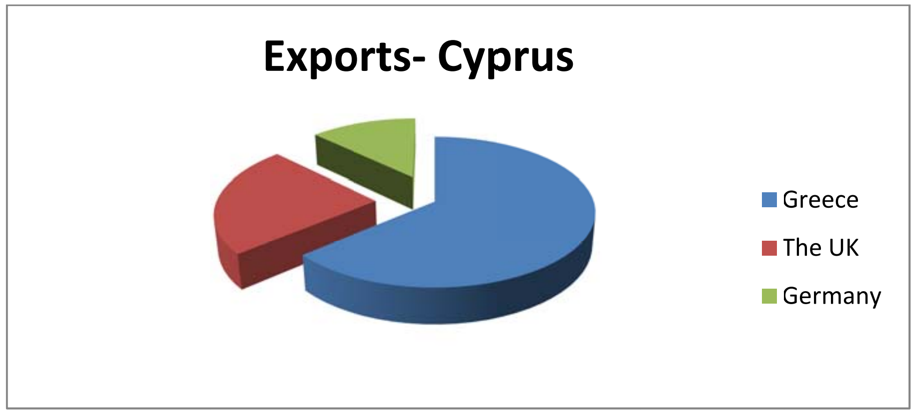
Leading Exporters and Importers of Merchandise Trade in the World (2010) (including EU28 Member States and intra-EU Trade)[436]

STATES	MAJOR IMPORTERS	MAJOR EXPORTERS	THE MAJOR TRADE PARTNERS
Cyprus	97	132	110
Malta	128	128	135
Utd. Kingdom	6	12	8

Major Export- Trading Partners of Cyprus, 2011[437]

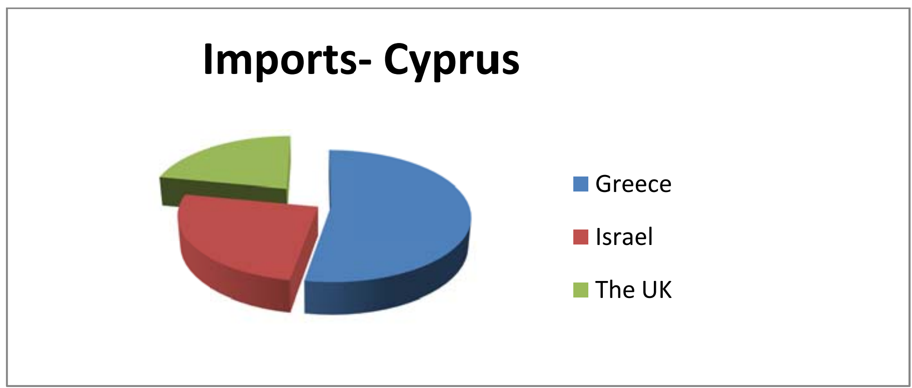
POSITION RANKING	STATE	RATE
1	Greece	27.4%
2	UK	10.2%
3	Germany	5.5%

[436] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).
[437] Central Intelligence Agency (CIA), "Full List- Import Partners", The CIA World Fact Book, from: <https://www.cia.gov/library/publications/the-world-factbook/fields/2061.html>, (accessed 4 March 2013).



Major Import- Trading Partners of Cyprus, 2011[438]

POSITION RANKING	STATE	RATE
1	Greece	21.7%
2	Israel	10.4%
3	UK	9%
4	Italy	8.3%
5	Germany	8.3%



Cyprus' main trading partners are found within the European region. More specifically, the majority of trade that Cyprus is engaged in with European Countries is with members of the European Union, such as Greece, UK or Germany. However, Cyprus also trades with other regions such as Asia, North and Central America, Australia and Oceania, South Africa.

Greece and The UK have been the largest EU import partners for Cyprus for a number of years, accounting for the 30 per cent of the total imports to Cyprus from the EU. We should underscore the position that Israel as the second import-trading partner of Cyprus, accounting for more than 10% of imports from Cyprus.

Internationally, in the list of the 182 top trading partners, Cyprus ranks at number 110 in the world, more than twenty places above Malta, yet far below the United Kingdom. Cyprus holds a lower position in the ranking.

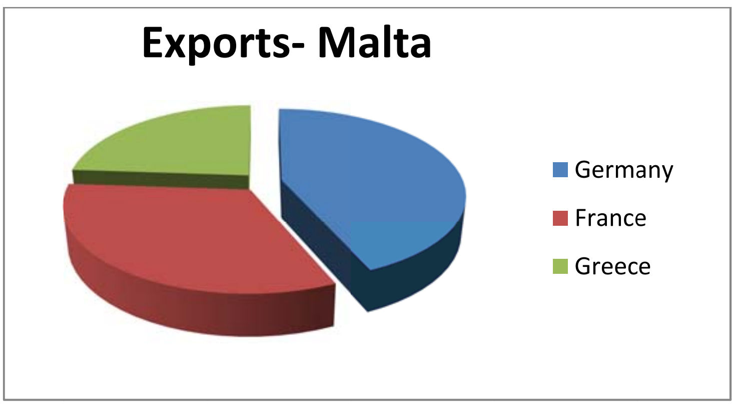
We can conclude that for Cyprus, the fact of being a member of the European Union, from a trade perspective, offers highly advantages given that the bulk of its trade is conducted at EU level.

[438]Ibidem.

TRADING DATA OF MALTA

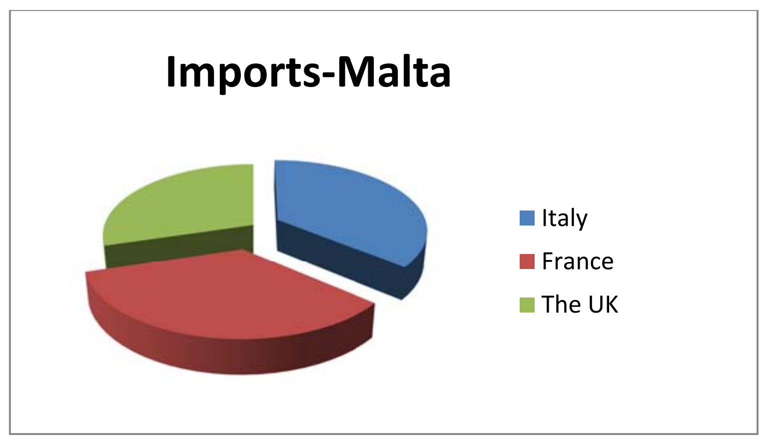
Major Export- Trading Partners of Malta, 2011[439]

POSITION RANKING	STATE	RATE
1	Germany	14%
2	France	10.5%
3	Greece	7.7%
4	Italy	7.4%
5	UK	6.4%



Major Import- Trading Partners of Malta, 2011[440]

POSITION RANKING	STATE	RATE
1	Italy	32%
2	France	8.4%
3	UK	8%
4	Germany	6.9%



Malta's main trading partners are found within the European region. More specifically, the main amount of trade that Malta is engaged in with European Countries is with members of the European Union, such as Germany, France and Greece. However, Malta also trades with other regions such as Asia, North and Central America, Australia and Oceania, South Africa,

[439] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).
[440] Ibidem.

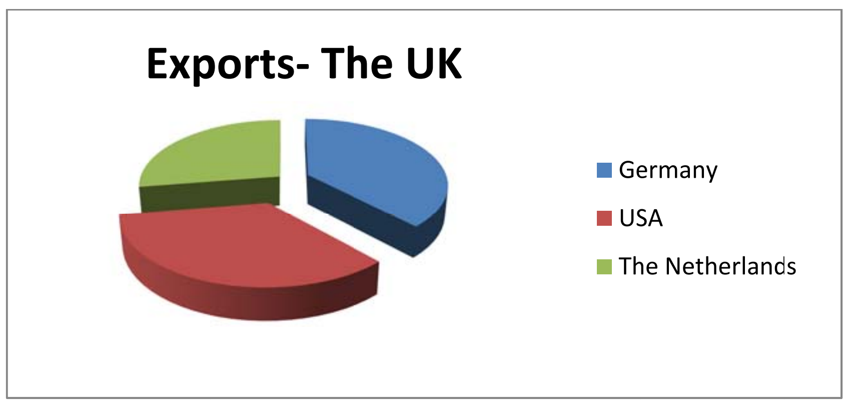
Caribbean and Bahamas Islands.Imports from EU member states accounted for 64% of total imports while sales to other EU member States made up 43.4% of total exports. Internationally, in the list of the 182 top trading partners, Malta stands at 135. A low position in the ranking.

Similarly to Cyprus, we can conclude that for Malta, the fact of being a member of the European Union, from a trade perspective, offers highly advantages given that the bulk of its trade is conducted at EU level.

TRADING DATA OF THE UNITED KINGDOM

Major Export- Trading Partners of the United Kingdom, 2011[441]

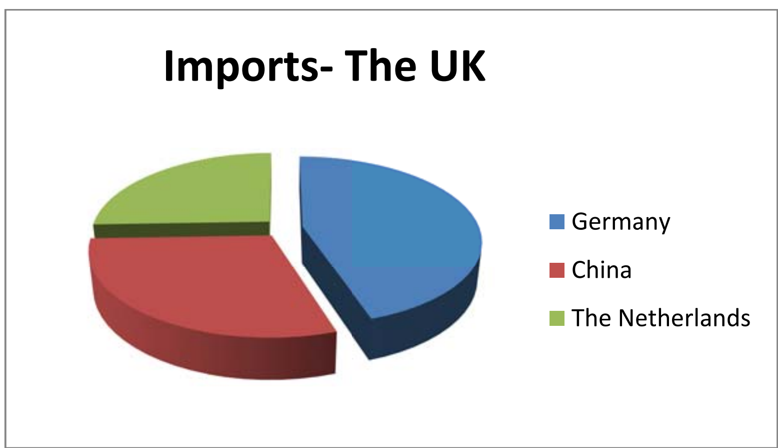
POSITION RANKING	STATE	RATE
1	Germany	10.9%
2	US	9.9%
3	Netherlands	7.9%
4	France	7.4%
5	Switzerland	7.1%



Major Import- Trading Partners of the United Kingdom, 2011[442]

POSITION RANKING	STATE	RATE
1	Germany	12.5%
2	China	8.2%
3	Netherlands	7.1%
4	USA	7%
5	France	5.7%

[441] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).
[442] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).



UK's main trading partners are found within the European region. More specifically, a great amount of trade that UK is engaged in with European Countries is with members of the European Union, except Switzerland, such as Germany, the Netherlands and France. However, the UK also trades with other regions such as Asia, North and Central America, Australia and Oceania, South Africa. It is important to note that both China and the USA are very important trading partners in their trade exchanges with the UK.

Germany and The Netherlands have been the largest EU import partners for the UK for a number of years, accounting for between 30 and 40 per cent of the total imports to the UK from the EU.

Internationally, in the list of the 182 top trading partners, The UK stands at 8.A very high position in the ranking.

Regarding the UK, we can conclude that to be a member of the European Union, gives her lots of advantages in trade terms, as the bulk of its trade is conducted at Community level, although it is important to note that the UK has major trading partners in Asia and North America, mainly China and the United States. Therefore, the United Kingdom could count on other alternatives, but for the moment most of its trade is carried out at EU level.

	Trading Partners- Imports	**Trading Partners- Exports**
CYPRUS	1. Greece 2. Israel 3. The UK	1. Greece 2. The UK 3. Germany
MALTA	1. Italy 2. France 3. The UK	1. Germany 2. France 3. Greece
THE UK	1. Germany 2. China 3. The Ntherlands	1. Germany 2. USA 3. The Ntherlands

Comparatively, the three member states coincide in the fact that the bulk of their trade is conducted in Europe, specifically with EU countries. However, it is worth noting that, in the UK, the USA and China figure in second position in ranking of the trading partners in exports and imports respectively. If we continue to analyse trading partners, some coincidence seems to emerge, in that United Kingdom and Greece are important trading partners for both Malta and for Cyprus. France is an important trading partner for both Malta and UK. While Germany,

which figures among the top three, is important for the three states (The UK, Cyprus and Malta). Yet there are significant differences, especially regarding the position the trading partners occupy and the fact that Israel is one of the chief trading partners in terms of imports from Cyprus and the Netherlands, in both imports and exports, is one of the leading partners for the United Kingdom.

Finally, we cannot overlook Malta and Cyprus' trade with the United Kingdom, although this relationship is not reciprocal since these two states do not hold significant places in the United Kingdom's ranking of trading partners. We should clarify that Cyprus conducts more trade with the United Kingdom than does Malta, above all in exports, where the UK has second place.

In Malta's case, the United Kingdom only appears as a top trading partner in imports. Clearly, Cyprus' strong ties with Greece are borne out by their commercial exchange, which is the former's leading trading partner, in both imports and exports. The same can holds for Malta and its historical and geographical links with Italy. Paradoxically, the United Kingdom's top trading partner, in both imports and exports, is Germany, with whom it has no historical ties. The third trading partner for imports and exports of the UK has little connection with the UK and the Commonwealth. As for the second trading partner place for imports and exports, neither China nor the United States belong to the Commonwealth, but there are major historical ties between each of them and the UK.

CHAPTER IV: THE ROLE AND STATUS OF THE BRITISH OVERSEAS COUNTRIES AND TERRITORIES AND THE CROWN DEPENDENCIES IN THE COMMONWEALTH AND THE EUROPEAN UNION

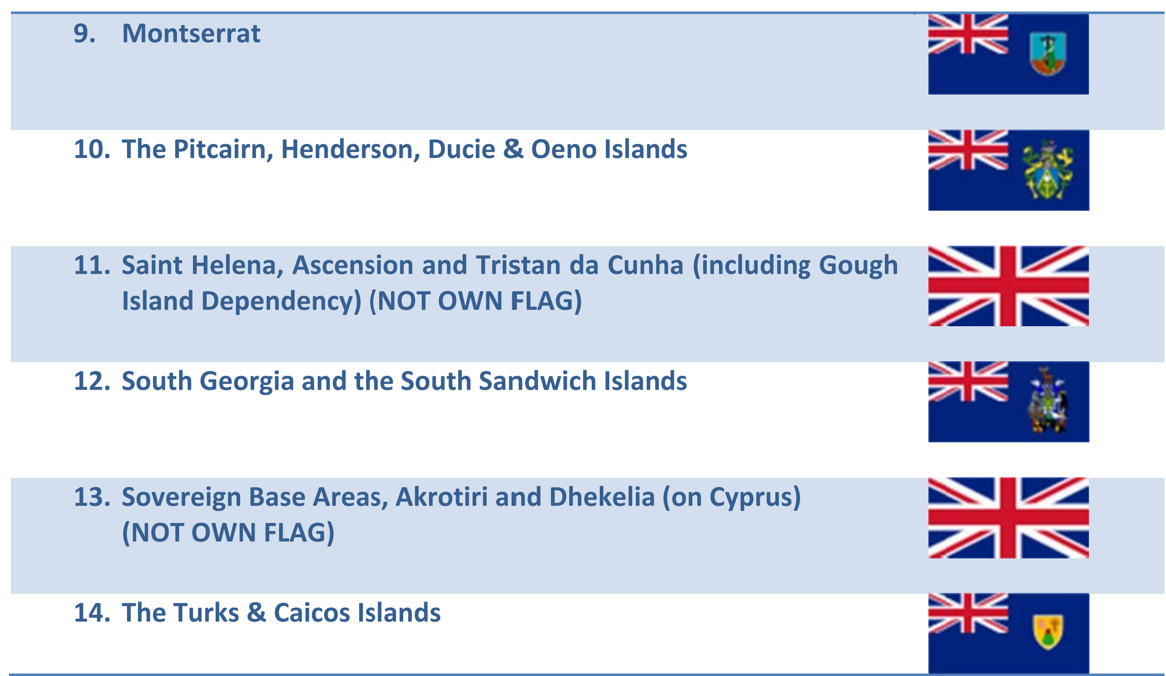
The analysis carried out in this chapter follows the same line as that used in this thesis, but it is important to clarify that we will only make a general reference to the fourteen British Overseas Territories (BOTs) since they do not form part of the area of research of this thesis. Nevertheless, we examine Gibraltar because it is the only British Overseas Territory that forms part of both the EU and the Commonwealth. We briefly discuss the case of the Sovereign Bases Areas of Akrotiri and Dhekelia in Cyprus, as the territory on which these bases are located is considered part of Europe and it borders the Republic of Cyprus – a member of the European Union – as well being constitutionally linked to a member state of the UE, the United Kingdom, although it is subject to a special regimen.

EXPLANATORY NOTE:

It is important to differentiate between Crown Dependencies and British Overseas Territories. **The British Overseas Territories** (BOTs) are the result of the evolution and break up of the British Empire and can be understood as the scattered remnants of the former British Empire that have gradually attained different statuses until their present current status as British Overseas Territories. In fact, their status, denomination and relationship with the United Kingdom have steadily evolved in parallel with the process of decolonisation. From a world divided into imperial powers a new world emerged where "empire" was no longer acceptable and the United Kingdom, one of the biggest imperial powers in history, which at its height ruled one quarter of the Earth's surface, has had to adapt to this reality.

The Fourteen British Overseas Territories are:

BRITISH OVERSEAS TERRITORIES	FLAG
1. Anguilla	
2. Bermuda	
3. British Antarctic Territory	
4. British Indian Ocean Territory	
5. The British Virgin Islands	
6. The Cayman Islands	
7. The Falkland Islands	
8. Gibraltar	



9. Montserrat	
10. The Pitcairn, Henderson, Ducie & Oeno Islands	
11. Saint Helena, Ascension and Tristan da Cunha (including Gough Island Dependency) (NOT OWN FLAG)	
12. South Georgia and the South Sandwich Islands	
13. Sovereign Base Areas, Akrotiri and Dhekelia (on Cyprus) (NOT OWN FLAG)	
14. The Turks & Caicos Islands	

The Crown Dependencies are:

CROWN DEPENDENCY	FLAG
• The Isle of Man	
• The Channel Islands:	
- Bailiwick of Jersey	
- Bailiwick of Guernsey	

1. HISTORICAL APPROACH: THE DESINTEGRATION OF THE BRITISH EMPIRE

A. BRITISH OVERSEAS TERRITORIES: THE TRANSFORMATION OF THE COLONIES INTO BRITISH OVERSEAS TERRITORIES

The fate of the numerous British possessions has varied, therefore they cannot be analysed homogeneously. Some territories, such as Canada achieved full sovereignty before the inception of the decolonisation process, and without armed conflict. As it has already been noted in this thesis, Canada, prior to the acquisition of full sovereignty, unlike the colonial territories, was granted the status of Dominion. In other territories, full sovereignty was attained as a result of conflict between the mother country and the colony as in the case of the United States. However, some territories, such as Malta, did not desire self-determination and

sought to become part of the United Kingdom. Others, not only did not want self-determination, but considered that is was not viable for reasons of survival. These were generally island territories, isolated or prone to natural disasters, small territories with few resources, such as the cases of the islands of Montserrat and St. Helena "So, the great diversity of territories, in geographical size, population, levels of economic development (or undevelopment), and constitutional status inevitably meant that this process or change would not be single and smooth. Decolonisation was variously interpreted and applied in a variety of ways[443]."

Already back in the 1950s, government authorities and academics drew two main conclusions regarding their colonial territories. First, not all these territories would achieve the status of Dominion and subsequent sovereignty, either because some territories did not aspire to sovereignty or that they were not in conditions to attain it; second, the United Kingdom was unwilling to concede it because "it was not intended that strategically located 'fortress' colonies, such as Cyprus, should become independent."[444]

Meanwhile the international context of the time was characterised by the break-up of the empires and increasing demands of the old colonies for sovereignty. The seeds of anti-colonialist sentiment were being sown around the globe. International institutions, above all the United Nations, were applying pressure on the imperial powers to force them to facilitate the decolonisation process of their colonies.

This new reality weighed heavily on the conscience of British leaders since it was no longer considered morally acceptable to possess colonial territories. "Post-war British governments were increasingly sensitive to the UN criticism of colonial rule (…) There was a continuing concern to remove colonies from the category of "non self-governing territories" covered by Chapter XI of the UN Charter[445]".

By the early 1960s overseas colonies were an increasing embarrassment[446] (…) the official line was that the colonial relationship was becoming outdated and adversely affecting Britain's position in the UN and our relations with other countries[447] (…) Britain's desire was to be rid of the burden of certain imperial possessions or regions that did had not have a strategic or economic value, but rather were a source of problems for that country.

Hence, as a result of the drive against colonialism, British authorities did away with the term "colony" to refer to such territories and substituted it with the term "dependent territory." It divided these dependant territories into three categories; the first was made up of those territories that were in conditions to obtain an independent status, such as Nigeria, the Gold Coast or the Federation of Malaya with Singapore. The second category took in territories labelled "intermediate" or "less-mature" – most of the African colonies – that were subject to a slow constitutional advance with no timetable for a transfer of power;[448] the third group was composed of territories that were either unable or did not wish to become independent, chiefly those that had small populations and weak economic and social structures since in the

[443] KILLINGRAY, D., TAYLOR, D., "The United Kingdom Overseas Territories: Past, Present and Future", University of London, OSPA Research Project at the Institute of Commonwealth Studies, 2005, Num. 3, pp. 53-64.
[444] Ibidem.
[445] Ibidem.
[446] UK Government, "The Future of smaller Colonial territories", National Archives, UK Government: Colonial Office and Commonwealth Office, 20 June -16 July 1962, CO 936/733, Num. 43-53.
[447] UK Government, "The Future of British Colonial Territories", UK Governmnt Official Documents, CO Memo, 27 September 1963, FO 371/172610, Num. 13.
[448] ISAACS, G.A., "Constitutional development in smaller colonial territories", Cabinet Memorandum, UK Government Official Document, 10 March 1949, CAB 129/33/2, CP (49) 62.

1950s and 1960s, "**an essential qualification for independence was that colonies should be economically self-sustaining and not in receipt of budgetary grants-in-aid**.[449]"

Thus, in 1965 the Britain had made a total commitment to ending colonialism. Indeed, the Colonial Secretary, Anthony Greenwood, circulated a minute explaining, "at this stage in our colonial history our main task must be to liquidate colonialism either by granting independence or evolving other forms of government which would secure democratic rights for the people."[450] Both Conservative and Labour British governments were constantly concerned by the liquidation of colonialism in those territories, mainly small islands, where self-determination and acquisition of full sovereignty was regarded as unviable. Over the years, this led to a number of proposals as to the kind of status should be conferred upon them.

PROPOSALS FOR "SMALLER" TERRITORIES:

- In 1951 the Rees Committee recommended to grant small territories a new constitutional status "something between dependency and fully self-governing territory under the title of 'Island or City States[451]'". This would have required new structures in Whitehall, a minister of Commonwealth Affairs, and permanent territorial representatives in London. The recommendation did not succeed.

- This proposal was followed by a fresh one in the mid-1950s; this time the Colonial Policy Committee[452] proposed the term "statehood", for these territories which were too small or remote to be able to look forward to independent national status, either alone or as components of a regional federation. "Statehood" was given another look in 1958 but then steadly buried.

- By the late 1950s, it had become clear these territories did not share the same reality and that they could not be dealt with homogenously, but rather, the problem surrounding their status would need to be resolved on a case-by-case basis. At the time, countries in this category included territories as diverse as British Honduras, Gambia or Mauritius. It was also feared that this category of territories would have implications for the future of the Commonwealth, because they constituted a brake on the pace of the colonial devolutionary process and the recognition of differentiated statuses might bring about a "two-tier membership of the Commonwealth,"[453] creating a up a gap between "first-class members" (those with full membership as they had achieved sovereignty) and "second-class members" (those that were dependent territories).

The casuistry diverse can be seen in the following examples:

A. In the mid-1960s, independence was granted to small territories that, initially, had not been deemed suitable to acquire it. Some became independent through peaceful means, whereas others were preceded by conflict as in Cyprus and Sierra Leone.

[449] KILLINGRAY, D., TAYLOR, D., "The United Kingdom Overseas Territories: Past, Present and Future", University of London, OSPA Research Project at the Institute of Commonwealth Studies, 2005, Num. 3, p. 57.
[450] UK Government, "The Future of remaining colonial territories", Cabinet Papers, National Archives, 31 May 1965, CAB 148/21.
[451] MADDEN, F., *The End of the Empire: Select Documents on the Constitutional History of the British Empire and Commonwealth*, Greenwood Press, Vol. VIII, 2000, p.687.
[452] KILLINGRAY, D., TAYLOR, D., "The United Kingdom Overseas Territories: Past, Present and Future", op. cit., p. 57.
[453] Ibidem.

B. Integration into Britain was proposed for territories like Gibraltar, Malta, the Seychelles and the Falklands. This idea would not succeed, not least in Malta, which obtained full sovereignty, even though the Maltese initially requested integration into United Kingdom, for they did not consider independence viable in terms of their own survival.

C. Steadily, after the acquisition of full sovereignty of some small states, this category (dependant territories) was narrowed down still further until it applied only to genuinely small territories, which today we would consider micro territories.

D. The idea of “Free Association” was put forward for small and micro territories, which involved bringing together several small dependant territories into a federation, whereby the United Kingdom would cede sovereign power to the new federation and, at the same time, safeguard the stability and self-sufficiency of the territories in question. This idea was successful in the case of New Zealand, the Cook Islands and Western Samoa, which freely associated in 1962. The solution was in line with United Nations Resolution 1541 (XV) of December 1960, which declares the free association with another state was possible, providing it was “free and voluntary choice of the people of the territory concerned, expressed through informed and democratic process.”

E. It was precisely in this last aspect of “voluntary choice of the people of the territory concerned” that the constitutional arrangement in the Caribbean with six associated states was not taken into consideration. The small island of Anguilla, with a population of 6,000 inhabitants, opposed such an association. In February 1969, the island unilaterally seceded from the newly associated state of St Christopher and Nevis and sparked an invasion “by a British force of soldiers and police to restore order”, which proved to be costly operation estimated at “1.23 million pounds a year by 1979”.[454] Anguilla regained its British dependency in 1971 and, in the face of strong international criticism over the British invasion and the UK’s unwillingness to respect the wishes of the Anguillans, formally separated Anguilla from St Christopher and Nevis in 1980.

F. This experience revealed that the free association formula was not always satisfactory, and that federations could not be formed without the will of the population of the territories since United Kingdom did not have enough authority to impose it. Therefore the experiment of free association, which was refused to the Seychelles in the late 1960s, was not tried elsewhere.[455]

G. Hong Kong was resolved ad hoc. In 1984, it was agreed that the colony should be returned to China in 1997.

The decolonisation process for a former imperial power such as the United Kingdom was not easy as it had to satisfy manifold and even opposing interests. On the one side, Britain did not want to lose it influence in some of its former colonies, not least those of geostrategic value or that offered economic benefits, but, one the other, it was becoming increasingly aware of international pressure and opinion condemning colonialism. Accordingly, the United Kingdom realised the importance of respecting the wishes of those territories that aspired to full sovereignty and that it would not be pragmatic to oppose an inevitable process. “Britain’s

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[454] KILLINGRAY, D., TAYLOR, D., “The United Kingdom Overseas Territories: Past, Present and Future”, op. cit., p.57.
[455] CROSSMAN, R., *The Diaries of a Cabinet Minister*, London, Hamish Hamilton & Jonathan Cape Pbl., 1977, p. 110.

international image for good stewardship in administering even the remnants of a fading empire remained an important imperative before the gaze of the United States, the Commonwealth countries, and the United Nations."[456]

Nevertheless, some territories, which either did not want or did not view the initiation of the processes towards self-determination as feasible, continued to be dependant territories. This posed and continues to pose major dilemmas for the United Kingdom. **It was clear that forthwith these territories, or more than one of them, would remain related to Britain**.

Hence, the United Kingdom was faced with the dilemma of the *moral responsibility* towards the territories that did not seek independence, especially those that would not be able to sustain themselves without economic aid from the United Kingdom. "Among Colonial Office officials, and their successors within the Foreign and Commonwealth Office, there was a long-standing strong and abiding sense of moral responsibility for the political, economic and social welfare of the dependent territories."[457] The moral responsibility for these dependencies led it to follow a series of principles that was to form part of the British publicly stated policy:

1- Not force the dependent territories to consider moving to Independence, if they don't want to achieve it[458].
2- Respect and respond positively towards the Independence of these territories, when this is the clearly and constitutionally wish of the people.[459]
3- No change to the dependent territories will be allowed without the consent of the local population.
4- To those territories that need economic aid, it was argued that the level of aid to be given it should not raise local standards of living to levels beyond that which the territory would be able to sustain if it progressed to independence[460]

In this context, in territories such as the Cayman Islands, the British Virgin Islands, and the Turks and Caicos Islands, there were no strong local demands for independence.[461] Most of these territories did not seek independence because after having scrutinised those British dependent territories that had obtained independence, they realised that those that had remained dependent on Britain enjoyed higher living standards. However, territories like Bermuda or the Cayman Islands, which despite being small islands, enjoyed a satisfactory economic level and political stability, which meant they could have begun the processes towards independence, yet their inhabitants did not want full sovereignty. In fact, in 1995 a referendum was held in Bermuda in which 73% of the population voted against independence.

> "With the Americans to feed us and the British to defend us, who needs Independence[462]" (John Swan, leader of the United Bermuda Party, 1982).

[456] KILLINGRAY, D., TAYLOR, D., "The United Kingdom Overseas Territories: Past, Present and Future", op. cit., p.58.
[457] Ibidem.
[458] SUTTON, P., "Two Steps Forward, One Step Back: Britain and the Commonwealth Caribbean", *Cambridge Journal*, Vol. 25, 2001, Issue 2, p. 43.
[459] Ibidem.
[460] UK Government, "The Future of Dependent Territories", UK Government: Foreign and Commonwealth Office, 8 November 1973, FCO 86/75, Anthony Royle to Lord Balneil.
[461] POSNETT, R., "Britain's Dependent Territories: a fistful of islands", *Institute of Commonwealth Studies Seminar Papers*, 3 November 1978, p. 157.
[462] Quoted in CONNELL, J., "Britain's Caribbean Colonies: The end of the era of decolonization", *Journal of Commonwealth and Comparative Politics*, 1994, Num. 32, p.99.

> “There is no wish whatsoever to alter the present state of the islands as a dependent territory on, which it must be said, much of the islands prosperity may depend[463]” (Constitutional Commission of the Cayman Islands)
>
> “(replying to the UN Special Committee) The British Virgin Islands will not be bullied, provoked, coerced or sweetmouthed into independence[464]” (Ralph O’Neal, deputy Chief Minister of the British Virgin Islands, 1990)

In the case of Gibraltar and The Falklands, Spain and Argentina respectively demanded the annexation of these territories, although the autochthonous populations of the two territories fiercely opposed and continue to oppose it. The inhabitants of these territories have repeatedly expressed their desire to maintain their current status. This United Kingdom’s responsibility for these territories comes at a high price. In the 1970s and 1980s, British officials “continued to hope that the economic burdens of the dependent territories might be shared with, or even passed, to other powers”.[465] Thus the United Kingdom would have preferred to negotiate their transfer since the economic and security costs incurred in protecting the status of these territories dwarfed the benefits it obtained in maintaining them as dependent territories, above all when taking into account that following the end of the Cold War and the restoration of democracy in Spain, Gibraltar and the Falklands lost a huge part of their geostrategic value. Indeed, British representatives held covert negotiations in Madrid and Buenos Aires in order to reach an agreement over the transfer of these territories. Following its failure to reach landmark deals, the United Kingdom applied the principle to which it had morally committed itself, that of respecting the will of the autochthonous population. Gibraltar held two referendums, one in 1967 and the other in 2002, in which almost 100% of the electorate opted to continue under British sovereignty. The Falklands also a held a referendum on 12 March 2013, in which, similar to the Gibraltar referendum, over 90% of the electorate voted in favour of maintaining the same status. According to figures from the BBC “1,513 were in favour, while just three votes were against”. [466] Finally the status of "British Dependent Territory", which was created by the British National Act in 1981, was renamed, “British Overseas Territories” in 2002.[467]

B. **CROWN DEPENDENCIES: A SINGULAR HISTORIC REALITY**

If the British Overseas Territories (BOTs) have unique characteristics, the Crown Dependencies (CDs) are even more anomalous. As with the BOTs, the CDs are the result of a concrete reality, albeit a historical reality entirely distinct from that of the BOTs. The Crown Dependencies are not part of the United Kingdom. They have never been colonies of the UK and they are not Overseas Territories, and their connection with Britain is altogether different.

The Crown Dependencies include the Isle of Man which lies in the Irish Sea, mid-way between Ireland and the North of England, and the Channel Islands situated 10 to 30 miles off the north-west coast of France, consists of Jersey, Guernsey, Alderney, Sark, and Herm, Jethou, Brechou, and Lihou. All these except Jersey are in the Bailiwick of Guernsey, but the Minquiers,

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[463] KILLINGRAY, D., TAYLOR, D., “The United Kingdom Overseas Territories: Past, Present and Future”, op. cit., p.59.
[464] CONNELL, J., “Britain’s Caribbean Colonies: The end of the era of decolonization”, op. cit., p. 100.
[465] KILLINGRAY, D., TAYLOR, D., “The United Kingdom Overseas Territories: Past, Present and Future”, op. cit., p.60.
[466] Falklands referendum: Voters choose to remain UK territory, from: British Broadcasting Corporation (BBC), “Falklands referendum: Voters choose to remain UK territory”, BBC News, 12 March 2013, from: <http://www.bbc.co.uk/news/uk-217509>, (accessed 5 May 2013).
[467] UK Border Agency, “Who is a British overseas territories citizen?”, UK Government- Home Office: UK Border Agency, from: <http://www.ukba.homeoffice.gov.uk/britishcitizenship/othernationality/britishoverseasterritories/>, (accessed 15 May 2013).

Ecrehous, Les Dirouilles and Les Pierres de Lecq, uninhabited group of islets are part of the Bailiwick of Jersey. They are considered the remnants of the Duchy of Normandy, and are not part of the United Kingdom.

B.1) THE CHANNEL ISLANDS

The recent history of the Channel Islands can be dated back quite clearly to Norman times. The islands were annexed to the Dukedom of Normandy around 933 by William I Longsword, who was the son of Rollo of Normandy or Rolf "the Gange", a Scandinavian (probably born in Norway) Viking Chief, considered to be the first Duke of Normandy. In 1911 Rollo was granted part of the future duchy of Normandy by Charles the Simple, King of France, at the Treaty of Saint-Clair-sur-Epte, in exchange for feudal alliegiance and conversion to Christianity.

> "King Charles III, Charles the Simple of France (born 879 A.D. died 929 A.D.; King of France 893 - 929 A.D.) defeated the Vikings. The Vikings lost 7,000 men. King Charles decided that he did not want to continue to fight the Vikings. He decided to sign a treaty with Rollo the Viking (Hrolf the Ganger in Norse or Rollon in French)[468]".

In the year 927, Rollo abdicated in favour of his son William, succeeding his father as ruler of Normandy and becoming the Second Duke of Normandy. As previously mentioned, he annexed the Channel Islands in 933. Later, in 1035 the llegitimate son of Robert I, Duke of Normandy, known as William "the Bastard" was recognised as his heir. In 1066, William,the new Duke of Normandy conquered England, whereupon he became known as King William I "the Conqueror" of England, the first Norman king of England.

> "Early in 1066, Edward, king of England died and Harold, Earl of Wessex was crowned king. William was furious, claiming that in 1051 Edward, a distant cousin, had promised him the throne and that Harold had later sworn to support that claim.
>
> William landed in England on 28 September 1066, establishing a camp near Hastings. Harold had travelled north to fight another invader, Harold Hardrada, King of Norway and defeated him at Stamford Bridge near York"[469].

From then on, the duke of Normandy and the king of England were usually the same person, until 1204, when king John of England lost continental territory of Normandy in the war against Philip II of France, but despite the Channel Islands were part of the Dukedom of Normandy, they weren't lost, since they remained loyal to the English crown. In return for this loyalty, King John granted to the islands, certain rights and privileges in 1215, in a "sort of Islands' own Magna Carta[470]", these rights and privileges were mainly that the Islands would remained a self-governing possession of the English Crown. Since then, Channel Islands enjoy a unique "Royal" relationship "the inhabitants of these islands have been answerable only to the Duke of Normandy and his successors, the British sovereign[471]". So, the islands today are

[468] Sinclair Organisation, "Treaty of St. Clair-sur-Epte", France, Sinclair Organisation, 911, from: <http://sinclair.quarterman.org/archive/2002/08/msg00044.html>, (accessed 10 May 2013).
[469] British Broadcasting Corporation (BBC), "Historic Figures: William the Conqueror", BBC History, from: <http://www.bbc.co.uk/history/historic_figures/william_i_king.shtml>, (accessed 10 May 2013).
[470] House of Commons Justice Committee, "Crown Dependencies", Eight Report of Session 2009-2010, House of Commons, Vol. 2, 2010.
[471] Islands life organisation, "History of the Channel Islands", Islands life, from: <http://www.islandlife.org/history.htm>, (accessed 10 May 2013).

Crown Dependencies, they "retain autonomy in government and they owe allegiance to The Queen in her role as Duke of Normandy[472]".

B.2) THE ISLE OF MAN

Historically the Isle of Man, which was first used by the Norse Vikings as a base, was connected to Scandinavian rullers. During King Haakon Haakonsson IV (1204—1263) reign, King Alexander III of Scotland "made aggressive attempts to wrestle the Western Isles and Argyll from Norwegian control. In 1263, Haakon responded by sailing to Scotland with a large fleet[473]", at this battle, known as the Largs and Magnus battle, Alexander III defeats Haakon IV, however it was an inconclusive battle, since further Norwegian military actions were planned. Finally, when King Haakon died, his successor, Magnus Lagabøter, known as Magnus VI Håkonsson of Norway entered into negotiations with the Scottish King that led to the 1266 Treaty of Perth, where the Isle of Man and other Isles were transferred to Scotland early in the tenth century.

> "The Norse Kings had brought the Island under subjection and established in it a dynasty which lasted for nearly four centuries. Afterwards the Island passed under Scottish rule, and was finally ceded to England after the battle of Neville's Cross in 1346[474]".

Subsequently a series of battles followed between England and Scotland for possession of the Isle. Finally, David II of Scotland was defeated in 1346 by the king of England Edward III at the Battle of Neville's Cross.

William de Montacute, 3rd Baron Montacute, (later the 1st Earl of Salisbury) was granted the lordship of the Isle of Man by King Edward III. The Earl of Salisbury sold the Lordship of the Isle of Man to William le Scope of Bolton. Thus possession of the Isle changed hands throughout history, for many centuries the Stanley family (the Earls of Derby) were the vassal monarchs or Lords of Man, but in 1765, as a result of the Isle of Man Purchased Act, also known as the Act of Revestment, the English crown bought back the regalities of the Island from the Atholl family for the sum of £70,000. Since then, "the Crown 'revested' the regalities of the Lord into itself, and the British authorities exercised direct authority over the Island. However, from the mid-nineteenth century on, the Island regained an increasing level of autonomy[475]".

> "For more than half a century after the establishment of English domination the Lordship of the Island was held by a, succession of English barons on feudal tenure, but in 1405 the Lordship was granted by Henry IV to Sir John Stanley " to have" and to hold by liege homage and the service of rendering to the said King two " falcons once only, that is to say, immediately after the same homage done ; and "of rendering to his heirs, Kings of England, two falcons on the days of their" coronations instead of all other services, customs, and demands." Thus began the rule of the Earls of Derby,

[472] UK Government, "The Channel Islands", The official website of the British Monarchy, from: <http://www.royal.gov.uk/MonarchUK/QueenandCrowndependencies/ChannelIslands.aspx>, (accessed 10 May 2013).

[473] British Broadcasting Corporation (BBC), "The Battle of Largs – 1263", BBC History, from: <http://www.bbc.co.uk/scotland/history/scotland_united/the_battle_of_largs/>, (accessed 10 May 2013).

[474] Isle of Man Constitution Committee, "Report of the Departmental Committee on the Constitution of the Isle of Man", presented to Parliament by Command of His Majesty, published at His Majesty's Stationery Office, 1911.

[475] EDGE, P., AUGUR PEARCE, C.C., "The work of a religious representative in a democratic legislature: A case study of the Lord Bishop of Sodor and Man in Tynwald, 1961-2001", *Marburg Journal of Religion*, Vol. 9, December 2004, Num. 2, p. 43.

which, on the whole, was characterised by observance of the Insular Constitution and Customs as transmitted from Norse times.

The direct connection of the Derby family with the Island terminated with the death in 1736 of the tenth Earl without male heirs. The Lordship of the Island then passed to the second Duke of Atholl, who was descended from a daughter of the seventh Earl of Derby (…)

In 1765--by an Act which is commonly known as the Revestment Act (5 Geo. III., c. 26)- the Lordship and Customs of the Isle of Man and its dependencies were bought from the third Duke of Atholl for 70,000 and an annuity of 2,000 (Irish) a year on the joint lives of the Duke and his Duchess. The purchase did not affect the, Duke of Atholl's manorial rights in the Island, and he retained his interest in the land revenues, patronage of the bishopric, advowsons (…)[476]"

Nowadays, the Isle of Man is an internally self-governing **Crown Dependency**, it is not part of the United Kingdom and as previously mentioned, as a result of 1765 purchase Act, now Her Majesty The Queen is the Head of State and is Lord of Man, so the islanders owe allegiance to The Queen in her role as Lord of Man.

2. POLITICAL APPROACH: THE INSTITUTIONAL FRAMEWORK OF THE BRITISH OVERSEAS TERRITORIES AND THE CROWN DEPENDENCIES

A) THE BRITISH OVERSEAS TERRITORIES

General information

"**The Overseas Territories are very diverse**, with thousands of small islands, vast areas of ocean, but also, in Antarctica, land 6 times the size of the United Kingdom. They include one of the world's richest communities, in Bermuda; the most remote community, in Tristan da Cunha and one of the smallest, with only 54 people living on Pitcairn Island. The total population of the territories is roughly a quarter of a million.

Most of the Overseas territories have a permanent resident population. The exceptions are the British Indian Ocean Territory, the British Antarctic Territory, South Georgia and South Sandwich Islands. The latter two have research stations

The UK Government is committed under the United Nations Charter "to promote to the utmost… the well-being of the inhabitants of these territories". Three overseas territories, St Helena, Montserrat and Pitcairn, are dependent on aid as a result of extreme challenges including inaccessibility, undiversified economies and declining populations[477]".

These territories are heterogeneous, mainly small islands that are located at a great distance from the United Kingdom. Indeed, some of them are geographically isolated. Said diversity and distance from the UK means that each BOT (British Ovrseas Territory) has its own institutional system and enjoys a certain amount of internal administrative autonomy.

Constitutionally, they do not form part of the United Kingdom. Thus, each territory has its own government institutions, constitution and legal system. The fact that they have their own

[476] Isle of Man Constitution Committee, "Report of the Departmental Committee on the Constitution of the Isle of Man", presented to Parliament by Command of His Majesty, published at His Majesty's Stationery Office, 1911.
[477] Ibidem.

constitutions may come as a surprise given that they are not sovereign states, but territories under British sovereignty; yet this is the result of the high degree of self-government they enjoy.

> "The UK Government does not have direct responsibility for administering public services, (except currently exceptionally in the Turks and Caicos Islands) but UK Government Departments have a duty to promote effective, accountable and democratic Government institutions and offer advice and assistance to the OTs where needed[478]".

It is precisely these constitutions, known as "Territory Constitutions", which set out the distribution of the system of powers and establish the competences and responsibilities of the institutions of government.

> "Each new Overseas Territory constitution is the result of negotiations between the UK Government and the representatives of each Territory, the circumstances, speed of development and needs of which are different. The provisions of each constitution are not identical, although there are many similarities[479]".

The Institutional Framework is similar but not identical to all Overseas, The Head of the Overseas Territories is the British Monarch, who appoints a representative in each territory to exercise Her executive power.

> "The UK, the Overseas Territories and the Crown Dependencies form one undivided Realm, which is distinct from the other States of which Her Majesty The Queen is monarch[480]".

Regarding judiciary, "they appoint their own judges and prosecutors, manage their own criminal and civil justice systems and are responsible for managing their own prisons and offenders[481]". Each territory has its own attorney –general and Court system. Nevertheless the BOTs have a Judicial Committee of The Privy Council (JCPC) which is the court of final appeal for the UK overseas territories and Crown dependencies, and, as we previously mentioned, for those Commonwealth countries that have retained the appeal to Her Majesty in Council or, in the case of Republics, to the Judicial Committee[482].

Legislative power, although they generally have their own assemblies, "The UK Parliament has unlimited power to legislate for the Territories." We cannot overlook the fact that these territories enjoy a high degree of self-government and have freely opted to remain under British sovereignty, which respects the will of these territories. This implies that British Parliament is their supreme legislative body in all the British overseas territories, however they do not have representatives in the UK Parliament. In this sense, in a submission to the UK

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[478] UK Government, "A New Approach to the British Overseas Territories", Justice Assistance engagement plan, UK Government: Ministry of Justice, 2012.

[479] UK Parliament, "Turks and Caicos Islands: Government Response to the Committee's Seventh Report of Session 2009-10", Foreign Affairs Committee, UK Parliament, from: <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmfaff/623/62305.htm>, (accessed 3 July 2013).

[480] UK Government, "Overseas Territories White Paper", UK Government: Foreign & Commonwealth Office, 28 June 2012.

[481] Ibidem.

[482] The Supreme Court, "Judicial Committee of the Privy Council", The Supreme Court, from: <http://www.jcpc.gov.uk/>, (accessed 4 July 2013).

Parliament's Backbench Business Committee en 2012[483] the Conservative Member of the UK Parliament, Andrew Rosindell who also chairs the UK's All-Party Parliamentary Group on the British Overseas Territories, claims that both, the Overseas Territories and the Crown Dependencies have representatives in the UK Parliament as do the Overseas Territories and Countries of other states of the international community, such as Denmark or Australia as it is not reasonable that these territories are ultimately governed by the UK parliament, but are not given any voice at all.

> "The United Kingdom-our Government, our Parliament-ultimately governs 21 territories around the world, but those territories have no voice in this Parliament, they elect no representatives and have no representation, unlike former colonies and territories of other countries, such as Australia, Denmark, France and the Netherlands, which have external territories committees to which representatives are elected (…) All they have is an informal all-party group, of which I am proud to be chairman. We have a democratic hole, with hundreds of thousands of people for whom we make laws, whom we ultimately govern and on whose behalf we can declare war, make foreign policy and sign international treaties. We have substantial control over their domestic affairs. Those territories that have sterling are bound by much of our own economic policy. In a range of areas, although the Crown dependencies and overseas territories are not part of the UK they are substantially influenced and ultimately governed by this Parliament, so it is wrong for them to have no voice at all [484]".

Regarding their assemblies, the BOTs citizens are responsible for directly electing their representatives. These assemblies are responsible for **administering** all but a few reserved areas of government[485]". Each overseas territory has its own legal system independent of the UK, which is generally based in Common Law, with some distinctions for local circumstances the executive and governmental tasks are generally in the hands of the "Governor or Commissioner, appointed by Her Majesty The Queen, an elected legislature and Ministers[486]".

Finally, the many British overseas territories use a great variety of currencies with very few using the British pound as their native currency. Gibraltar uses the Gibraltar Pound and Akrotiri and Dhekelia uses the Euro.

UK- OVERSEAS RELATION

As we pointed out in the Legal Approach, a modernisation process of the Constitutions of the Overseas Territories was initiated in 1999. Since this is almost completed, rather than devise fresh constitutional changes, it would be more logical to ensure that the ones adopted are being implemented effectively.

In the White Paper 2012, which describes and sets out the constitutional link between the BOTs and the UK, clearly expresses the will of the United Kingdom to continue working to develop and enhance this constitutional relationship, given that while proud of its special links with the 14 Overseas Territories, in recent times the UK has not given enough attention to this link.

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[483] ROSSINDELL, A., "British overseas territories and Crown dependencies", UK Parliament Publications, session 2010-12, from:
<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmbackben/uc100112/ucbb100112.htm>, (accessed 4 July 2013).
[484] Ibidem.
[485] Ibidem.
[486] Ibidem.

Moreover, United Kingdom makes clear that it does not object to the exercise of the right to exercise self-determination if the territories express this desire democratically as this relationship is founded on the will of the parties.

> "Any decision to sever the constitutional link between the UK and a Territory should be on the basis of the clear and constitutionally expressed wish of the people of the Territory[487]."

In short, it is a modern relationship based on:

a) partnership,
b) shared values and
c) the right of the people of each Territory to choose to remain British

Constitutionally, the Overseas Terrritories are not full part of the UK, but fall under UK's jurisdiction, this implies that the United Kingdom has a number of internal and external responsibilities for these territories, based on international law and historical reasons. Internally, it is responsible for security, good governance and the social and economic wellbeing of the inhabitants of these territories, and internationally it is mainly responsible for defence and international relations. These responsibilities entail the adoption of a number of actions (assistance, protection or promotion) by the United Kingdom to ensure their effective implementation. Furthermore, these tasks are a priority for the United Kingdom.

> "The UK Government's fundamental responsibility and objective is to ensure the security and good governance of the Territories and their peoples. This responsibility lows from international law including the Charter of the United Nations. It also lows from our shared history and political commitment to the wellbeing of all British nationals. This requires us, among other things, to promote the political, economic, social and educational advancement of the people of the Territories, to ensure their just treatment and their protection against abuses, and to develop self-government and free political institutions in the Territories. The reasonable assistance needs of the Territories are a first call on the UK's international development budget[488]".

Internationally, the United Kingdom is responsible for ensuring that these Territories fulfil their obligations, therefore it maintains certain residual powers to ensure that they effectively meet them, and likewise it can hold them to account in the event they fail to meet their internal obligations.

> "In the case of the uninhabited Territories the UK Government has a responsibility to ensure that they are administered, and that their environmental and natural resources are protected and managed, to the highest standards[489]".

The table below summarises the United Kingdom's internal and international responsibilities for these territories[490]:

> 1. Defence and Security: the UK is committed to defend the Territories and contributes to their protection from crime and support in the event of natural disaster;

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[487]Ibidem.
[488] Ibidem.
[489] Ibidem.
[490]Ibidem.

2. Economic Assistance: the UK provides substantial budgetary assistance to Territories in need;

3. Technical Support: the UK Government provides a broad range of technical assistance and support;

4. International Support: the UK is responsible for the external relations of the Territories and uses its diplomatic resources and influence to promote their interests;

5. Reputational Benefits: the reputations of Territory Governments and businesses are strengthened by their association with the UK.

Even though they are not sovereign territories, the model of constitutional relationship between the United Kingdom and the British Overseas Territories continues to rest upon the principle of autonomy, which lends them a high degree of self-government (which varies according to their powers, resources and real possibilities).

> "The Government maintains the UK's long-standing position on independence for the Territories[491]".

The autonomy enjoyed by the Overseas Territories translates as not only in receiving support and entitlements but includes obligations and responsibilities in their domestic actions and administration by following the "same high standards as the UK Government in maintaining the rule of law, respect for human rights and integrity in public life, delivering efficient public services, and building strong and successful communities. Territories in receipt of budgetary support are expected to do everything they can to reduce over time their reliance on subsidies from the UK taxpayer[492]".

B) **THE CROWN DEPENDENCIES**

B.1 **<u>The Channel Islands</u>**

As we have previously mentioned, the archipelago of the Channel Islands has two separate Bailiwicks, the Bailiwick of Jersey and the Bailiwick of Guernsey, eac one includes a group of small islands and inhabited islets.

The term Bailiwick derives from the word "Bailie" or "Bailiff" employed in Old Middle English or Anglo-Norman language; these words, in turn, derive from the term "Bailli" in Old French. In the Oxford Dictionary,[493] Bailiwick (noun) is defined as:

> 1 (One's bailiwick) one's sphere of operations or area of interest: ex. after the war, the Middle East remained his bailiwick
>
> 2 (Law) the district or jurisdiction of a bailie or bailiff: ex. the warden had the right to arrest all poachers found within his bailiwick.

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[491] UK Government, "The Overseas Territories Security, Success and Sustainability", UK Government: Foreign and Commonwealth Office, June 2012, Cm 8374.
[492] Ibidem.
[493] Oxford Dictionaries, "Definition of Balie", On-line Oxford Dictionaries, from: <http://oxforddictionaries.com/definition/english/bailie?q=bailie>, (accessed 6 July 2013).

The word “Bailie” is defined as:

1. Chiefly historical, a municipal officer and magistrate.

Despite the historical relationship with France (Normandy), none of the two Bailiwicks has a written or codified constitution in a single text, in the continental style. Rather, its constitution is made up of an extensive and complex body of different normative documents and practical customs and usages originating over the course of years, decades and centuries. They largely derive from the Treaty of Paris of 1259, from the Royal Charters, from common law referring to norms being developed in the courts of the Bailiwick, of the ancient body of Norman customary law and more recently from those norms and reforms emanating from legislature known as the States of Jersey and the States of Guernsey. One of the main institutional reforms was carried out 1948, The Reform (Guernsey) Law[494].

> “Like the UK, Guernsey does not have a written constitution. There are a number of Royal Charters from successive sovereigns that define the rights, freedoms and privileges of the island. There are a number of "constitutional" laws which define the assembly, that give effect to rights described in certain international treaties and shape the way that States of Guernsey interact with the residents of the island[495]”.

Although the two Bailiwicks have nearly identical institutional structures, each one is unique and each retains its own organisational and functional autonomy.

> “Jersey has its own laws, judiciaries and executives[496]”.

Thus, taking into account their institutional and organisational and structural coincidence, we have conducted a joint analysis of the two Bailiwicks, highlighting the necessary details and clarifications where required.

It is important to note that despite the strong French influence, which maintains its presence in the culture of the Channel Islands, the principle of separation of powers stemming from the ideology of the French Revolution is not present in the organisational model of power of these territories. In this sense, multiple roles straddling the different branches of Government came under increased scrutiny for their apparent contravention of the doctrine of separation of powers. As we already mentioned in earlier sections, this is due to their historical peculiarities.

Thus despite being self-governing territories, they are not sovereign states, but Crown Dependencies. They do not form part of the United Kingdom, nor are they represented in the UK Parliament. However, the UK Government is responsible for their defence and international representation.

The institutional structure of the Bailiwicks functions as follows:

- ✓ Each Bailiwick is headed by a **Bailiff,** who is the President of the States and of the Royal Court. Therefore, he holds legislative power (The States of Deliberation) and exercises judicial power. In turn, he has a “Deputy Bailiff who assists him and is able to

[494] States of Guernsey, “Consolidated text, Projet de Loi, The Reform (Guernsey) Law 1948”, States of Guernsey, from: <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71775&p=0>, (accessed 6 July 2013).
[495] Government of Guernsey, “Constitution of Guernsey”, States of Guernsey, from: <http://www.gov.gg/article/1866/Constitution>, (accessed 6 July 2013).
[496] Government of Jersey, “Constitution of Jersey”, from: <http://www.gov.je/Constitution>, (accessed 6 July 2013).

perform the same functions as the Bailiff when authorised so to do. They are both appointed by the Crown." Hence, as we already discussed, the principle of separation of powers in not entirely clear.

- ✓ The Crown is represented in each Bailiwick by a Lieutenant Governor. "He has traditionally been a senior member of Her Majesty's Armed Forces but this is likely to change in the future. Each of them are also Commander-in-Chief and the Commander of the Armed Forces of the Crown in Jersey and in Guernsey, respectively. Communication between Her Majesty's Government (through the Home Office) and Jersey is conducted through the Lieutenant-Governor"[497].

- ✓ Other Crown appointees are the Dean of Jersey and Guernsey, each of them are the head of the Church of England in Jersey and Guernsey. The Law Officers of the Crown are the Procureur in Guernsey and the Attorney General in Jersey, and the Solicitor General in Jersey and the Comptroller in Guernsey. All these charges "carry out various statutory and customary law functions and are non-voting members of Jersey's/Guernsey's legislative assembly, the States of Deliberation[498]."

- ✓ The States, which derives from the French term *États*, is the Legislative Assembly. Both Jersey and Guernsey each have their own assembly. The structure of the Bailiwick of Guernsey is much more complex than Jersey's since unlike the Bailiwick of Jersey, which has jurisdiction over Jersey, the largest island, the other islands are uninhabited. Guernsey is the largest island in the Bailiwick of Guernsey, yet the rest of the islands are inhabited and make up autonomous jurisdictions. Thus, Bailiwick takes in the island of Guernsey and the islands of Alderney, Sark, Herm, Jethou, Brecqhou, and Lihou. It is organised into three separate jurisdictions: Guernsey, which includes also the islands of Herm and Jethou; Sark, which also has claims jurisdiction over the island of Brecqhou; and the island of Alderney. Each jurisdiction also contains the other smaller islands. In addition to these jurisdictions, it also has its own Parliamentary Assembly, which in Guernsey is known as The States of Guernsey, the parliament of Sark is called the Chief Pleas, and the parliament of Alderney is known as the States of Alderney. The three parliaments together can also approve joint Bailiwick-wide legislation, which applies in those parts of the Bailiwick whose parliaments have approved it. Having made this point, it is important clarify for the purposes of this thesis, we will focus on the institutional system of the island of Guernsey.

- ✓ It is important to note that the States, above all in Guernsey, exercise simultaneously government and legislative functions, thus we once again reiterate the idea that the separation of powers in the two Bailiwicks is vague. In order to tell apart the different functions, legislatives functions are exercised as "The States of Deliberation". The makeup and structure of the States of Jersey and of Guernsey is different. However, curiously, in both cases the Assembly consists of members that are elected by the citizens, and only these elected members have a vote in the Assembly; the other members that are not elected by the citizenry may take part in debates, but they have no vote.

[497] Ibidem.
[498] Government of Guernsey, "Law Officers", States of Guernsey, from: <http://www.gov.gg/law>, (accessed 4 July 2013).

In Jersey "the States comprises the Bailiff, the Lieutenant Governor, the Connetables of the twelve parishes[499], twelve Senators, twenty-nine Deputies, the Dean of Jersey, the Attorney General and the Solicitor General. Although they all have the right to speak in the Assembly, the right to vote is reserved for the **fifty-three elected members** consisting of the Senators, Connetables and the Deputies. Should it be necessary, the Bailiff has a casting vote[500]".

In Guernsey, "the States of Deliberation forms Guernsey's parliamentary assembly and comprises: A Presiding Officer, who is ex officio the Bailiff (or in his absence the Deputy Bailiff, as Deputy Presiding Officer) Her Majesty's Procureur, Her Majesty's Comptroller, **fourty-five** People's Deputies, two Representatives of the States of Alderney, Sark sends no representative. The Presiding Officer and the two Law Officers have no vote[501]". The decisions are made by consensus.

The main differences we observe in the composition of the Parliamentary Assembly of the two Bailiwicks relate mainly to the number and type of members that directly elected by the citizens. It should also be noted that in Jersey, each Connétable, known as 'constable' in English, runs a parish for a three-year mandate and also represents the parish in the legislature, the States of Jersey. Whereas in Guernsey, the constables are not members of the The States of Deliberation.

The States of Jersey has a higher number of elected members than that of Guernsey, which in turn, consists of three types: Deputies, Senators and Connétables. In Guernsey, on the other hand, the elected members are of a single type, Deputies. Of the 47 Deputies that make up the States of Guernsey, two of them are representatives of the States of Alderney. Regarding the non-elected members of the Parliament, Jersey has one member, the Dean of Jersey, who has no power of vote, while there is no similar member in Guernsey

- ✓ The Crown Dependencies have no representation in the UK Parliament, which as a rule does not legislate on behalf of Guernsey and Jersey, except in certain matters over which it has legislative powers. In this case, the UK Parliament may not legislate "without first obtaining the consent of Guernsey and Jersey's administration.[502]"

> "Government officials must never state or imply that the Crown Dependencies are part of the United Kingdom, or Great Britain or England or act on that assumption.
>
> It is important that where a UK policy initiative requires consultation with the Crown Dependencies sufficient time is given to their governments to make that consultation effective[503]".

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[499] Jersey is divided into twelve administrative districts or parishes. Each parish is headed by a Constable (French: Connétable), they are elected for a term of three years.

[500] Government of Jersey, "Constitution of Jersey", op. cit.

[501] Government of Guernsey, "Parliament- States of Deliberation", States of Guernsey, from: <http://www.gov.gg/parliament>, (accessed 6 July 2013).

[502] Government of Guernsey, "The UK and the EU", States of Guernsey, from: <http://www.gov.gg/article/1892/Guernsey-the-UK-and-the-EU>, (accessed 6 July 2013).

[503] UK Government, "Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man", UK Government: Ministry of Justice Crown Dependencies Branch, from: <http://www.justice.gov.uk/downloads/about/moj/our-responsibilities/Background_Briefing_on_the_Crown_Dependencies2.pdf>, (accessed 23 June 2013).

- ✓ The governments of Jersey and Guernsey differ in their executive and government powers. In Guernsey's case, the government functions correspond to The States of Guernsey. Its work is co-ordinated by the Policy Council, on which the Minister of each Department has a seat. The Council is headed by the Chief Minister; there is a Deputy Chief Minister and ten Government Departments: Commerce & Employment, Culture & Leisure, Education, Environment, Health & Social Services, Home Affairs, Housing, Public Services, Social Security and Treasury & Resources. The main tasks of the Council are distributed into the following areas: Constitutional and External Affairs, Strategic and Corporate Policy, Co-ordinating States Business, Emergency Powers Authority, Island Archives and Human Resources.

> "The Policy Council is responsible for Guernsey's constitutional and external affairs, developing strategic and corporate policy and coordinating States business. It also examines proposals and Reports placed before Guernsey's Parliament (the States of Deliberation) by Departments and Non States Bodies.
>
> The States of Deliberation acts as the overarching executive. The Policy Council and Departments are delegated some executive functions by the States of Deliberation, policies and proposals for legislation are brought to the assembly by those bodies[504]"

Similar to the case of Guernsey, Jersey's government functions correspond to The States of Jersey. Its work, in this case, is co-ordinated by the Council of Ministers, which is headed by the Chief Minister and is made up of nine other Ministers chosen by all States Members, which are in charge of the following departments: Economic Development, Education, Sport and Culture, Home Affairs, Health and Social Service, Housing, Planning and Environment, Social Security, Transport and Technical Services and Treasury and Resources.

> "The main responsibilities of the council include the following[505]:
>
> - co-ordinating policies and administration
> - discussing and agreeing policy affecting two or more ministers
> - prioritising executive and legislative proposals"

As we have previously explained, the Bailiwick of Jersey consists of the Island of Jersey and its uninhabited islands. The island of Jersey is the largest of the Channel Islands, so as well as having a central government, it also has other units of government that represent the different administrative divisions. Geographically Jersey is divided into twelve Parishes, each having its own municipality. Each parish has its Connetable, Centeniers, Vingteniers and other officers elected for a three year term of office. "The Governing body in each parish is known as the Assembly of Principals (ratepayers).[506]"

Guernsey also has parishes, territorial government units or municipal divisions. Specifically, it is divided into ten parishes, and unlike in Jersey each one of these

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[504] States of Guernsey, "Government and Administration", States of Guernsey, from: <http://www.gov.gg/Guernsey-Government>, (accessed 11 July 2013).

[505] Government of Guernsey, "The Council of Ministers", States of Guernsey, from: <http://www.gov.je/Government/HowGovernmentWorks/CouncilMinisters/Pages/About.asp>, (accessed 11 July 2013).

[506] Government of Jersey, "Council of Ministers", Government of Jersey, from: <http://www.cab.org.je/index.php?option=com_content&view=article&id=213:states-of-jersey-council-of-ministers--7121l1-&catid=29&Itemid=53>, (accessed 17 July 2013).

parishes has a main administrative body, known as a Douzaine or in some Parishes the term Constable's Office is used. This body consists of twelve people, known as Douzeniers[507], with the expectations of the two parishes of Vale and St Peter Port, which have more than twelve. The Douzeniers are elected by the residents of the parish to serve a 6-year period of office and two of them are elected each year. Usually the Dean or "Doyen de la Douzaine" is the most senior one, meaning he has served longer than the rest. Furthermore, each Parish has two Constables who are the executive officers of the Douzaine, they carry out the decisions of the Douzaine, serving for between one and three years. The longest serving Constable is known as the Senior Constable and his or her colleague as the Junior Constable.

> "In ten ecclesiastical parishes which act as civil administration districts with limited powers (…) the main body is the Douzaine, is usually made up of twelve members known as Douzeniers[508]. There are exceptions, the Vale having sixteen and St Peter Port having twenty[509].

Each parish also elects two Parish Constables who historically had criminal investigative powers and also supervision of foreigners residing in the parish. The Parishioners elect the Constables for a maximum term of three years. Office holders are able to stand for re-election[510].

"The two Constables for each parish are also elected residents of that parish who are tasked with the specific duties of delivering the decisions and administration as required by the douzeniers.

Douzeniers and Constables hold parish meetings at which they discuss government proposals and decisions as they relate to the parish in addition to local matters of administration and Parish Rates.

Both Constables and Douzeniers have a duty as custodians of public safety and morals of the parish. In other instances, some kinds of authority are specific to individual parishes[511]."

Finally, it is interesting to note that neither Jersey nor Guernsey have political parties, so politicians are independent of political parties:

> "Jersey politicians are independent of political parties, there is no party line for politicians to follow. Constituents expect their Deputy to represent their views in the States"[512].

[507] In the past Douzeniers were expected to have served a term as Constable before they can be elected as a Douzenier. However now it is the case that the Constables are elected from amongst the Douzeniers.
Government of Jersey, "Council of Ministers", Government of Jersey, from:
<http://www.cab.org.je/index.php?option=com_content&view=article&id=213:states-of-jersey-council-of-ministers--7121l1-&catid=29&Itemid=53>, (accessed 17 July 2013).
[508] As the name suggests, this arises from the French word "Douze" or twelve.
Government of Guernsey, "Douzaines", States of Guernsey, from: <http://www.gov.gg/article/2045/Douzaines>, (accessed 17 July 2013).
[509] the parish of Vale (which was once two parishes, Ibidem.
[510] The Royal Court of Guernsey, "The Royal Court of Guernsey", from:
<http://guernseyroyalcourt.gg/article/1954/Parishes-and-Douzaines>, (accessed 17 July 2013).
[511] Government of Guernsey, "Douzaines", op. cit.
[512] Government of Jersey, "Constitution of Jersey", op. cit.

> "Guernsey's system of government operates on a system based on consensus. There has been no move to set up and maintain political parties[513]".

- ✓ Regarding the judiciary, **confusion arises yet again on the principle of separation of powers,** Jersey's system combines Institutions and the Courts of Justice in order to administer. The first level consists of the Parish Halls or Town Halls. A Parish is one of the territorial and administrative sub-divisions of the island, which in Jersey amount to twelve and in Guernsey ten. The Parish Halls deal with minor matters, mainly penalties limited to a maximum of £100 per offence. More matters that are serious are referred on to the Magistrates Court or Youth Court, if a minor is being tried. However, matters a more serious nature such as minor criminal cases are dealt with by a Stipendiary Magistrate. The Royal Court, which is responsible for resolving more serious criminal and civil cases, is presided over by the Bailiff (or the Deputy Bailiff, depending on the type of case), they also are part of twelve Jurats, elected by an Electoral College. "The Bailiff is the sole judge of law and it is he who determines whether costs should be awarded, and in what amount. The Jurats determine other matters. There is also a Court of Appeal with judges travelling over from England and Guernsey, in some instances Video Conferencing is used with the Appeal Judges in London conferring with people in Jersey[514]". In addition to the courts, there are a number of Tribunals, including: Jersey Employment Tribunal, Health and Safety Appeal Tribunal, Data Protection Tribunal, Rent Control Tribunal, Social Security Tribunal, and Mental Health Review Tribunal.

  In Jersey, the Centenier is entrusted with bringing most of the cases to the Parish Hall and the Magistrates Court. Nevertheless, in cases that are likely to proceed to the Royal Court or where more a complex argument of law is required, this role falls to the Prosecutor, rather than the Centenier. This enables the Attorney General to be represented.

  Guernsey, which has a similar court system to Jersey's, has a Magistrate's Court, presided over by a Judge of the Magistrate's Court, as appointed by the Royal Court. In addition, the Deputy Bailiff or a Judge of the Royal Court may preside over sittings of the Magistrate's Court. This Judge largely deals with minor matters and has several sections: Criminal and Civil Jurisdiction of the Magistrate's Court, summary jurisdiction in criminal law cases which are liable to attract a sentence of a maximum of **two years and/or a fine of £20,000**. However, there are a number of Laws, for example those involving Sea Fisheries, that provide the Judge with the authority to pass a sentence with a higher fine. Regarding civil matters, the jurisdiction of the Court is limited, the sum in dispute cannot exceed £10,000. These are commonly known as petty debt cases.[515] Furthermore, other sections are Family Law Matters, Inquests (to certify a death), Juvenile Court and Costs and Fees.

  The Guernsey Royal Court, historically known as the *Cour en Corps*, is responsible for the resolution of civil and criminal matters, it deals with more serious matters than the Magistrate's Courts, in particular the Royal Court deals with heavy fines of more than £20,000 or imprisonment for a period of more than two years. Regarding civil matters, it is responsible for those matters beyond the legal competence of the Magistrate's

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[513] The Royal Court of Guernsey, "The Royal Court of Guernsey", from: <http://guernseyroyalcourt.gg/article/1954/Parishes-and-Douzaines>, (accessed 17 July 2013).
[514] Government of Jersey, "Constitution of Jersey", op. cit.
[515] The Royal Court of Guernsey, "The Royal Court of Guernsey", from: <http://guernseyroyalcourt.gg/article/1954/Parishes-and-Douzaines>, (accessed 17 July 2013).

Court. The Guernsey Royal Court is made up of three divisions: the Full Court, the Ordinary Court and the Matrimonial Causes Division. The Royal Court is presided by "a single Judge of law, this being either the Bailiff, the Deputy Bailiff, a Judge of the Royal Court or a Lieutenant Bailiff qualified in law; and is made up by not less than seven, but no more than twelve, Jurats acting as Judges of fact[516]".

The Guernsey Court of Appeal is nearly identical to the one in Jersey, in fact "typically a judge of the Guernsey Court of Appeal will at the time of appointment also be appointed an ordinary Justice of the Jersey Court of Appeal. Additionally, by custom and at the initiative of the Bailiff of Guernsey, his brother Bailiff in Jersey is appointed by the Sovereign to be a Justice of the Guernsey Court of Appeal. The same is the case in respect of the Guernsey Bailiff being appointed to serve as an ordinary Justice of the Jersey Court of Appeal. Bailiffs are appointed to these positions only for so long as they hold office as Bailiff, whilst all other Justices of the Court of Appeal are appointed to serve until age 70[517]". Guernsey has other tribunals as: The Contracts Court, The Court of Chief Pleas and The Ecclesiastical Court.

Lastly, both Jersey and Guernsey have a Judicial Committee of the Privy Council, which is the is the court of final appeal for the UK Overseas Territories and Crown dependencies, and for those Commonwealth countries that have retained the appeal to Her Majesty in Council or, in the case of Republics, to the Judicial Committee. However, in Canada and Australia it is not possible to exercise the right of appeal from the Privy Council, which is regarded as an obsolete channel since at present both states have their own Supreme Court, and it has been a long time since the Privy Council last heard an appeal from these two states.

UK RELATIONS WITH THE CROWN DEPENDENCIES

As we have noted, "although the Crown Dependencies are proud of their British associations, the Crown Dependencies are not part of the United Kingdom and are autonomous and self-governing, with their own, independent legal, administrative and fiscal systems. The Island parliaments legislate for themselves. UK legislation and international treaties are only extended to them with their consent[518]."

Two United Kingdom institutions are of essential importance when handling the relations of the United Kingdom with the Crown Dependencies: The Crown and the UK Ministry of Justice. Regarding the Crown, Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, published in 1973 and known as the Kilbrandon Report, sets out an account of the duties of the Crown in relation to its Dependencies[519].

The Crown's responsibilities include:

- ultimate responsibility for the "good government" of the Islands;
- the ratification of Island legislation by Order in Council (Royal Assent) following scrutiny by the relevant Privy Councillor (at the time of the Kilbrandon Report the Home Secretary, now the Justice Secretary);

[516] Ibidem.
[517] Ibidem.
[518] UK House of Commons, "Eighth Report of Session 2009–10", op. cit.
[519] UK Government, "Report of the Royal Commission on the Constitution (Kilbrandon Commission), 1969-1973", UK Government Official Document, 11 January 1974, Cmnd 5460, Part XI of Vol. 1.

- international representation, subject to consultation with the insular authorities prior to the conclusion of any agreement which would apply to them;
- ensuring the Islands meet their international obligations; and
- defence.[520]

Regarding the Ministry of Justice, the House of Commons Justice Committee Report[521] provides an excellent explanation of the tasks and competences of this Ministry in relation to Crown Dependencies, this Ministry is charged with administration of the relationship between the UK Government, on behalf of the Crown, and the Crown Dependencies[522]. On 7 October 2008, the Justice Secretary, the Rt Hon Jack Straw MP, described the responsibilities of the Ministry of Justice as including:

- international relations;
- defence;
- ensuring that the Crown Dependencies meet their international obligations, including human rights obligations; and
- the "good government" of the islands[523].

The mentioned Report states that the limits of these responsibilities in relation to its Dependencies have never been tested, and this contributes to the Justice Secretary's description of the constitutional relationship as a "subtle one"[524].

The Ministry of Justice has outlined the broader work of the Crown Dependencies Branch, which sits inside the International Directorate of the Ministry of Justice[525]. The Crown Dependencies Branch[526]:

- holds the policy responsibility for the UK's relationship with the Crown Dependencies;
- provides the main channel of communication between the Crown Dependencies and the UK Government on a full range of policy concerns and issues raised by both the Crown Dependencies and the UK;
- ensures the development of UK policy takes the interests of the Crown Dependencies into account, where appropriate;
- processes legislation submitted for Royal Assent by the Crown Dependencies (in the case of the Isle of Man, the Lieutenant Governor possesses a delegated power to grant Royal Assent for many types of legislation and the Ministry of Justice will signal to him whether or not it is appropriate for him to use that power)consults with the Islands on extending international instruments and UK legislation to them; where appropriate;
- recommends crown appointments in the Islands[527].

[520] Ibidem.
[521] UK House of Commons, "Eighth Report of Session 2009–10", Report on the Crown Dependencies ordered by the House of Commons, UK House of Commons: Justice Committee, 23 March 2010.
[522] Prior to the creation of the Ministry of Justice, both the Home Office and the Department for Constitutional Affairs have had responsibility for the relationship with the Crown Dependencies.
[523] UK Parliament, "First Report of the Justice Committee Session 2008-09", Q 14, 17, oral evidence on The Work of the Ministry of Justice, 7 October 2008, HC 1076-i.
[524] UK Parliament, "First Report of the Justice Committee Session 2008-09", op. cit., Q 15.
[525] Ibidem, Q 45.
[526] UK House of Commons, "Eighth Report of Session 2009–10", op.cit.
[527] UK Parliament, "First Report of the Justice Committee Session 2008-09", op. cit., Ev 87.

The Ministry of Justice emphasises the extent to which the relationship with the Crown Dependencies is a shared responsibility across government, with the Ministry relying on other departments for advice, assistance and international representation[528]. For their part, Government officials should always consult the Ministry of Justice's Crown Dependencies Branch before contacting the Crown Dependencies when[529]:

- Briefing Ministers to make statements or answer Parliamentary Questions about the Crown Dependencies
- Arranging a visit to the Crown Dependencies by officials or Ministers
- Preparing proposals for international agreements that might apply to, or indirectly impact on the Crown Dependencies, for example, Community Treaties
- Proposing or drafting any Bill which may be relevant to the Crown Dependencies or including any provision relating to them in a published Bill.

B.2 The Isle of Man

The political status and the institutional and constitutional system of the Isle of Man are nearly identical to those of the Channel Islands. However, we have conducted separate review if it, given that this territory has its own peculiarities that set it apart from Jersey and Guernsey. They are the result of the geographical distance between them and, of course, their mainly Viking history as the island remained under direct Scandinavian rule until 1266.

The Isle of Man, like the Channel Islands, is an internally self-governing dependency of the British Crown. It is not and never has been part of the United Kingdom. However, the United Kingdom is responsible for the defence and international relations of the Isle. In exchange for services rendered, the Isle of Man makes an annual voluntary contribution to the United Kingdom.

> "The Crown Dependencies raise their own public revenue **and do not receive subsidies from or pay contributions to the UK**. They do, however, **make annual voluntary contributions towards the costs of their defence and international representation** by the UK. The government in Jersey funds a Territorial Army Royal Engineers' Squadron on the Island. In Guernsey, the government remits to HM Treasury the income from passport fees and meets the maintenance costs of the Alderney breakwater. The Isle of Man government makes annual cash payments calculated according to an agreement signed in 1994[530]".

The Queen is the Head of the State, holds the title of Lord of Mann, and is personally represented by Lieutenant Governor, who is appointed by the Crown following a selection process carried out by the UK Ministry of Justice. Governors hold office for five years.

> "The Crown has ultimate responsibility for the 'good government' of the Island and it acts on the advice of Ministers of the UK Government in their capacity as Privy Councillors[531]".

[528] UK Parliament, "First Report of the Justice Committee Session 2008-09", op. cit. Q 87; Ev 88.
[529] Ministry of Justice, "Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man", op. cit.
[530] Ibidem.
[531] Isle of Man Government, "Our relationship with the United Kingdom", Isle of Man Government, from: <http://www.gov.im/isleofman/externalrelations.xml>, (accessed 19 July 2013).

> "The Crown is ultimately responsible for the good government of the Crown Dependencies. This means that, in the circumstances of a grave breakdown or failure in the administration of justice or civil order, the residual prerogative power of the Crown could be used to intervene in the internal affairs of the Channel Islands and the Isle of Man[532]".

The Isle of Man is a parliamentary representative democracy, it has a parliament, the Tynwald, considered to be the world's oldest continuously working parliament in existence, and the only working example of a tricameral legislature, dates back to its Viking origins over 1,000 years ago. As with the Channel Islands, it is difficult to distinguish clearly the division of powers in the distribution of functions of the Isle of Man. One example of this vague division is found in the parliament itself, where we find members that also form part of the executive power and/or the judiciary.

The Legislative Assembly of the Isle of Man consists of the **House of Keys** and the **Legislative Council.** These two bodies meet separately and together in joint session as the **Tynwald**.

> "The two branches sit separately throughout the parliamentary year principally to enact primary legislation; they sit together as Tynwald Court mainly to debate matters of policy, approve delegated legislation and to adopt financial motions[533]".

The House of Keys is known as the electoral chamber, whose 24 members are elected every five years. Similar to the system in the Channel Islands, in which no political parties are represented in the Assembly, most Manx politicians stand for election as independents rather than as representatives of political parties. Though political parties do exist, their influence is not very strong. Therefore, as in the Channel Islands, parliamentary decisions are made through consensus.

The Legislative Council usually reviews Bills which are usually first introduced in the House of Keys. The Council consists of up of 11 members, eight of them elected by the House of Keys, and the other three are H.M. Attorney-General, who has no power of vote, the Lord Bishop, who may vote in determined matters, and the President of Tynwald, who is elected by Tynwald as a whole from its Members and who presides at sittings of Tynwald and the Legislative Council. (The President has a casting vote).

The Council Minister Act de 1990[534] renamed the Executive Council to the Council of Ministers, altered the procedure for the appointment of members of certain bodies; and for connected purposes. It has executive and governing functions, but the institution is wholly unlike the UK Cabinet.

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[532] Lord Bach in a parliamentary answer given on 3 May 2000, source: UK Government, "Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man", UK Government: Ministry of Justice Crown Dependencies Branch, from: <http://www.justice.gov.uk/downloads/about/moj/our-responsibilities/Background_Briefing_on_the_Crown_Dependencies2.pdf>, (accessed 23 June 2013).

[533] Isle of Man Government, "Parliament", Isle of Man Government, from: <http://www.gov.im/isleofman/parliament.xml>, (accessed 19 July 2013).

[534] Isle of Man Government, "Council of Ministers Act 1990", Isle of Man Government: Legislation, AT 3 of 1990, from: <http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1990/1990-0003/CouncilofMinistersAct1990_1.pdf>, (accessed 25 July 2013).

> "Whilst there are some comparisons that can be made, the Council of Ministers is not a parallel to the United Kingdom Cabinet and what can be learned by a comparison with the United Kingdom Cabinet system is limited[535]".

Formerly, the Lieutenant Governor presided over the Legislative Council, but this position been was replaced by a chairman elected by the Tynwald and appointed by the Lieutenant Governor, now known as Chief Minister. The remaining members that make up the Council receive the title of Minister and are appointed by the Lieutenant Governor, acting on the advice and with the concurrence of the Chief Minister. The Chief Minister assigns a minister to each department of the Isle of Man Government. The number of Ministers cannot exceed nine, without including the Chief Minister, and they must also be elected from among the members of the parliament.

> Article 2.1 "The Chief Minister shall be appointed from among the members of Tynwald by the Governor on the nomination of Tynwald".
>
> Article 3.1 "The Ministers, who shall not exceed 9 in number, shall be appointed from among the members of Tynwald by the Governor, acting on the advice and with the concurrence of the Chief Minister."
>
> Article 5 "The Chief Minister shall by an instrument in writing assign a Minister to each Department".

Nowadays the nine Departments in which is divided the Manx Government are the following[536]: 1. Community, Culture and Leisure, 2. Environment, Food and Agriculture, 3. Economic Development, 4. Education and Children, 5. Health, 6. Home Affairs, 7. Infrastructure, 8. Guernsey Social Care and 9. Treasury

In Jersey,[537] as in the Isle of Man, the government is divided around nine State Departments and the name and competences with which the different departments are vested 1. Economic Development, 2. Education, Sport and Culture, 3. Health and Social Services, 4. Home Affairs, 5. Housing, 6. Department of Environment, 7. Social Security, 8. Transport and Technical Services, 9. Treasury and Resources

In Guernsey[538], the work of the government is carried out by a coordinating body known as the Policy Council[539] and 10 States Departments: 1. Commerce and Employment, 2. Culture and Leisure, 3. Education, 4. Environment, 5. Health and Social Services, 6. Home Department, 7. Housing, 8. Public Services, 9. Social Security, 10. Treasury and Resources.

> "Jersey and the Isle of Man have ministerial systems of government with a directly elected legislature. The Head of Government on Jersey and the Isle of Man is the Chief Minister. Guernsey has a directly elected legislature and operates a system of consensus government through multi-member Departments and the Policy Council,

[535] Isle of Man Government, "The Council of Ministers", Isle of Man Government, from: <http://www.gov.im/government/council/council.xml>, (accessed 25 July 2013).
[536] Ibidem.
[537] States of Jersey, "Government and administration", States of Jersey, from: <http://www.gov.je/Government/Pages/default.aspx>, (accessed 25 July 2013).
[538] States of Guernsey, "Government Departments", States of Guernsey, from: <http://www.gov.gg/article/1707/A-Z-of-Departments>, (accessed 26 July 2013).
[539] He is responsible for Guernsey's constitutional and external affairs, developing strategic and corporate policy and coordinating States business. It also examines proposals and Reports placed before Guernsey's Parliament (the States of Deliberation) by Departments and Non States Bodies.
Government of Guernsey, "Policy Council", States of Guernsey, from: <http://www.gov.gg/policycouncil>, (accessed 26 July 2013).

> the latter constituted by the Minister from each Department and chaired by the Chief Minister[540]".

Regarding the local government, as in the Channel Islands, the municipal structure of the Isle of Man is based on the Parish system, although the latter has more parishes. Specifically, it has 17 parishes that deal with local affairs. This system was originally devised by the Vikings in the twelfth century to establish ecclesiastical boundaries. The local government of the Isle of Man consists of 24 local authorities: "consisting of 4 Town authorities, 2 District authorities, 3 Village authorities and 15 parish authorities[541]." Recently, the first of April of 2010 the local government was reform it and now is under the control of three different Government Departaments: 1. Department Environment, Food and Agriculture, 2. Department of Infrastructure and 3. Department of Social Care.

Interestingly, the Manx local government has a unique institutional system, which has Viking roots and does not exist in the Channel Islands. Each Parish has a Captain, which at present mainly performs ceremonial duties.

> "Each parish also has a Captain whose ancient role involved providing men to 'watch' the island 24 hours a day and guard against invasion but is now regarded as more of an honorary title required only to attend the Tynwald ceremony and local meetings"[542].

2. LEGAL APPROACH: THE SUI GENERIS LEGAL NATURE AND STATUS

A) THE OVERSEAS TERRITORIES

The process of modernisation, engagement and partnership between the United Kingdom and the Overseas Territories began in 1999, as a result of the adoption of the 1999 White Paper "Britain and the Overseas Territories: A Partnership for Progress and Prosperity[543]". This paper is divided into 9 chapters and an appendix, which contains a profile of each of the fourteen territories. According to Osborne "it was the culmination of a wide-ranging review of the UK's relationship with the British Overseas Territories (BOTs)". [544]

The White Paper addresses four main areas:

1. **Proposes a New Partnership between the Overseas Territories** and the UK with the aims of achieving "progress" and "prosperity". It is a renewed contract; a partnership intended to reflect not only the longstanding links between the BOT and the UK, but also the new dynamics of a changing and forward-looking relationship. Modernisation is identified as the key to the new partnership.

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[540] UK Government, "Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man", UK Government: Ministry of Justice Crown Dependencies Branch, from: <http://www.justice.gov.uk/downloads/about/moj/our-responsibilities/Background_Briefing_on_the_Crown_Dependencies2.pdf>, (accessed 23 June 2013).
[541] Isle of Man Government, "Local Authorities", Isle of Man Government, from: <http://www.gov.im/transport/msd/local/welcome.xml>, (accessed 26 July 2013).
[542] Isle of Man Government, "Parishes", Isle of Man Government, from: <http://www.isleofman.com/places/parishes/>, (accessed 26 July 2013).
[543] UK Government, "Partnership for Progress and Prosperity Britain and the Overseas Territories", UK Government: Secretary of State for Foreign and Commonwealth Affairs, UK Government Official Documents, March 1999, Cm 4264.
[544] OSBORNE, R.P., "The UK Overseas Territories Relationship: An Overview", in KILLINGRAY, D., TAYLOR, D., "The United Kingdom Overseas Territories: Past, Present and Future", University of London, Institute of Commonwealth Studies, *OSPA Research Project Papers*, 2005, Num. 3, pp. 315-332.

> "But fundamental to the new partnership will remain the right of each territory to remain British if that is the wish – freely and democratically expressed – of their people[545]".

It is important to emphasise that this partnership is based on a real willingness of the Territories to remain British. In the event they do not wish to continue so, Britain will assist them in their fundamental right of self-determination. In this regard, Killingray and Taylor[546] note that the White Paper reasserted the fundamental right of each Territory to remain British if that was the freely and democratically expressed wish of its people. Nevertheless, it also made clear that the British government would not stand in the way of independence, where it is an option, and is the clearly and constitutionally expressed wish of the people. In fact, as we have already mentioned about several Overseas Territories, referendums were recently held on this question in Gibraltar and the Falklands, and in the both cases the option to remain under British sovereignty was chosen.

2. **Recognising and generalising the status of British Citizenship** to the citizens of all Overseas Territories. The process for generalised recognition of this status has been complex and its designationhas been repeatedly changed up to the present. Osborne explained that, historically, the question of race and nationality was a big dilemma for the UK. This was highlighted by the British Nationality Act 1981, the purpose of which was to bring nationality and immigration legislation into line, and also with Europe. But the Act which conferred the title of "Citizenship of Dependent Territories" did not allow citizens who were not direct descendants of British nationals to enjoy certain rights, such as the right of entry to UK territory. This sparked a number of complaints that intensified when Gibraltarians were granted British Citizenship Rights in 1981, a status extended to Falkland Islanders by the British National (Falkland Islands) Act of 1983. So, in this author's opinion "Whites were citizens while non-whites were not! The Old Empire of race had not gone away[547]."

In this sense, the designation of these territories has varied from that which was historically known as "colonies", later as result of the British Nationality Act of 1981[548] (which came into force in 1983), the name was replaced to British Dependent Territories. Finally, in 2002, the British Overseas Territories Act[549] introduced the name of British Overseas Territories. So, before 26 February 2002, British overseas territories citizenship was known as Citizenship of the United Kingdom and colonies, and later British dependent territories citizenship. On 21 May 2002, British overseas territories citizens became British citizens automatically "if they had British overseas territories citizenship by connection with a qualifying territory. A qualifying territory is any of the British overseas territories except for the Sovereign Base Areas of Akrotiri and Dhekelia[550]".

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[545] UK Government, "Partnership for Progress and Prosperity Britain and the Overseas Territories", op. cit.
[546] KILLINGRAY, D., TAYLOR, D., "The United Kingdom Overseas Territories: Past, Present and Future", op. cit., p.61.
[547] OSBORNE, R.P., "The UK Overseas Territories Relationship: An Overview", op. cit., p. 323.
[548] UK Government, "British Nationality Act 1981", UK Government Legislation, from: <http://www.legislation.gov.uk/ukpga/1981/61>, (accessed 15 May 2013).
[549] UK Government, "British Overseas Territories Act 2002", UK Government Legislation, from: <http://www.legislation.gov.uk/ukpga/2002/8/introduction>, (accessed 15 May 2013).
[550] UK Border Agency, "Who is a British overseas territories citizen?", UK Government- Home Office: UK Border Agency, from: <http://www.ukba.homeoffice.gov.uk/britishcitizenship/othernationality/britishoverseasterritories/>, (accessed 15 May 2013).

Loss of British Overseas Citizenship:

> "When St Christopher and Nevis became an independent Commonwealth country on 19 February 1983, British overseas territories citizens lost that citizenship if they were connected only with St Christopher and Nevis.
>
> On 30 June 1997, when sovereignty of Hong Kong returned to China, British overseas territories citizens lost that citizenship if they were connected only with Hong Kong. Special rules were introduced in 1986 to allow British overseas territories citizens from Hong Kong to acquire the new status of British (national) overseas. Those who did not register as British nationals (overseas) and had no other nationality or citizenship on 30 June 1997 became British overseas citizens on 1 July 1997[551]".

In sum, the 1999 White Paper allowed as citizens of the overseas territories to have the possibility of acquiring British Citizenship, save those that we have just discussed. However, the wording of the White Paper establishes that British citizenship is not compulsory since those who do not wish to acquire it may continue to be British Dependent Territories citizens.

> "British citizenship – and so the right of abode – will be offered to those citizens of the Overseas Territories who do not already enjoy it, and who meet certain conditions. Those who do not wish to have it will be able to say so and remain British Dependent Territories citizen".

3. **Encouraging Good Governance** is another area addressed by the White Paper. It encourages the adoption of those measures aimed at the reform and modernisation of government structures. Accordingly, it emphasises the importance that the Territories themselves undertake these reforms It attaches importance to improving protection and respect for human rights and encourages the adoption of a more suitable regulation in financial and fiscal matters that comply with international standards and obligations.

> "To make progress in reforming and modernising human rights provisions – notably judicial corporal punishment, capital punishment and laws affecting homosexual conduct".
>
> "Regulation of offshore financial service industries in the Overseas Territories needs to be improved to meet internationally accepted standards and to combat financial crime and regulatory abuse."

4. **Sustainable Development**, through this White Paper the government of the United Kingdom declares that one of its objectives consists of assisting these Territories in achieving sustainable development and fighting poverty. Similarly, it expressly mentions the wealth of these Territories in terms of natural diversity and the UK Government agrees to work with the Overseas Territory governments in order to "conserve, manage and protect the natural environment of the territories". Likewise, it recognises "the need to adopt an Environment Charter in order to clarify the roles of the partners in this important work".

Furthermore, despite the fact that these Territories are under the United Kingdom's sovereignty, which is responsible for their international relations, defence and security, as well as having the duty to help them provide local governance of high quality, the White Paper emphasises that these territories should administer themselves in accordance with their constitutions; and in full respect for those of the UK's international obligations relevant to

[551] Ibidem.

them. Hence, the United Kingdom must allow Overseas Territories to decide their own future and to enjoy a high degree of autonomy.

Lastly, The White Paper provided for new structures for the partnership between the UK and the Overseas Territories to structure a dialogue between the OT collectively and the UK Government, these structures can be summarised as follows:

1. The appointment of a Minister for the Overseas Territories within the Foreign Commonwealh Office, with a similar Minister being appointed in the Department for International Development.

2. The establishment of The Overseas Territories Consultative Council (OTCC), which will meet every year, it will provide a forum within which matters of common interest and concern can be discussed at high level.

Designs of technical and financial assistance for development projects, mainly through the UK Department For International Development (DFID). In this context, Osborne[552] explains that to date five territories were in receipt of DFID support, with the largest programmes being those for Montserrat, to assist with reconstruction following the volcanic crisis of 1997, and to St. Helena, which faces the challenges of extreme physical isolation.

Since then, the author of the present thesis notes that more actions have been undertaken, such as the establishment of a modest regional programme to support and assist the Territories in regional integration. Furthermore, DFID has provided advice on budgetary and economic planning. The FCO and DFID have worked with OT governments to raise awareness and standards of human rights; and have agreed Environment Charters with the majority of Territories to encourage them to put in place measures which will protect their rich biological diversity for future generations.

The 1999 White Paper **still remains the framework for the UK's relationship with the Overseas Territories**, and it has had an enormous impact. As already commented, thanks to this document, rules of great importance have been adopted, such as the British Overseas Territories Act 2002,and mechanisms of critical importance have been put in place, such as the Overseas Territories Consultative Council. Moreover the process to review and modernise the constitutions of these Territories has begun.

However since the world has moved on and the international agenda has changed, several documents that update this White Paper have been adopted. Some of the main ones have been the 2003 White Paper published by the Foreign Office entitled "the UK International Priorities: A Strategy for the FCO".[553] This document has been described as a key for its clarity in setting out the United Kingdom's **eight foreign policy priorities** for the next five to ten years. We can observe that the eighth priority refers to the Overseas Territories:

[552] OSBORNE, R.P., "The UK Overseas Territories Relationship: An Overview", op. cit., p.323.

[553] UK Government, "UK International Priorities: A Strategy for the Foreign Commonwealth Office White Paper ", UK Government: Commonwealth and Foreign Office, 2 December 2003, from: <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmfaff/745/74507.htm#note51>, (17 May 2013).

Strategic international policy priorities for the United Kingdom[554]:

1) a world safer from global terrorism and weapons of mass destruction;

2) protection of the United Kingdom from illegal immigration, drug trafficking and other international crime;

3) an international system based on the rule of law, which is better able to resolve disputes and prevent conflicts;

4) an effective EU in a secure neighbourhood;

5) promotion of United Kingdom economic interests in an open and expanding global economy;

6) sustainable development, underpinned by democracy, good governance and human rights;

7) security of United Kingdom and global energy supplies; and

8) security and good governance of the United Kingdom's Overseas Territories.

Moreover, the 2003 document points out that the challenges that the United Kingdom will face in the coming years, such as environmental change, insecurity of energy supplies and global terrorism. As well, it states that the country's key relationships will be with the USA—"the world's single superpower"—and with the EU[555]. Curiously, the document expressly mentions the Commonwealth, which will continue to be a "valuable informal group for the promotion of common values and interests across the world[556]."

The 2003 White Paper is followed by other important documents, the latest being the Strategic Plan adopted by the Ministry of Justice, in 2012: "A New Approach to the British Overseas Territories Justice assistance engagement plan", [557] to which we will refer regarding questions of regulation and legal organisation, and the White Paper of the Foreign and Commonwealth Office adopted in June 2012 entitled "The Overseas Territories: Security, Success and Sustainability", [558] for which the UK Government ran international public consultation with the Government of these territories, from September 2011 to January 2012.

The 2012 White Paper sets out a Strategic Plan focused on three main areas: the security of the Territories, their economic development and their natural environment and it has as its main objectives to re-engage and re-evaluate the relations between these territories and the UK, since in recent times said Territories have not been given the attention they warrant.

According to the Secretary of State for Foreign and Commonwealth Affairs "We have not in the past devoted enough attention to the vast and pristine environments in the lands and seas of our Territories".

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[554] Ibidem, par. 50.
[555] Ibidem, par. 52.
[556] Ibidem, par. 53.
[557] UK Government, "A New Approach to the British Overseas Territories Justice assistance engagement plan", UK Government: Ministry of Justice, 2012.
[558] UK Government, "The Overseas Territories Security, Success and Sustainability", UK Government: Foreign and Commonwealth Office, June 2012, Cm 8374.

In this same line, in the Writen Ministerial Statement de 2012, regarding this White Paper, this highlights that:

> "Our (UK) historical links go back more than four centuries. The Territories comprise a quarter of a million people and 90% of the biodiversity of the UK and Territories combined. They are valued constituent parts of the Realm and we have a responsibility to ensure their security and good governance. We also want them to be vibrant and flourishing communities that proudly retain aspects of their British identity. This means upholding their rights of selfdetermination, helping them become economically independent and able to generate opportunities for their people, and protecting their extraordinary environmental heritage[559]".

Likewise, the strategy priorities are to "support coalitions and partnerships across and between the private sector, professional bodies and civil society in the UK and in the Territories, look at how can be fostered high standards of governance and build strong communities".

Finally, within the framework of this White Paper, the UK Ministers and Territory Governments agreed to monitor the work and report regularly on progress, through the Joint Ministerial Council.

THE BRITISH OVERSEAS TERRITORIES AND THE EUROPEAN UNION LAW

Part four of the Treaty on the Functioning of the European Union (Articles 198 to 204 TFEU)[560] regulates the status of the Overseas Countries and Territories and their relationship with the European Union. These territories and countries are not part of the European Union, but they are constitutionally linked to a member state, thus they have a special relationship with European Union.

Article 198, defines Overseas Countries and Territories (the OCTs), which will be the ones that have special relations with Denmark, France, the Netherlands and the United Kingdom. These are listed in Annex II. In the case of the United Kingdom, the article refers to the 14 Overseas Territories that we have already mentioned, though with some distinctions, which we will subsequently address.

The OCTs list is the following[561]:

- **Anguilla (UK)**
- Aruba (NL)
- Bermuda (UK): has never applied the association regime.
- Bonaire (NL)
- **British Antarctic Territory (UK): OCTs, without a permanent local population.**
- **British Indian Ocean Territory (UK): OCTs, without a permanent local population.**
- **British Virgin Islands** (UK)
- Cayman Islands (UK)
- Curação (NL)*

559 UK Government, "The Overseas Territories White Paper", UK Government: Foreign & Commonwealth Office, 28 June 2012.

560 European Union, "Consolidated Version of the Treaty on the Functioning of the European Union", Lisbon, 9 May 2008, C 115/49.

561 European Commission, "EU relations with Overseas Countries and Territories", European Commission: Development and Cooperation- Europeaid, from: <http://ec.europa.eu/europeaid/where/octs_and_greenland/index_en.htm>, (accessed 21 May 2013).

- **Falkland Islands** (UK)
- French Polynesia (FR)
- French Southern and Antarctic Territories (FR): OCTs, without a permanent local population.
- Greenland (DK)
- Mayotte (FR) **
- **Montserrat** (UK)
- New Caledonia and Dependencies (FR)
- **Pitcairn** (UK)
- Saba (NL)*
- Saint Barthelemy (FR)
- Sint Eustatius (NL)*
- Saint Maarten (NL)*
- **South Georgia and South Sandwich Islands (UK): OCTs, without a permanent local population**.
- **Saint Helena, Ascension Island, Tristan da Cunha (UK)**
- St. Pierre and Miquelon (FR)
- **Turks and Caicos Islands (UK)**
- Wallis and Futuna Islands (FR)

(*) Curaçao, Saint Maarten, Bonaire, Saba and Saint Eustatius were, up to 10.10.2010 part of the Netherlands Antilles.

(**) Following the accession of Mayotte to the status of "département d'outre-mer" on the 31 March 2011 and according to the Council decision 2012/419/UE of 11 July 2012 amending the status of Mayotte with regard to the European Union, this territory will become an outermost region of the EU as from 1 January 2014.

Regarding the British Overseas Territories we should draw two important distinctions:

Gibraltar is a BOT although it is not listed in Appendix II, therefore it is the only Overseas Territory that is part of the EU and as such is subject to European Union obligations (except for Value Added Tax, customs purposes and the common agricultural policy).

The Sovereign Bases of Akrotiri and Dhekelia in Cyprus are not part of the European Union, their legal status is confirmed by Protocol 3 of the Treaty of Accession of the Republic of Cyprus in the European Union, entitled 'on the Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus', where it is provided that the Treaty shall not apply to the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia, except to the extent necessary to ensure the implementation of the agreements set out in the Protocol.

As we can note, there are huge differences between the OCTs themselves in terms of the degree of autonomy, the Member States to which they are linked, but also in the economic and social field and as regards their geographical characteristics and climate. However, despite the immense diversity between the OCTs, they do share common characteristics[562]:

[562] European Commission, "Policy Coherence on Development", European Commission: Development and Cooperation- Europeaid, from: <http://ec.europa.eu/europeaid/what/development-policies/policy-coherence/index_en.htm>, (accessed 1 January 2011).

1. None of them is a sovereign country,
2. They are all parliamentary democracies,
3. They are all islands,
4. The size of their populations is very small and
5. Their ecological richness is extraordinary compared to continental Europe.
6. They are all relatively vulnerable to external shocks and are in general dependent on a narrow economic base that mostly revolves around services.
7. They are also heavily reliant on imports of goods and energy. In general, exports of goods from the OCTs to the EU or within their respective geographical regions remain limited.

As a result of this diversity, some territories are in a less advantageous situation than others. Specifically, Annex IB of the Overseas Decision,[563] which we address subsequently, enumerates the OCTs considered by the Decision itself as the least developed; these are:

- Anguilla,
- Mayotte,
- Montserrat,
- Saint Helena, Ascension Island, Tristan da Cunha,
- Turks and Caicos Islands,
- Wallis and Futuna Islands,
- St Pierre and Miquelon.

Article 198 TFEU, points out that the status of each of the OCTS is that of an "Associated Country or Territory". This is a general status that may be granted to any territory or country, but which can only be acquired by territories and countries that have a special relation with the previously cited member states and that are listed in Annex II. The recognition of associate signifies that the OCTs benefit from a special relation with European Union.

According to Article 198 TFEU, the special relation has as its objectives, "to promote their (OCTs) economic and social development, to establish close economic relations between them and the Union as a whole and to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire".

Articles 199 and 200 TFEU mainly provide for the trade regime and financial aid derived from the status of associate. That is, they set out the obligations and rights of OCTs and member states, and their relations with the former.

Article 199 specifies the following regime:

In their trade relations, the general rule is that the member states must treat the OCTs in the same way they treat the rest of the Member states. For their part, the OCTs must treat the Member states and the rest of the OCTs in the same way they treat the Member state with which they have a special linkage.

The Member States shall contribute to the investments required for the progressive development of these countries and territories.

[563] European Union, "Council Decision on the association of the overseas countries and territories with the European Community", 27 November 2001, 2001/822/EC.

As for investments funded by the EU, all natural and legal persons who are nationals of a Member State or of one of the countries and territories are eligible to participate on equal terms in tenders and supplies.

The right of establishment of nationals and companies in relations between Member States and the OCTs are regulated in accordance with provisions and procedures laid down in the Chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 203.

Article 200 states:

In trade relations between Member states and OCTs, and among the OCT themselves, customs duties on imports are prohibited. However, the fourth paragraph stipulates that overseas territories or countries that, as a result of "international obligations", already apply a non-discriminatory customs tariff, need not apply this prohibition.

As a favourable measure it is worth noting that the EU empowers the OCTs to levy customs duties, provided that can justify it as a charge that is meant to bring greater "development and industrialisation or produce revenue for their budgets". The geographical isolation of most OCTs means that their micro-economies are dependent and vulnerable, thus this favourable measure is entirely justified. Nonetheless, the same article imposes a limit on this possibility, "this burden may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations".

Finally, the last paragraph makes reference to non-discrimination, hence any modification or alteration in customs duties imposed on goods imported into the countries and territories must not involve the adoption of any type of discriminatory measure (de factor or de jure, direct or indirect) regarding imports from the various Member States.

In short, to our mind the EU recognises a favourable regime for the OCTs, in which it grants the OCTs unilateral trade preferences to all products originating in their territories.

> "The OCT-EU trade regime consists of a non-reciprocal preferential trade regime, established in accordance with tariff conditions which are amongst the most generous that have been granted by the Community. However, in view of progressive global and regional trade liberalisation, a reform of the system proves necessary[564]".

The legal framework of relations between the EU and the OCTs is based on the fourth part of the TFEU and on derivative or secondary law. On a general basis, the main regulation of the OCTs[565] is 2001/822/EC: Council Decision on the association of the overseas countries and territories with the European Community (known as the "Overseas Association Decision") which was adopted on 27 November 2001 but expires in December 2013.[566] It draws up a framework for the association of the overseas countries and territories (OCTs) with the European Union.

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[564] European Commission, "Future relations between the EU and Overseas Countries and Territories (OCTs)", Summaries of EU Legislation, European Commission, from: <http://europa.eu/legislation_summaries/development/overseas_countries_territories/rx0005_en.htm>, (accessed 23 May 2013).

[565] (There are further rules of a particular nature which regulate specific relations such as the case of Greenland, which we will not examine as it does not fall within the scope of this thesis).

[566] End of validity: 31/12/2013; See Art. 63 (European Union, "Council Decision on the association of the overseas countries and territories with the European Community", 27 November 2001, 2001/822/EC).

The preamble of this Decision describes the OCTs as **fragile and vulnerable** territories, adverting that they require a specific and adequate system of protection for their needs, which this law seeks to offer them.

> "The OCTs are fragile island environments requiring adequate protection, including in respect of waste management".

Furthermore, regarding the scope of application of this Decision, it states that one BOT, Bermuda, has expressly decided not to implement the content of this Decision in is territory.

> "The arrangements for association laid down in this Decision should not be applied to Bermuda in accordance with the wishes of the Government of Bermuda"

The articles of the The Overseas Association Decision is complex and covers diverse questions stemming from the associated status of the OCTs and from the special relation they maintain with the EU. In short, it covers the following aspects:

a) Principles underlying the EU –OCT co-operative relationship: principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law and principle of non discrimmination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

b) **Areas of cooperation**: The second part of this Decision identifies the areas de cooperation between the OCTs and the UE.

- **Sectoral policies**: Agriculture, Fisheries, Forestry, Rural Development, Industry, Mining, Energy, Transport, Communication, Water, Banking, Finance and Business and Technology Development.

- **Trade development**: Article 12 states a series of operations and technical assistance measures on this area designed to increase the OCTs' self-reliance and improve regional cooperation in trade and services as well as clarifies that these measures would only be undertaken at the request of the OCT authorities. Some of these measures are: "support for the definition of appropriate macroeconomic policies necessary for trade development; support for the creation or reform of appropriate legal and regulatory frameworks as well as for the reform of administrative procedures or the establishment of coherent trade strategies."

Article 13 refers specifically to trade development limited to the services area. It concerns the will of the EU to develop and finance infrastructure and human resources as regards trade in services.

- **Social Sectors**: **Social Sectors**: Cooperation in this field is based chiefly on the adoption of programmes, technical and financial assistance earmarked for Education, Health, Population policy and family planning, prevention and fight against production or distribution and trafficking of all kinds of drugs.

- **Regional Cooperation**: The EU will provide effective aid in order to achieve regional cooperation between two or more OCTs and between one or more OCTs with one or more ACP States. Most OCTs are geographically distributed in the regions of Africa, the Caribbean and Pacific, in other words, in the same zones as the ACP States.

Fundamentally the main objectives of promoting this type of cooperation or integration are according to article 16 to "foster the gradual integration of the OCTs into the world economy; accelerate economic cooperation and development within the regions of the OCT and between them and the regions of the ACP States; promote the free movement of persons, goods, services, capital, labour and technology; accelerate economic diversification and the coordination and harmonisation of regional and sub-regional cooperation policies and promote and foster inter-OCT and intra-OCT trade as well as trade with the most remote regions, ACP States or other third countries." To this end, it must articulate and build the necessary capacities and infrastructure.

- **Cultural Cooperation**: principally, actions should be aimed at promoting "cultural identities and intercultural dialogue with particular reference to preserving the cultural heritage, the production and dissemination of cultural products, cultural events and information and communication."

c) Actors and cooperation bodies

Article 5 of the Decision states that following actors to carry out this cooperation are as follows:

- The OCT authorities;
- the other regional and local authorities within the OCTs;
- civil society, social, business and trade union associations, public service providers and local, national or international non-governmental organisations (NGOs) identified by agreement between the OCT authorities, the Commission and the Member State to which the OCT is linked.
- The Member States to which the OCTs are linked.

Regarding the bodies, articles 7 stipulates the creation of a an **OCT-EU forum for dialogue**, which would meet annually to bring together OCT authorities, representatives of the Member States and the Commission, with the aim of fostering a broad-based dialogue between the European Community, all the OCTs and the Member States to which they are linked. The main task of this forum will be to "consult each other on the principles, detailed procedures and results of the association". Furthermore, this envisages the creation of a **Secretariat**, entrusted with assisting this Forum.

Similarly, the eighth article of this Decision envisages the possibility, if the OCTs so desire, to grant them observer status in order that they may participate at the plenary sessions of **the ACP-EU Joint Parliamentary Assembly**. The OCTs will be informed of the agenda, resolutions and recommendations of the mentioned Assembly.

The European Development Fund (EDF) - Overseas Countries and Territories (OCT) Committee: Article 24 of the decision envisages the creation of this Committee that will work "on the substantive issues of development cooperation at OCT and regional level. In the interests of coherence, coordination and complementarity, it shall monitor the implementation of the Single Programming Documents (SPD)".

Instruments for cooperation: Programmes of technical assistance and financial aid. Article 31 outlines the type of technical assistance that the OCTs may rely on and articles 24 and the following establishes several financial support instruments, mainly the European Development Fund, as well as other instruments such as: humanitarian and emergency aid, grants funded

by the Investment Facility, loans from the EIB's own resources or Additional support in event of adverse effects of any short-term fluctuations in export earnings.

The EU provides financial support for the development strategy of each OCT (set out in a 'single programming document'). Total EU funding for all OCTs for the period 2008-13 is **€286 million**, through the European Development Fund (EDF) [567]:

- €195 million for special programmes (all OCTs with per-capita GNP lower than that of EU)
- €40 million for regional cooperation and integration
- €30 million to finance the European Investment Bank investment facility for OCTs
- €6 million for technical assistance
- €15 million for emergency help.

The OCTs can also get funding under European programmes (e.g. research, education and training, innovation and competitiveness, culture and media, etc.).

<table>
<tr><th colspan="4">Territorial Allocations under the 10th EDF[568]</th></tr>
<tr><th colspan="2">Overseas Country or Territory</th><th colspan="2">indicative allocation (in € million)</th></tr>
<tr><td colspan="2">New Caledonia</td><td colspan="2">19.81</td></tr>
<tr><td colspan="2">French Polynesia</td><td colspan="2">19.79</td></tr>
<tr><td colspan="2">Wallis and Futuna</td><td colspan="2">16.49</td></tr>
<tr><td colspan="2">Mayotte</td><td colspan="2">22.92</td></tr>
<tr><td colspan="2">St Pierre et Miquelon</td><td colspan="2">20.74</td></tr>
<tr><td colspan="2">Aruba</td><td colspan="2">8.88</td></tr>
<tr><td colspan="2">Former Netherlands Antilles</td><td colspan="2">24</td></tr>
<tr><td rowspan="5">Former Netherlands Antilles</td><td>Curaçao</td><td rowspan="5">Per island</td><td>11.25</td></tr>
<tr><td>Sint-Maarten</td><td>4.75</td></tr>
<tr><td>Bonaire</td><td>3</td></tr>
<tr><td>Sint-Eustatius</td><td>2</td></tr>
<tr><td>Saba</td><td>3</td></tr>
<tr><td colspan="2">Falkland Islands</td><td colspan="2">4.13</td></tr>
<tr><td colspan="2">Turks and Caicos</td><td colspan="2">11.85</td></tr>
</table>

[567] European Commission, "EU relations with Overseas Countries and Territories", European Commission: Development and Cooperation- Europeaid, from: <http://ec.europa.eu/europeaid/where/octs_and_greenland/index_en.htm>, (accessed 21 May 2013).
[568] Ibidem.

Anguilla	11.7
Montserrat	15.66
Saint Helena, Ascension Island & Tristan da Cunha	16.63
Pitcairn	2.4
Total	**195**

According to the European Commission, "the 2001 Decision has proven to be beneficial for OCTs but is also outdated and will expire in 2013. Thus, the legislative proposal intends to turn the association into a vehicle via which the EU and the OCTs can address contemporary challenges in a targeted manner[569]".

For their part, the OCTs require a series of changes that the new legislation must incorporate, with the aim of:

- promote the economic and social development of the OCTs more effectively;
- develop economic relations between the OCTs and the European Union;
- take greater account of the diversity and specific characteristics of the individual OCTs, including aspects relating to freedom of establishment;
- and ensure that the effectiveness of the financial instrument is improved.

Accordingly, the Commission has embarked upon a process of modernisation and reform of the special relationship between the OCTs and the EU, on the basis of building a real partnership. This process began with the adoption of the Green Paper on future relations between the EU and the OCTs, on 25 June 2008.[570]

The Green Paper makes it very clear that this is not its objective "to set out a new policy or establish new financial instruments or detailed procedures, but to examine a series of challenges and opportunities and to obtain input from interested parties before defining a new partnership between the EU and the OCTs", In preparing it, the European Commission carried out a wide public consultation from the 1st July to the 17th October 2008, "intended to spark a

broad public discussion on a number of essential questions regarding any substantial modernisation of the OCT-EC association, so that the Commission will eventually be able to determine the appropriate policy response on best possible informed basis, with the objective of defining a new long-term strategy for the association of the OCTs with the Community, which will fully or partly replace the current one when the present Overseas Association Decision expires on 31 December 2013 ."

The outcome of the Green Paper was subsequently presented in the Commission Communication, "Elements for a new partnership between the EU and the OCTs[571]". The main

[569] Ibidem.
[570] European Commission, Green Paper: "Future relations between the EU and the Overseas Countries and Territories", Commission of the European Communities, 25 June 2008, COM (2008) 383 final.
[571] Ibidem.

conclusions of the European Commision were "that the special relationship between the EU and the OCTs should move away from a classic development cooperation approach to a reciprocal partnership to support the OCTs' sustainable development and promote the EU's values and standards in the wider world. Taking into account the feedback received in response to the public consultation, particular from the OCTs and the four Member States to which they are linked (Denmark, France, the Netherlands and the United Kingdom), the Commission believes that the focus should be on strengthening the OCTs' competitiveness and resilience, as well as cooperation with other partners, all while taking due account of the OCTs' diversityFollowing its publication, the Council adopted on 22 December 20098 conclusions welcoming "the Commission's reflections on how to best further develop and strengthen the EU-OCT partnership and foster sustainable development in the OCTs".

Finally in July 2012 the Commission adopted a proposal for a post-2013 Overseas Association Council Decision[572], which was transmitted to EU institutions and national Parliaments. This proposal sets out the need to modernise this special relationship, leaving behind the current model of cooperation and moving towards a real partnership model:

The priority areas for cooperation would be:

1. Environment,
2. Trade (trade in goods, trade in services and cooperation on trade-related issues)
3. Regional integration.

In brief, its objectives would include:

- The establishment of close economic relations between the EU and the OCTs as a whole;
- The establishment of a more reciprocal relationship between EU and OCTs ;
- The enhancement of OCTs' competitiveness;
- The strengthening of OCTs' resilience and reduction of their vulnerability;
- The promotion of cooperation of OCTs with third partners;
- The promotion of EU's values, standards and interests in the wider world via the OCTs.

According to the European Commission, "the proposed changes are expected to have a positive effect on the OCT trading environment. They will rank OCTs among the EU's most favoured trading partners. not only because of the OCTs' duty- and quota-free access to the EU market for goods, but also because the OCTs will automatically receive better terms of trade in services and establishment. In addition, by changing the conditions under which OCT goods and services access the EU market, it should become easier for OCTs to translate market openings into real export opportunities[573]".

[572] European Commission, "Proposal for a Council Decision on the Association of the Overseas Countries and Territories with the European Union" ("Overseas Association Decision"), COM (2012) 362 final, 16 July 2012, 2012/0195 (CNS).
[573] Ibidem.

In conclusion, we regard the relationship between the EU and the Overseas Countries and Territories in general, and the British Overseas Territories in particular, as positive, yet there remain areas for improvement, although it is interesting to note that the EU is aware of this and is directing all its efforts at securing a true partnership. At present, this special relationship grants them the status of Territories or Associated Countries due to the links they maintain with certain member states. Moreover, it is a well-formulated relationship, which gives them certain privileges or preferential treatment, not least in trade and development aid. Furthermore, the various instruments that regulate this relationship have gradually begun to include improvement measures. Hence, the main areas for cooperation have focused above all on trade and cooperation and sustainable development since many of these OCTs are in a vulnerable situation, primarily due to their isolated geographical location or to lack of resources.

We have seen that the European Union contributes significant aid to these territories and it develops programmes consistent with the interests of the various territories, except for Bermuda, which, in accordance with the wishes of her Government, is the only overseas territory of the UK not included in the overseas decision of 27 November 2001 implementing Part IV of the EC Treaty.

The European Commission’s proposal for the adoption of a new Decision on the OCTs, which will have to be taken by the Council in order to replace the current one in force that expires in December 2013. It is an interesting proposal, in that it rejects the drafting and adoption of a new relationship model with these territories, advocating instead an improvement of the existing model and moving towards a true partnership. The proposal stands out for two objectives, the EU’s clear commitment towards the regionalisation of the OCTs, namely, that they themselves undertake the processes towards integration, either with other groups of states of the geographical region to which they belong and/or between the OCTs themselves, and thereby seek to enhance their economy and achieve a more interactivity and protagonism in the actual scenario. In this regard, we should highlight that the proposal of a regional framework for collaboration and integration between the OCTs and ACP states, which would both benefit from the European Development Fund (EDF), which is the main instrument for cooperation in financing the development of the OCTs and for regional cooperation involving them. The OCTs and ACP states share a number of common features, such as the geographical area in which they are located and the vulnerability of their situation.

> “The majority of OCTs are located in the African, Caribbean and Pacific States (ACP), but their level of development is higher than that of their neighbours. However, the micro-island character of their economies makes them dependent on importing goods and energy. These factors make them particularly vulnerable to international economic shocks[574]”.

The second noteworthy objective is to promote self-sufficiency and gradually reduce their dependence on aid from the EU, other organisations or states en general. The creation of instruments and mechanisms for cooperation, which foster dialogue between the main actors of this relationship (UE, OCTs and Member states with which they have a special tie) and the adoption of joint plans and strategies, such as the EU-OCTs Forum, are also highly valued. We believe that work should continue along this line in order give greater protagonism towards shaping a true partnership.

[574] European Commission, “Future relations between the EU and Overseas Countries and Territories” (OCTs), op. cit.

In short, the path defined by EU Institutions, chiefly in the economic and trade sphere, should be hailed positively, however since the objective is to move towards a true partnership, we are of the view that there are other areas de cooperation in need of improvement, where a closer integration would be appropriate. Hence, our proposal would be based upon further progress towards more integration of the OCTs in the EU by overcoming the tariff preference agreements that they currently enjoy and moving towards a customs union and subsequently a common market, the latter being a long-term objective that would be achieved gradually and would consist of strengthening the four fundamental freedoms. This would be as advantageous for the OCTs as for the rest of the parties, the EU as a whole and Member states with which they have the closest ties, since they would no longer depend exclusively on the assistance and aid of the latter. The OCTs in general and the BOTs in particular can offer to the UK a series of highly important advantages that could be extended to the EU as a whole. To summarise, the main ones are:

- "A global presence in diverse regions of the world;
- A set of strategic assets: some of the Territories host military bases or cover regions of significant current operational and long term strategic value;
- Economic and financial opportunities: there are multiple economic opportunities for a broad spectrum of UK companies as well as financial sector specialists.
- Natural and environmental resources: these are of global significance, including fisheries, minerals and hydrocarbons, and biodiversity far exceeding that in the UK's home territory and waters
- Talent and diversity: the people of the Territories bring talents to the UK and the EU, as students at our universities and workers in our businesses.[575]"

B) THE CROWN DEPENDENCIES

THE CROWN DEPENDENCIES AND THE UNITED KINGDOM LAW

Formally, the constitutional relationship between the Crown Dependencies and the UK are not based on any formal constitutional document and for instance, in the case of Jersey has evolved mainly by convention over 800 years. Nevertheless, in recent years, a number of important papers have been agreed that have become the constitutional frame of reference and international status of the Islands. Mainly the Kilbrandon Report of 1973 and more recently, the "framework for developing the international identity of (Jersey, Guernsey and the Isle of Man)", which was agreed by each Crown Dependency and the UK, this document deals with the external "identity" of each territory.

Regarding the Kilbrandon Report, el 31 October 1973, the Royal Commission on the Constitution, known as the Kilbrandon Commission, a long-running royal commission set up by Harold Wilson's Labour government issued a Report, known as the Kilbrandon Report in order to analise the constitutional structures of the United Kingdom and the British Islands and the government of its constituent countries, and to consider whether any changes should be made to those structures.

In constitutional terms, the Kilbrandon report confirmed the internal legislative, executive and judicial autonomy of each Island, but it acknowledged the United Kingdom's excessive power, its right of intervention in order to preserve "good government" in each jurisdiction, which furthermore Sutton notes is a vague an imprecise term since it has never been precisely defined. Regarding the legislative power of the Islands, the Report concluded that the UK

[575] Foreign and Commonwealth Office, "The Overseas Territories Security, Success and Sustainability", op. cit.

Parliament was able to legislate for the Channel Islands and the Isle of Man, but the Report reinforced the requirement that the UK Parliament had a duty to consult these territories in doing so. However, the Report recognises the possibility of the UK Parliament's imposing a legislative measure regarded as domestic without the consent of the Crown Dependencies, only exceptionally and provided circumstances required it:

> 'Our own conclusion, therefore, is that in the eyes of the courts parliament has a paramount power to legislate for the islands in any circumstances, and we have proceeded on this assumption. This does not, of course, mean that parliament should be any more ready than in the past to interfere in the islands' domestic affairs and any less mindful of the need to preserve their autonomy. On the contrary, in the changed international situation greater vigilance may be needed. But if, exceptionally, circumstances should demand the application to the islands without their consent of measures of a kind hitherto regarded as domestic, then Parliament would, in our view, have the power to enact the necessary legislation.'

As for international relations, the Kilbrandon Report did not propose any change in the relationship between the United Kingdom, the Channel Islands and the Isle of Man. It rejected the proposal to give more responsibility and competences to the Crown Dependencies in this area. The United Kingdom would continue to oversee the international relations of these territories, and the Report ruled out sharing responsibility for external affairs between the UK and island governments. Nonetheless, it did support a Home Office proposal that a more formal process of consultation be carried out in future over the implementation of international agreements in the islands.

On 1 May 2007, following the statement of intent agreed on 11 January 2006, each of the Crown Dependencies agreed with the UK Secretary of State for Constitutional Affairs on a regulatory framework on islands' identity and constitutional status in their relations with the United Kingdom and on the international stage. This is declarative political instrument, which is not legally binding for the parties. These regulatory frameworks fulfil a two-fold function: to clarify the constitutional relationship between the UK and the Crown Dependencies, and assist in the development of their international status and identity.

Hence, there are different Frameworks for Developing the International Identity of Jersey, Guernsey and the Isle of Man that were signed on different dates. Jersey and the Isle of Man signed on 1 May 2007 and Guernsey on 18 December 2008. The three frameworks are short documents outlining ten points that are generic in nature, in that that call for further specification and subsequent development and have identical contents, which define the United Kingdom's scope of action in terms of its responsibility for the international relations of the Crown Dependencies. In fact, it is interesting to highlight that the document itself states that the interests of the United Kingdom and Crown dependencies may differ and that, accordingly, the United Kingdom when acting in an international capacity must take into account this discrepancy and be able to represent both interests.

The first provision of the frameworks mentioned state that "in the context of the UK's responsibility for (Jersey, Guernsey and the Isle of Man's) international relations:

- The UK will not act internationally on behalf of (Jersey, Guernsey and the Isle of Man) without prior consultation.
- The UK recognises that the interests of (Jersey, Guernsey and the Isle of Man) may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity. This is particularly evident in respect of the

> relationship with the European Union where the UK interests can be expected to be those of an EU member state and the interests of (Jersey, Guernsey and the Isle of Man) can be expected to reflect the fact that the UK's membership of the EU only extends to Jersey in certain circumstances as set out in Protocol 3 of the UK's Treaty of Accession.

The second provision makes it quite clear that "(Jersey, Guernsey and the Isle of Man) have an international identity which is different from that of the UK". In this sense, we have explained that the implementation of United Kingdom legislation cannot be extended to Crown Dependencies without first obtaining their prior consent:

> "The UK Government Departments must consult the Crown Dependencies at the earliest opportunity in the event that extension is under consideration. It is to be noted that there are different formalities in each jurisdiction which must be observed before such an Order in Council can become effective, all of which have the potential to impact on Bill timetables".

Finally, in the case the UK law can be extended it must be done "by virtue of the Act itself or by Order in Council made with their agreement under an enabling provision contained in the Act which provides for it to be extended to the Crown Dependencies. For an Act to extend otherwise than by an Order in Council is now very unusual. "

THE CROWN DEPENDENCIES STATUS IN INTERNATIONAL LAW

The Crown Dependencies are not, strictly speaking, subjects of International law, because rather than states, they are territorial units that do not have full sovereignty. Nevertheless, as discussed in this thesis, they are self-governing territories and enjoy judicial independence. Hence, they have a considerable measure of autonomy within their separate constitutional relationships with the UK since they do not and have never formed part of the UK. Their only link with the United Kingdom is historical, solely through the Institution of the Crown. Nonetheless, we must clarify that the United Kingdom is responsible for the Crown Dependences' international relations, defence and ultimate good governance, so it has the power to ensure that these obligations are met.

> "The Crown Dependencies (Jersey, Guernsey and the Isle of Man) have their own democratically elected governments responsible for setting policy, passing laws and determining each Island's future. They have an important relationship with the United Kingdom because of their status as dependencies of the British Crown but they are not part of the United Kingdom nor, except to a limited extent, the European Union. They are not represented in the UK parliament and UK laws do not ordinarily extend to them without their consent[576]".

Accordingly, from an international perspective, responsibility for the Island's international representation rests largely with the UK government. But, as we have previously mentioned the UK cannot act internationally on behalf of the Crown Dependencies without prior consultation. Since 1951, these territories are expressly included in many of the important international conventions to which the UK is a party.

Regarding the implementation of the **international law**, two stages must be differenciated, before and after 1951. Treaties and international agreements ratified by the UK before this

[576] Ministry of Justice, "Government Response to the Justice Select Committee's Report: Crown Dependencies", Ministry of Justice, November 2010.

year, although applied to the Crown Dependencies, they did not include any specific reference to these territories. On the other hand, the situation varied from 1951, since this year till now the Treaties and agreements refer specifically to these territories.

> "The long-standing practice of the UK when it ratifies, accedes to, or accepts a treaty, convention or agreement is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and any of the Crown Dependencies or Overseas Territories that wish the treaty to apply to them[577]".

However, it is not always possible to include Crown Dependencies or Overseas Territories in the instrument of ratification (for example, where they do not yet have the necessary implementing measures in place). Thus, the general practice that has been agreed by other States and by the UN Secretary General consists, whenever possible, in extending the scope of ratification in order to include the Crown Dependencies at a later date.

> "If a convention or treaty is extended to the Crown Dependencies, the UK retains responsibility at international law for all of their international obligations[578]".

Therefore, it is important to highlight that in negotiations of any treaty or convention that contains provisions that directly affect the Crown Dependencies, these should be consulted in good time in advance.

The lack of international subjectivity implies not exercising **rights and being subject to obligations** conferred and covered by international legal standards; having neither the capacity to assert legal claims before international bodies nor being responsible on the international stage (active and passive legitimacy) Basically, it would be denied the ius contrahendi, or right to contract international obligations and the ius legationis, or right to legation, both when sending or receiving representatives.

For their part, the Crown dependencies are sui generis entities since they are neither States nor do they form an integral part of any State. Although they are not full subjects of international law, there is nothing to prevent them from playing a prominent role as actors on the international stage. Indeed, the very peculiarities of these islands' tax systems and "the globalisation process has led to the emergence of each of the three Crown Dependencies as significant international "players", in the financial field".[579]

Therefore, the "external personality" of the Islands has grown significantly in recent years, but their international relations are still formally the responsibility of the UK. As for ius contrahendi, it is clear that the Crown Dependencies do not have this right. International Treaties and conventions are signed by United Kingdom, which oversees the international relations of these territories. Nevertheless, based on the regulatory framework we have analysed, mainly the Kilbrandon Report and each one of the Frameworks for Developing the International Identity, although not involving legal obligations, the United Kingdom must observe two important aspects. The first consists of consulting the Crown Dependencies in the shortest possible time about those obligations that affect them[580] and, secondly, in the framework of the negotiations of an international agreement, in the event of disagreement between the United Kingdom and the Crown Dependencies, the UK must be able to represent

[577] Ibidem.

[578] Ibidem.

[579] SUTTON, A., *The evolving legal status of the Crown Dependencies under UK*, European and International Law, Jersey, White and Case Pbl, 2008, pp. 1-5.

[580] Sutton considers that the consultation that the UK must carry out before binding any of the Crown Dependencies to obligations in international law and to normally respect their wishes is a "Constitutional practice."

the interests of both parties. Therefore, since 1951 it has been common practice for the United Kingdom to include expressly the territories in many of the important international conventions to which the UK is party.

It should be clarified that in taxation, which is one area in which the Crown Dependencies have a higher measure of external autonomy, owing to two main factors: the growth of their financial services business based on favourable tax regimes and the particular insular tax policies that differ widely from those in the UK. The difficulty for the UK to act on behalf of the Islands has meant that they have concluded a number of tax information exchange agreements with third countries.

> "Constitutionally, these type of agreements are concluded in accordance with letters of entrustment from the UK to negotiate, conclude and perform tax information exchange agreements. The status of these agreements between the UK Crown Dependencies and third countries under public international law is not clear. However, they are – above all – practical arrangements which ought not to give rise to disputes under public international law or engage the international responsibility of the UK[581]."

Similarly, the Isle of Man (on 13 December 2000) and Jersey and Guernsey (in February 2002) signed "letters of commitment" on harmful tax competition to the OECD. The nature of this type of agreement is not very clear. Jersey's letter of commitment[582] refers to this document as a general political commitment. Further, in a subsequent agreement, signed between the United Kingdom and Guernsey for Exchange of Information relating to tax matters, Guernsey's letter refers to a commitment[583] with the OECD, and points out that Guernsey has committed itself to fulfilling a number of political obligations.

> "Whereas the States of Guernsey on 21 February 2002 entered into a political commitment to the OECD's principles of effective exchange of information[584]";

Hence, there is no doubt that, at the international level, the Crown Dependencies are committed to meeting certain obligations (of a political nature) in taxation. The imputability of responsibility in the event of noncompliance raises more questions. The Isle of Man's letter[585] even contains a schedule of compliance of said obligations. This schedule is not included in the letters from Jersey or Guernsey, which are longer documents than that of the Isle of Man's, in which there is a commitment to adopt a series of measures in order to facilitate a more effective exchange of information and to increase transparency in taxation.

[581] SUTTON, A., *The evolving legal status of the Crown Dependencies under UK*, European and International Law, op. cit., p.3.
[582] Organisation for Economic Co-operation and Development (OECD), "Harmful Tax Competition", Report by the OECD Council of Ministers, November 2000.
[583] Ibidem.
[584] Ibidem.
[585] Ibidem.

It is interesting to note that in the Isle of Man's letter, in addition to establishing political obligations with the OECD, it also grants the right to participate fully in the discussion groups on the implementation of the international commitments it has acquired.

> "The commitments will allow the full participation of the Isle of Man Government in the further and ongoing OECD discussions on the detailed implementation of the international commitments[586]"

As part of this agreement and regarding the representation of the Isle in future negotiations, it is curious to find that the letter does not explicitly state that the United Kingdom is the representative of the Isle, but uses a generic formula "To Whom It May Concern the representation of the Isle Government" which allows for a broad interpretation of who is responsible for such representation. That said, it goes on to establish the political obligation of representing the Isle, focusing primarily on its economic interests and fiscal autonomy, which indirectly leads us to conclude that this is a provision directed at the representatives of the United Kingdom, which oversees the international relations of the Crown Dependencies since it does not seem logically necessary to remind the representatives of Manx of it.

> "In further negotiations, the interest of the Island's economy and the Island's autonomy in tax matters will be paramount in the minds of those representing the Isle of Man Government[587]"

Regarding ius legationis, the Islands have no independent official representation abroad; they have no ambassadors or consulates but depend on the representation of the United Kingdom. However, bearing in mind their considerable autonomy, above all in the tax sector, in 2011 they have managed obtain a permanent representation for EU Affairs in Brussels (in the legal form of private foundations) and also maintain informal relations with third states, such as the United States and international bodies, such as the OECD which, thanks to the cooperation and work of the Crown Dependencies with said body, has led to their being struck off the list of uncooperative jurisdictions.

The Isle of Man's Government Annual Reports of 2010[588] and 2011[589] on the Strategic Plan 2007-2011 sets the Manx government's principal priority in the area of the international relations as "to protect and promote the Island's international relationships", through five basic actions:

> 1. "**To defend and develop our formal relationships with the UK and Europe**"
>
> This section acknowledges that the Isle of Man has achieved a significant headway in the "ability to monitor, assess and influence the development of policy in the European Union" but insists that is necessary to continue in its efforts, expressly calls the parties "**to seek ways to further strengthen the Island's ability to represent its own interests**" and claims for "the opening of the Island's Representative Office in Brussels and the appointment of a Director of European Affairs".
>
> This demand was met in 2011, when an office of permanent representation was opened in Brussels and Patrick Bourke was appointed as the Island's first Director of European Affairs and Brussels Representative.

[586] Organisation for Economic Co-operation and Development (OECD), "Harmful Tax Competition", Report by the OECD Council of Ministers, November 2000.
[587] Ibidem.
[588] Isle of Man Government, "Annual Report on the Government Strategic Plan 2007-2011", Isle of Man Government, 2010.
[589] Ibidem.

Since 2011, the Channel Islands also have a Brussels Office[590] set up jointly by the two Bailiwicks to develop the Channel Islands' influence with the EU, to advise the Channel Islands' governments on European matters and to promote economic ties with the EU.[591] Steve Williams was appointed as Director of European Affairs. It is interesting to note that it is a private foundation (a not for profit organisation) established under Belgian law.

2. "**To continue to foster positive relationships with our immediate neighbours**

The Isle of Man is working to strengthen this relationship especially though the British Irish Council, which comprises, as equal partners, the governments of the United Kingdom, Ireland, Scotland, Wales, Northern Ireland, the Isle of Man, Jersey and Guernsey.

3. "**To continue to strengthen our relationship with key international players**"

This refers to informal relations, which have been strengthened in recent times, some of examples of which are:

In United States, in July 2009 "the Manx Chief Minister lead a delegation to Washington, reinforcing messages about the Isle of Man with key advisors and officials in the areas of tax and financial crime".

In Canada, in 2009 the Canadian High Commissioner was invited to the Isle of Man, where he meet with "many politicians, senior officers and local businesspeople to discuss economic opportunities between our two countries. This visit was followed up by a further meeting at the High Commission in London in July 2010.

In 2012, the Isle of Man Government opened a representative office in Singapore as a result of the implementation of the Department of Economic Development's Country Strategy[592].

One of the provisions of this strategic plan states that the Isle of Man has a network of Honorary Representatives who work to promote the **Island's cultural and business profile** internationally. Therefore, there is a partial recognition of its foreign representative capacity, restricted to two spheres, culture and business. This kind of representative would have the functions of representation and promotion of specific interests of the Isle of Man and it would form part of the area of paradiplomacy.

4. "**To establish relationships with Overseas Governments to develop and improve potential markets for the future**" as indicated in the Strategic Plan this process has already started with the Chinese Government and will be developed with others in due course.

5. "**To further develop the Island's influence and representation in international organisations such as the United Nations (UN), the World Trade Organisation (WTO) and the Organisation for Economic Cooperation and Development (OECD)**." The

[590] Channel Islands Brussels Office, "Channel Islands Brussels Office", from: <http://www.channelislands.eu/about/team/>, (accessed 3 June 2013).

[591] States of Jersey, "Jersey welcomes UK Government support for strengthening of its international identity", International Insight Journal, 2010, Issue 3, pp. 4.

[592] Isle of Man Government, "Service Delivery Plan 2011/12", Isle of Man Government: Department of Economic Development, from: <http://www.gov.im/lib/docs/cso/plan/2011/ded_sdp2011.pdf>, (accessed 12 June 2013).

power or prerogative to control and impose UN and also EU sanctions on countries deemed to be in contravention of international standards, which has been granted to the Isle of Man raises issues of international law, focused on international personality, because traditionally this type of international powers[593] are granted to subjects of international law, and the Isle of Man is not such a subject.

In short, the legal personality sui generis of the Crown Dependencies implies that we cannot state they have ius contrahendi and ius legationis, yet nor can we consider that they totally lack these capabilities. We observe that these are not measurable capabilities in absolute terms, and that as such being graduables they are not homogenous for all of them. Hence, the Isle of Man has different powers to those of the Channel Islands', and even between the latter. This leads us to conclude that these territories cannot be analysed using parameters of classical international law and, therefore, we should adopt a broader and more flexible approach based on the discipline of international relations, which allows us to defend the idea that the classical subjects of international law coexist with a number of actors that have considerable autonomy, which allows them to engage with classical subjects and with other international actors and play a relevant role on the international scene. This is how we should understand the Crown Dependencies, as international actors, empowered to enter into international agreements sui generis, which mainly involve political obligations and that are authorised to have their own representatives, especially in fiscal and cultural matters, and to receive representatives of States and international organisations. Although this is about an informal representation, which falls within the scope of paradiplomacy, this kind of international relations is increasing.

Therefore, the growing international outreach of the Crown Dependencies is undeniable and increasingly more apparent. However, as we have seen, formally, in their international relations, they continue to be represented by the United Kingdom, even though the Crown Dependencies are not an integral part of that country. This model of representation has largely been conducted without major incidences and there does not appear to be sufficient evidence of any desire to change it. Nevertheless, in recent times the Crown Dependencies have become more critical, mainly because they regard that their interests are not being represented or defended adequately, especially in fiscal terms, where the differences between the Crown Dependencies and the United Kingdom are even more evident. Moreover, the prior consultation procedure that the United Kingdom should undertake when negotiating international agreements whose provisions affect the interests of the islands is not considered satisfactory either, as it is slow and ineffective. All this has led the Crown Dependencies to call for improvements and the modification or flexibility of the representation model to bring it more into line with their interests.

In this regard, Sutton indicates that "although the "external personality" of the Islands has grown significantly in recent years, their international relations are still formally the responsibility of the UK. However, UK missions in third countries and with international organisations (including the EU) do not generally see themselves as having any role whatsoever in promoting or defending the Islands' interests internationally[594]."

[593] They are International in nature because these powers are granted to the Isle of Man by International organisations, such as the United Nations and the European Union.

[594] SUTTON, A., *The evolving legal status of the Crown Dependencies under UK*, op. cit., p.3.

Likewhie, in a report released the 30 March 2010[595] the UK Parliament's Justice Committee concluded that:

> "The relationship between the UK Government and the Crown Dependencies (the Bailiwicks of Jersey and Guernsey, including Alderney and Sark, and the Isle of Man) is mostly working well but questions remain over the role the UK takes with regard to legislation, international representation and good government in the Islands.
>
> The inquiry found the Crown Dependency governments are mostly content with their relationship with the Ministry of Justice. However, the Ministry of Justice could do more to ensure that other Whitehall departments understand that the Islands are independent of the UK and that there are limited grounds for UK intervention in insular affairs and legislation. There is also some concern about delays in the legislative process when Island legislation is passed to the UK for scrutiny prior to Royal Assent. The Committee believes that such delays could be improved with more focused processes on the UK Government side and less duplication of effort by Island and UK Government officials when scrutinising legislation. "**Our evidence clearly demonstrates that there is unhappiness within some of the Dependencies with the working of this arrangement".**
>
> **Likewise, in international negotiations the UK has to represent both the interests of the UK and those of the Dependencies. The States of Jersey argued that this was an unsatisfactory arrangement, which "does not reflect the increasing role that Jersey plays in international affairs**". The fact that the Island depends on the UK representative to make its contribution presents "inherent difficulties". The States argued that this was because, given that the UK has far more extensive national interests than Jersey, its representative may not place the same weight on issues affecting the island as a Jersey representative would "and might choose to focus his/her energies on matters more important to the UK[596]". In evidence to the Justice Committee of this House in 2009 and 2010, the then Minister responsible for these issues in the Ministry of Justice acknowledged that, where there was a conflict between those interests, those of the UK would take precedence[597]. "

Thus, given the Crown Dependencies' growing dissatisfaction, this thesis proposes that British Crown should grant the Dependencies a limited capability or international subjectivity in tax and cultural issues since it is in these areas where they enjoy most autonomy. Moreover, these are the most difficult areas for United Kingdom to represent, due to the disparity between the models of each of the parties. In this way, we believe that separately both the Crown Dependencies and the United Kingdom could in this way represent their interests more effectively and as such this ease tension and criticism. From the perspective of international and constitutional law there is no impediment to prevent the undertaking of this proposal; the very nature sui generis of the Crown Dependencies would justify this proposal. It only requires the political will of the two parties.

[595] UK House of Commons, "Eighth Report of Session 2009–10", Report on the Crown Dependencies ordered by the House of Commons, UK House of Commons: Justice Committee, 23 March 2010.

[596] Ibidem, para. 182.

[597] Ibidem, para. 183.

> "Despite the formal constitutional responsibility of the UK for the defence and international relations of the Crown Dependencies, recent events (perhaps in particular the de facto elimination of national frontiers and the "relativisation" of statehood and sovereignty) have demonstrated the need for the self-governing Crown Dependencies to acquire a measure of external autonomy comparable to that which they possess internally. It is not at all clear that the UK has the political will actively to defend the interests of the Crown Dependencies internationally even when these interests do not conflict with those of the UK. It is not obvious that the difficulties faced by the Crown Dependencies, particularly in their external relations, are fully understood in London. It should therefore allow these jurisdictions the necessary international personality to represent and defend their own interests, both bilaterally and with organisations such as the EU[598]."

THE CROWN DEPENDENCIES AND EUROPEAN UNION LAW

The Crown Dependencies are neither members of the European Union nor associate members of the European Union, they enjoy a special relationship with the EU, which was negotiated at the time of the United Kingdom's accession to the European Economic Community (EEC) in 1973. Particularly, the nature and scope of the relationship is provided by Protocol 3 of the mentioned Treaty of Accession.

This Protocol contains six articles, which govern the various aspects of the relationship between the Crown Dependencies and the EU. The Protocol does not use the term Crown Dependencies, but refers to these territories as: the Isle of Man and the Channel Islands.

The first article establishes that both the Channel Islands and the Isle of Man are part of the customs territory of the Union, under the same conditions as the UK. Accordingly, being a member of the Customs Union entails the same obligations for all. "In particular, customs duties and charges having equivalent effect between those territories and the Community, as originally constituted and between those territories and the new Member States, shall be progressively reduced in accordance with the timetable laid down in Articles 32 and 36 of the Act of Accession[599]". Similarly, specific provisions are set out regarding the European Steal and Coal Community, which no longer apply as the Treaty establishing the European Coal and Steel Community expired on 23 July 2002.

Regarding the agricultural products and products processed in these territiries, the second section of the first article of the Protocol provides that the Crown Dependencies must adopt the same measures as does the UK in terms of trade burdens from the EU law: levies and other import measures. This article also guarantees free movement, and the observance of normal conditions of competition in the trade of these types of goods.

The second article refers to the nationals of these territories, the Channel Islanders and the Manxmen. Primarily, it was assured that entry of the United Kingdom into the then European Communities would not imply the loss of rights and prerogatives that these nationals enjoyed and, secondly, that the provisions related to the free movement of persons and services did not extend to these territories.

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[598] SUTTON, A., "Jersey's Changing Constitutional Relationship With Europe", *The Jersey Law Review,* 2005, pp.1-24.

[599] European Union, "Protocol (Num.3), Documents concerning the Accession to the European Communities of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, Protocol no 3 on the Channel Islands and the Isle of Man", 11972B/PRO/03, 27 March 1972, Official Journal L 073.

The third article refers to Euratom and notes that the provisions contained in article 196 of its constitutive treaty will apply “to those persons or undertakings when they are established in the aforementioned territories”.[600] The fourth article provides for equal treatment in these territories of natural and legal persons of the European Union. The fifth article sets out the process and steps to follow in the event of any difficulties arising from this Protocol, both by the EU itself and by the Crown Dependencies. In particular, the Commission should propose to the Council a series of safeguard measures, specifying their terms and conditions of implementation. The Council would have one month to act, and the decisions should be taken in accordance qualified majority voting rule.

Finally, for the purposes of this protocol, the sixth article specifies who should be considered a national of these territories, namely “any citizen of the United Kingdom and Colonies who holds that citizenship by virtue of the fact that he, a parent or grandparent was born, adopted, naturalised or registered in the Island in question” and those who will be not, in particular it mentions two cases where they would not be deemed Channel Islander or Manxman. First, “if the person a parent or grandparent was born, adopted, or naturalised or registered in the United Kingdom” and second, “if he has at any time been ordinarily resident in the United Kingdom for five years”.

In short, the protocol deals with various questions arising from the special relationship between the Crown Dependencies and the EU. Thus, despite not having membership of or being associated with the EU, the Crown Dependencies form part of the Common Customs Union and enjoy the benefits of the free movement of agricultural goods and products processed there and from trade between the Islands and the Union. Therefore, these provisions allow these Dependencies “to trade with countries in the European Economic Area in a fashion generally similar to its trade with the Union itself”.[601] Implementation of the provisions for the free movement of persons, services and capital is, therefore, not required. Likewise, they have obligations to fulfil, mainly that the Authorities of these territories must assure the same treatment to all natural and legal persons of the Union.

Thus, EU law has direct application to the Crown Dependencies only for very limited purposes. In the event that the implementation of EU law was extended to these territories, the process would be similar to that required for the extension of UK law. It would require the prior express consent of the UK Ministry of Justice, and that this should not be taken for granted.

> “UK Government officials are also asked not to state or imply in any public document that a piece of EU legislation applies to any of the Crown Dependencies, or act on that assumption, without first consulting the Ministry of Justice[602] ”.

In addition to this Protocol, the other Union rules do not apply. “This means that, in particular, the EU provisions on taxation, VAT, company law, financial services and consumer protection do not apply”.[603] Nevertheless, there is no impediment for the Crown Dependencies to enact

[600] Ibidem.

[601] Isle of Man Government, “Relationship with the European Union”, Official Document, The Isle of Man Government, from:
<http://www.gov.im/lib/docs/ebusiness/advantages/protocol3.pdf>, (accessed 19 June 2013).

[602] UK Government, “Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man”, UK Government: Ministry of Justice Crown Dependencies Branch, from:
<http://www.justice.gov.uk/downloads/about/moj/our-responsibilities/Background_Briefing_on_the_Crown_Dependencies2.pdf>, (accessed 23 June 2013).

[603] Government of Jersey, “The European Union Law - Jersey's status in respect of EC Law”, The Government of Jersey, 22 March 2004.

legislation similar to or based on EU law. Therefore, since none of the Crown Dependencies contributes to the European Union, these territories do not receive anything from the funds of European Union.

As we have discussed in previous pages, the United Kingdom, Ireland, and the Crown Dependencies do not form part of the Schengen Area. That said, as in the case of Ireland and the United Kingdom, the Islands have improved judicial co-operation within Europe and have also voluntarily incorporated a number of key laws and policy areas.

> “EU tax instruments do not apply, nor do the developing justice and home affairs initiatives or the Schengen acquis, although the Islands support improved judicial co-operation within Europe and have also voluntarily applied for recognised equivalent status in a number of key law and policy areas[604] ”.

It is important to note that Crown Dependencies form part of the Common Travel Area, set up between the Republic of Ireland, the UK and the Crown Dependencies (and between the Crown Dependencies themselves), which implies primarily that travellers are not required to pass through a physical immigration control point. It also allows some co-operation on matters relating to immigration issues between its members.

Until 2011, there was no formal agreement between Ireland and UK regarding the Common Travel Area. In the “PROTOCOL ON THE APPLICATION OF CERTAIN ASPECTS OF ARTICLE 7a OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY TO THE UNITED KINGDOM AND TO IRELAND”, the 1997 Amsterdam Treaty, in its Second article was established that “The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (“the Common Travel Area).”

The 20 December 2011 the Republic of Ireland and the United Kingdom signed in Dublin the "Joint Statement Regarding Co-Operation on Measures to Secure the External Common Travel Area Border" and referred to by both governments as a memorandum of understanding, since the 2011 agreement is an unbinding agreement with its eighth clause stating that the agreement "is not intended to create legally binding obligations, nor to create or confer any right, privilege or benefit on any person or party, private or public ."

Finally, we have to remark that any proposal to change the status and relations with the EU will entail the amendment of Protocol 3 would require the unanimous approval of all Member States of the Union, including, of course, the UK.

[604] UK Government, “Fact sheet on the UK’s relationship with the Crown Dependencies”, UK Government: Ministry of Justice, from: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185870/crown-dependencies.pdf>, (accessed 23 June 2013).

B.1 **The Channel Islands Legal System**

The Law of the Channel Islands has been influenced by several different legal traditions, in particular Norman customary law, English common law and modern French civil law[605]. Regarding the type of laws that both Parliaments pass, we can note that they are strongly influenced by the French heritage of the islands.

Therefore, they adopt Projet de Loi, which is a proposition for a new law, it could be made by amongst others a Minister, any States member, a scrutiny panel and the Comité des Connétables. It must be approved as being procedurally in order by the Bailiff, después de tres lecturas. El Project pasa a ser an Act of the States, but not yet law. Una copia del Act, acompañada por la legal opinion de los Legal Officers, y un Explanatory Memorandum which sets out the purposes of the Law and analyses the international obligations of the UK on account of Jersey or Guernsey which might impact upon it. All this documentation was transferred to the Lieutenant Governor who transmitted it to the Secretary of State for Justice as Her Majesty's Privy Councillor with responsibility for the affairs of Jersey and Guernsey. The Justice Secretary consults with other Ministers having responsibility in the UK for the policy area covered by the Law, and thereafter submits the Law to the Privy Council office in order that the Monarch, acting with the advice of her Privy Council, may approve it and gives her assent. An Order in Council approving the Law is then sent to the Lieutenant Governor for transmission to the Royal Court so that it can be registered[606]. The States also make delegated legislation which do not require Royal Sanction, such as Ordinances, Orders or Commencement Orders.

Today, French and English remain official languages of the law in Jersey and Guernsey, though the former has been giving way to the latter. Generally, French is now used only where new legislation makes amendments to legislation originally drafted in French.

> "A Jersey legal practitioner requires French (not Jersey French) to read the following:[607]"

- The foundational texts of customary law – the Très-ancien Coutumier and the Grand Coutumier de Normandie (though with a recent English translation of the latter now available).
- The works of the 16th-18th century commentators on the foundational texts
- 19th and 20th century academic scholarship on the foundational texts and commentators is almost all in French.
- The great majority of legislation adopted by the States Assembly before the 1940s was in French; while many of these Laws and subordinate legislation have been repealed or replaced with enactments in the English language, there remains a body of legislation (some of it dealing with matters of practical importance) in French; when this legislation is amended, it is done in French.
- Almost all judgments of the Royal Court prior to 1950 are in French; French judgments continued to be handed down until the early 1960s.
- The Tables des Décisions, issued between 1885-1963, are in French: these provide indices to unreported Royal Court judgments during this period (the Table des Decisions for the period 1964 to 1978 is printed in English).

[605] NICOLLE, S., "The Origin and Development of Jersey law: an Outline Guide", *Jersey and Guernsey Law Review*, 2009, p. 2.
[606] Institute of Law, "Jersey Legal System & Constitutional Law", *Institute of Law Jersey Journal*, 2012, p.2.
[607] Ibidem.

- Contrats for the sale of immovable property passed before the Royal Court were in French until October 2006; although new contracts are now required to be in English, practicing lawyers are likely to have to read previous contrats in French for many years to come.
- Insofar as modern French law is source of inspiration for the development of Jersey law, primary and secondary texts are in French.
- The advocates' and ecrivains' oaths are in French.

B.2 The Isle of Man's Legal System

Unlike the Channel Islands' legal system, which has a strong French influence, the Manx legal system is based on the principles of English common law. Traditionally, the legal system of the Isle is governed by Udal law,[608] which is the ancient Norse system of inheritance and law brought by the Viking settlers wherever they settled. At present, however, very few aspects continue to be regulated by this law of a customary nature.

> ”Criminal law was codified in the 19th century and is closely based on English law. In relation to contract, tort, family law and social security, Manx law is very similar to English law. But in other respects Manx law has been developed to meet the Island's special circumstances, particularly with regard to direct taxation, company law and financial supervision[609]”.

As in the Channel Islands, UK legislation does not normally extend to the Isle of Man, which has its own parliament. Exceptionally UK Law will apply if required by the Act itself, if any Order in Council so determines, or if it is a law from one of the areas for which the United Kingdom is responsible, such International relations or Defence.

It is important to be note that when an extension of UK legislation is under consideration, it should be consulted with those Crown Dependencies to which it is directed as soon as possible. Each one should be consulted in the case that the rule should apply to all of them.

Regarding the Isle of Man, the principal source of law is an Act of Tynwald, other forms of delegated legislation or secondary legislation, are rules, orders and regulations made under authority of these Acts. The Manx Parliament has power to pass Acts on any subject[610], but all Acts of Tynwald require the Royal Assent of the Queen. The legislative procedure is essentially identical to that of the rest of the Crown Dependencies. The first step is taken by Ministry of Justice who will examine that the Act of the Tynwald does not conflict with international obligations or any fundamental constitutional principles. Subsequently, the Lord Chancellor[611]

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[608] Udal law is a near-defunct Norse derived legal system, which is found in Shetland and Orkney, Scotland and in Manx law at the Isle of Man. It is closely related to Odelsrett. Udal law was codified by the kings Magnus I of Norway the good and Magnus VI of Norway lawmender. The Treaty of Perth transferred the Outer Hebrides and Isle of Man to Scots law while Norse law and rule still applied for Shetland and Orkney. Scottish Courts have intermittently acknowledged the supremacy of Udal law in property cases up to the present day.
LAMBERT, M., SURHONE, L., TIMPLEDON, M., MARSEKEN, S., *Udal Law*, London, Betascript Publishing, 2010.

[609] Isle of Man Government, "Legal System", Isle of Man Government, from:
<http://www.gov.im/isleofman/legalsystem.xml>, (accessed 30 June 2013).

[610]Except for some subjects which are of common concern to the Isle of Man and the United Kingdom, such asdefence and immigration. In that case, the UK would be entitled to legislate.
Isle of Man Government, "Legal System: A sophisticated yet familiar approach", Isle of Man Government: Isle of Man Law Society, from:
<http://www.gov.im/lib/docs/investiniom/FactSheets2010/legalsystem.pdf>, (accessed 30 June 2013).

[611] The Lord Chancellor is the Privy Counsellor primarily concerned with the affairs of the Crown Dependencies Ministry of Justice, Background briefing on the Crown Dependencies: UK Government, "Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man", op. cit.

will advise The Privy Council whether Her Majesty in Council can be advised to make an Assenting Order, and thereby grant Royal Assent.

As for the judicial power, similar to structure of the Channel Islands' system, the Isle of Man, has a High Court, whose judges are the two Deemsters (a term dating from Viking times), who have jurisdiction over all the criminal and civil matters.

"The Manx Appeal Court (the Staff of Government Division) consists of the Deemsters and the Judge of Appeal. The final appeal, one that is rarely pursued, is to the Judicial Committee of the Privy Council in London.

Finally, the Island has its own lay magistrates (similar to their English counterparts) and also two stipendiary magistrates (the High Bailiff and Deputy High Bailiff) who also act as coroners of inquests and preside over the licensing court"[612].

C. RELATIONS BETWEEN THE COMMONWEALTH AND THE OVERSEAS TERRITORIES AND THE CROWN DEPENDENCIES

Note: As we will see, despite the fact that the Crown Dependencies and Overseas Territories correspond to different categories, they share a common problem in the representation of their international relations. Accordingly, they have similar demands and make the same arguments when defending their interests in the Commonwealth. Therefore, this section warrants an analysis of the relations they maintain jointly with Commonwealth.

As in the case of the Overseas Territories, the Crown Dependencies cannot be full members of Commonwealth because they do not meet one of the main requirements for accession, that of being a sovereign state. This is the only possible criterion to join and to be a full member of Commonwealth, since observer or associated state status is not recognised. Thus, the Foreign and Commonwealth Office (FCO) has stated that only sovereign states are eligible for full membership of the Commonwealth.

The Crown Dependencies differ to the overseas territories, in that they enjoy self-governing powers and have never been colonies of the United Kingdom. Yet, in both cases, the United Kingdom is responsible for their international relations. In the two types of territories, although particularly in the case of the Crown Dependencies, who have a greater degree of autonomy from the United Kingdom, both use similar arguments when calling for a more prominent role in the Commonwealth. Thus they demand a greater measure of involvement in the Commonwealth since they believe they should be able to take part in the Commonwealth's principal discussion forums and decision-making institutions, such as the CHOGM, in order to represent their interests more adequately and highlight their proposals.

Moreover, it should be noted that they belong to institutions of the so-called Commonwealth Family, such as the Commonwealth Parliamentary Association, the Commonwealth Youth Parliament and the Commonwealth Games Association but are not full members of the Commonwealth in their own right.

In this context the Report by the Foreign Affairs Committee on the Role and Future of the Commonwealth[613] observes:

[612] Isle of Man Government, "Legal System", Isle of Man Government, from: <http://www.gov.im/isleofman/legalsystem.xml>, (accessed 30 June 2013).
[613] Foreign Affairs Committee - Fourth Report: "The role and future of the Commonwealth", op. cit., p.124.

> The Crown Dependencies and the UK Overseas Territories "are two different groups of constitutional entities, but in some cases the arguments about their relationship with the Commonwealth are similar".
>
> "The Overseas Territories and Crown Dependencies are not therefore members of the Commonwealth in their own right, although they are associated with it through their connection to the UK."
>
> The Report on Crown Dependencies states that the FCO points out that there are already linkages between the Territories and Crown Dependencies and the Commonwealth. For example, they have their own branches of the Commonwealth Parliamentary Assembly (CPA) and the Commonwealth Games Federation, and they send teams to the Commonwealth Games. Moreover, they attend other meetings such as the Commonwealth Finance Ministers' and Sports Ministers' meetings, and other Ministerial meetings, as part of the UK delegation[614].

Thus, the main demands of these territories focus on examining whether the Crown Dependencies and the Overseas Territories should be formally represented by their own, so not only through the UK at main Institutions of the Commonwealth, such as the Commonwealth Heads of Government Meeting (CHOGM)[615], and to explore the possibility of creating other categories of participation in the Commonwealth, apart from full members, if it could be recognised the possibility of becoming Observer or Associate Members.

> In particular, Conservative MP Andrew Rosindell, a member of the committee and vice-chair of the Channel Islands all-party group said to BBC News that "he did not believe the islands should have the same status as independent nations but should be given something like associate membership and he insisted that some of the islands have larger economies than some nations so this is an anomaly needing addressing"[616].

As for the possibility of creating new Commonwealth membership criteria, we will draw our conclusions and those set out in the Report. However, we should first differentiate the judicial area from the political.

First, there is no legal impediment to promote stronger ties between the Crown Dependencies and the Overseas Territories with the Commonwealth, including the establishment of a new criterion of Commonwealth membership, such as observer or associate membership, which these territories call for. Nevertheless, it is not only necessary to meet the legal requirements; there must also be a political will.

Second, and at the political level, there must be a consensus both in the UK and in other countries across the Commonwealth, to the institution of a wholly new criterion of Commonwealth member.

Third, according to the Report, The UK Government not only is keen to re-open discussions with the Commonwealth Secretariat and member states on different categories of membership. But also considers that there are some clear advantages for introducing observer status, including "the benefits of a more diverse membership bringing a greater breadth of

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[614] House of Commons Justice Committee, "Crown Dependencies", Eight Report of Session 2009-2010, op. cit.

[615] The CHOGM involves heads of government getting together every two years to discuss global and Commonwealth issues and agree on collective policies and initiatives.

[616] British Broadcasting Corporation (BBC), "The UK study on Crown Dependencies' status in commonwealth", BBC News, 14 December 2011, from:
<http://www.bbc.co.uk/news/world-europe-jersey-16170158>, (accessed 3 July 2013).

expertise to the Commonwealth" and "enabling countries seeking full membership to gain experience of how the Commonwealth works[617]".

Fourth, experts are divided as to the creation of new criteria or categories of membership, on the one hand, authors such as Mole support the claims of these territories and argue that it would involve a fresh look, at the relationship between the Commonwealth and both the Crown Dependencies and Overseas Territories, and criticised the traditional conservative approach to expansion.

Stuart Mole[618] believes thar the Commonwealth "could be much more imaginative in looking at different layers and levels of engagement"[619]. For example, he urged greater involvement of territories such as Bermuda, the Cayman Islands and Gibraltar in hosting Commonwealth meetings[620]. Murphy, in contrast, is more wary, explaining that a key Commonwealth accession criterion is that States must be completely sovereign and independent and if this criterion is not respected would give rise to unease among Commonwealth members, since they might interpret in some way that they are subordinate to the British Government[621].

Editorial Board of The Round Table expressed a similar view to Philip Murphy's, also underlined the importance of sovereignty as a defining characteristic of a Commonwealth state. They believed that the bar of sovereignty, rather than nationhood and self-determination, as a condition of Commonwealth membership was unlikely to change[622]. Moreover The Round Table argued that a new status would have wider implications for other Commonwealth countries.

> "Creating a new category of membership which included the provinces of Canada, the states of India, South Africa, Malaysia and Australia, as well as Scotland, Wales and Northern Ireland (and the overseas territories and crown dependencies) "would involve considerable challenges for limited benefit[623]".

Fifth, The UK Government affirms that it would be willing to discuss with these territories a new status in the Commonwealth, but it is also necessary the will of them, since according to the UK Government, the territories still have made no request to join or have greater engagement with the Commonwealth[624]. This statement conflicts with the conclusions of the report, according to the Committee of experts that drafted it, the three Crown Dependencies sent to the Committee several demands calling for greater engagement with the Commonwealth. The most detailed case was made by the States of Jersey, which urged that the Foreign Secretary should request that the Commonwealth Heads of Government "consider granting associate membership to Jersey and the other Crown Dependencies as well as any other territories at a similarly advanced stage of autonomy[625]". The States of Guernsey and the

[617] House of Commons Justice Committee, "Crown Dependencies", Eight Report of Session 2009-2010, op. cit., par. 173.
[618] Former Director-General of the Royal Commonwealth Society and a former Director of the Secretary-General's Office in the Commonwealth Secretariat.
[619] House of Commons Justice Committee, "Crown Dependencies", Eight Report of Session 2009-2010, op. cit., par. 176.
[620] Ibidem, par. 177.
[621] Ibidem, par. 178.
[622] Ibidem, par. 179.
[623] Ibidem, par. 181.
[624] Ibidem, par. 186.
[625] Ibidem, par. 187.

Government of the Isle of Man made similar, if more modest, suggestions for closer Commonwealth connections[626].

As for the overseas territories, and regarding the participation and representativeness of the Overseas Territories, in the section given over to the Overseas Territories in the 2012 White Paper,[627] the UK Government agrees to develop three lines of action that will work towards and examine in depth the representativeness and participation of these territories in the Commonwealth. The main lines can be summarised as follows:

1. Encourage more participation in the wide range of Commonwealth programmes focused on small states, which adapt perfectly to the issues facing these Territories. In this sense, the Territories have participated in the Malta-Commonwealth Third Country Training Programme which aims to strengthen skills and capacity in small states in areas where Malta has expertise, for example in banking and finance, and coastal management.

2. Consult these territories when preparing the CHOGMS Agendas, with the aim of including their concerns and communicating their commentaries to this institution and informing them of the decisions previously adopted.

3. Invite them to attend other meetings such as the Commonwealth Finance Ministers' meeting as part of the UK delegation. As well as to join the Commonwealth of Learning..

4. Cooperate with the territories in advance of relevant Ministerial meetings so that their interests can best be represented.

5. As a result of UK Government and Commonwealth Secretariat conversations now, they are allowed to use the Commonwealth Small States Office in Geneva. They also were able to participated in the Commonwealth's 2012 Small States Conference.

6. The UK wants to strengthen links between the Commonwealth and the Overseas Territories. Thus, once again the UK insists that is ready to "explore the possibility of creating observer or associate member status of the Commonwealth from which the Territories might benefit. In fact, some Commonwealth bodies, such as the Commonwealth Foundation and Commonwealth Local Government Forum already offer associate membership[628]".

To summarise, all the evidence clearly demonstrates that there is discontent among the Crown Dependencies and the Overseas Territories over the current model of representation and participation in the Commonwealth, therefore a closer relation would doubtless have positive effects for the Commonwealth and the territories alike. The UK Government has drawn up a range of instruments, which are not legally binding, in order to improve the participation of these territories and give them greater prominence within the Commonwealth. Although we can observe the good intentions of the United Kingdom, to our mind they are not sufficient because the distinct models of organisation and government of these territories compared to those of the United Kingdom's would be difficult to represent. Fiscal interests of the Crown Dependencies are an example of this is as they do not resemble those of the United Kingdom.

This thesis clearly advocates that the Commonwealth should adopt new criteria of membership given the wide-ranging autonomy that many of these territories enjoy, above all

[626] Ibidem, par. 188.
[627] UK Government, "Overseas Territories White Paper", UK Government: Foreign & Commonwealth Office, 28 June 2012.
[628] Ibidem.

the Crown Dependencies. As for the Overseas Territories, their location far from United Kingdom, justifies the development of a greater role for these territories. For its part, the United Kingdom would be freed from representing interests that, in certain cases, are incompatible with its own.

We have seen that there is no legal problem to the recognition of new criteria, such as observer status or associate member of the Commonwealth, in fact other international organisations such as the UN and even the Commonwealth Foundation allow for this possibility. However, this would require a political will by all parties involved because Commonwealth decisions are adopted by consensus. Hence, the territories themselves have to state their claims formally, in a clear and precise manner. Some of them, such as the Crown Dependencies, have their own Parliamentary Assemblies, therefore they should use these institutions to adopt a joint statement through which they can apply pressure on the rest of the parties. Likewise, the UK Government (in the case of the Crown Dependencies, this should fall to the British Crown) should grant them this power, and lastly, the rest of the member states should accept said possibility, without fear of future repercussions since Commonwealth membership has a long history of decisions of this nature, such as the acceptance of republics, of small states or of members who have no direct bonds with the Commonwealth's past as in the case of Mozambique or Rwanda. The non-institutionalisation of the Commonwealth has the advantages of flexibility and adaptability towards the challenges and demands placed upon it and, therefore, it should know how to channel these advantages. Recognition of these types of categories or criteria would not imply the automatic entry of new members as it should regulate a process, in the same way it does for full members. In addition, observer status or associated membership would not carry the same rights and obligations that the full members enjoy. On the other hand, it would simplify both the representation mechanisms and meet the interests of these territories, which in some cases have greater political and economic stability than that of fully sovereign states. Lastly, we have observed that UK Government is willing to explore this new category and that both the Crown Dependencies and the Overseas Territories have on various occasions expressed their will to become associate or observer members, although perhaps they should do so according to the procedure that we have underlined. The opinion of the rest of the Commonwealth members is still to be determined.

4. ECONOMIC APPROACH: FINANCIL AND TAX CONTROVERSY

A. British Overseas Territories: Especial Focus on Gibraltar

The economic profile of the British Overseas Territories is very diverse. Some territories such as Montserrat are in a highly vulnerable situation and largely depend on aid from the UK, the EU and others. In contrast, Bermuda or Gibraltar is regarded as prosperous. The eruption of a long dormant volcano In Montserrat, in 1995, had a devastating impact on the island's life. While the recovery process has gradually improved, the island still needs support. Aside from Montserrat, three other territories receive aid from the UK Department for International Development. Gibraltar, on the other hand, is economically self-sufficient.

> "The principal contributors to Gibraltar's economic base are financial services, port operations, online gaming and tourism[629]".

As the 2012 White Paper on the Overseas Territories notes, the economic profile of the BOTs is very heterogeneous. The economic profiles of this White Paper are summarised below[630]:

[629] European Parliament, "EU-Gibraltar: Fabian Picardo", European Parliament, 15 March 2013, The European Parliament, from: <http://www.theparliament.com/policy-focus/economic-affairs/economics-article/newsarticle/eu-gibraltar-fabian-picardo/#.UaJQ9qLwlhg>, (accessed 26 July 2013).

> "Bermuda is now the most populous Territory with a population of 66,000 and enjoys one of the highest per capita incomes in the world. There are two populated Territories in the South Atlantic – the Territory of St Helena, Ascension and Tristan da Cunha; and the Falkland Islands. Both have for centuries played a role in the UK national history. Tristan da Cunha is the most remote permanently inhabited island in the world and is economically self-sufficient. St Helena is preparing to re-launch its economy with the construction of an international airport. Ascension is host to a range of UK/US military and communication assets. It has no permanent population, but depends largely on St Helena for its workforce. The Falkland Islands have been continuously inhabited and administered under British sovereignty since 1833. It has a thriving economy based on Fishing, agriculture and tourism. More recently offshore oil exploration has begun to support diversification.
>
> Gibraltar is the only Overseas Territory in the EU. Its economy is based largely on tourism, financial services, online gaming and shipping. The Sovereign Base Areas in Cyprus are not formally part of the EU. They cover around 256 square kilometres and offer the UK a military base in a region of strategic importance. Much of this land is privately owned by around 10,000 Cypriot nationals.
>
> Pitcairn in the South Pacific has the smallest population – around 50 permanent inhabitants, although there is a significant diaspora, mainly in New Zealand and Australia. The British Antarctic Territory, British Indian Ocean Territory and South Georgia & the South Sandwich Islands have no permanent population.
>
> These are extensive Territories many times the size of the UK including some of the world's best preserved environments and the world's largest Marine Protected Areas. The British Antarctic Territory is also highly prized as a global laboratory[631]".

The same Paper notes that tourism is the main economic activity of the majority of the BOTs, however the UK Government is concerned about the impact of this activity on the privileged environment of these territories and has made it a priority to minimise the impact and damage caused by the tourism industry on the coastlines, seas and wildlife that draw tourists.

Regarding the help the territories receive from the UK, the Department for International Development implemented the Operational Plan 2011-2015, which has three objectives outlined as follows[632]:

> 1. **To meet the reasonable assistance needs of OT citizens**, such as to facilitate physical access to the islands, strengthen human capacity to deliver public services effectively, including health and education provision, and produce efficiency savings.
>
> 2. **To accelerate aid-dependent OTs towards self-sufficiency** : Future interventions, if approved, will provide the physical and human capital to create an economic and social hub for Montserrat and improved access for St Helena, enabling private sector-driven economic growth which will reduce aid dependency over time. Such strategic

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[630] UK Government, "Britain and the Overseas Territories -A Modern Partnership White Paper", UK Office of Foreign and Commonwealth Affairs, from: <http://www.ukotcf.org/pdf/charters/whitepaper99textonly.pdf>, (accessed 7 July 2013).

[631] UK Government, "Britain and the Overseas Territories -A Modern Partnership White Paper", UK Office of Foreign and Commonwealth Affairs, from: <http://www.ukotcf.org/pdf/charters/whitepaper99textonly.pdf>, (accessed 7 July 2013).

[632] UK Government, "Operational Plan 2011-2015", UK Government: Department For International Development and Overseas Territories, June 2012.

investments, which go beyond simply meeting reasonable needs, are unlikely to be appropriate for a small OT such as Pitcairn with little prospect of self-sufficiency.

3. **To manage the UK Government's financial liability for non-aided Caribbean OTs in crisis**: DFID will work with the FCO to improve fiscal management in the Caribbean OTs; strengthen public financial management and administration capacity and systems; and reduce the risk of future fiscal crises.

In May 2012, the Department of Business, Innovations and Skills adopted a report entitled "Department of Business, Innovations and Skills and the Overseas Territories",[633] which notes that British Overseas Territories have a total population of around 250,000 mostly British citizens and these territories represent for the UK a great opportunity for trade and investment and, therefore, the actions of the UK must be directed at promoting sustainable economic and trade development.

> "The BOT are a collection of flourishing and vibrant markets with great potential. Some Territories have developed important niche positions in international financial markets. The UK Government is interested in supporting the sustainable economic development of the Territories"

As it has been discussed in previous sections, Gibraltar is the only BOT to be technically part of the EU, although it is not an EU member since it is not a State and therefore falls under the jurisdiction of the UK, which is responsible for Gibraltar's external relations, and it is excluded from the customs union and the common agricultural policy. The rest of the British Overseas Territories have a special relationship with the EU, which grants them the status of associated territories, thereby allow them a series of preferences, mainly in commerce, and they currently benefit from preferential market access arrangements to the EU through the Generalised System of Preferences (GSP) or the Overseas Association Decision (OAD). However, under current Commission proposals, Overseas Territories would, with effect from 1 January 2014, no longer be eligible for the preferences under the GSP. Therefore, one of the priorities included in the Department of Business, Innovation and Skills report is that the UK will work to ensure that these territories "continue to enjoy equivalent access through the provisions in a new OAD which will similarly come into effect in 2014[634]". The UK is also currently working to minimize and make the European Commission aware of the need to carefully explore the impact that the Free Trade Agreements (FTAs)under current negotiation, between the EU and other countries, may cause to the BOT, taking into account that these agreements do not apply to the Overseas Territories.

NOTE: **in order not to repeat the trade relations between the EU and the BOTs in general and with Gibraltar in particular, which we examined in depth in their respective sections, we refer to these sections**.

We hold that the involvement of these territories in the World Trade Organisation should be reviewed since the situation has changed and the economies of some of these territories meet WTO requirements for membership or participation to a larger or less extent. This would favour them more than being represented through UK. The BOTs were consulted between 1991 and 1995 by the United Kingdom when its World Trade Organisation (WTO) membership was being negotiated as to whether they wished to be covered by it. "**The Overseas Territories chose not to be** and therefore they are not represented in WTO talks[635]". In line with our

[633] UK Government, "Department of Business Innovation and Skills (BIS) and the Overseas Territories", Report of the UK Government Department for Business Innovation and Skills, May 2012.
[634] Ibidem.
[635] Ibidem.

recommendation, the Department of Business, Innovation and Skills also recommends that if these territories are willing to participate in this organisation, the Department in question should be ready to explore with the WTO the process towards membership.

Lastly, one of the most contentious issues on the economy of these territories, which also extends to the Crown Dependencies, needs to be addressed. Namely the financial sectors and systems of taxation of some of these territories has led the international community to accuse them of being "tax havens."

b) Crown Dependencies:

Without entering in substance of the question of so-called tax havens, which is not the subject of this thesis, both the British Overseas Territories and the Crown Dependencies are often considered as such.[636] Nevertheless, there is growing international pressure, mainly led by Britain, the European Union, United States and Organisation for Economic Cooperation and Development, to persuade these territories to begin to adopt an international framework. Consequently, it seems that significant advances have been made in this area. In fact on 15 June 2013, the Chief Ministers of Jersey, Guernsey and the Isle of Man issued a joint statement where they expressed their commitment to tackling tax evasion and fraud, as well as to adopt Action Plans. These plans will set out the concrete steps, where needed, to fully implement the Financial Action Task Force standards to further increase transparency on beneficial ownership information and to ensure that this information is freely available to law enforcement and tax authorities, and they also committed to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters[637]. Likewise, the BOTs are working towards the same goals, although some territories, such as Bermuda, are more reluctant than others.

Regarding the economic relations between the Crown Dependencies and the EU, Sutton[638] notes that since Protocol 3 was introduced, the importance to the Crown Dependencies of trades in goods has diminished, with financial services being far more important in economic terms.

This author describes four phases in Crown Dependency relations with Europe. First, from the adoption of Protocol 3, although free movement of goods was facilitated, there was little or no engagement on either side. Second, the creation of the Single Market in the European Community in 1985 did not have much impact on the Crown Dependencies, although they did monitor the situation. Third, from 2000 to 2005, there were significant developments in the taxation field, including the tax on savings Directive and the Code of Conduct on harmful business taxation. Although tax policy was outside Protocol 3, the Council of Ministers decided that these measures would apply to the Crown Dependencies, a view encouraged by the UK Government according to Professor Sutton. Under pressure from the UK Treasury, the Crown Dependencies negotiated bilateral agreements implementing the Directive with the EU Member States and modified their corporate tax structure to conform to the Code of Conduct. Fourth, since 2005, there has been a period of "constructive engagement" between the Crown Dependencies and the EU, during which contacts have increased, market access possibilities

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[636] Al Jazeera News, in a recent report stated that about one-fifth of the world's tax-free shelters are UK territories and crown dependencies.
HOOPER, S., WILLERS, B.; "The United Kingdom's tax havens", Al Jazeera News, 17 June 2013.
[637] States of Jersey, "Crown Dependencies support G8 on tax, trade and transparency", States of Jersey, from: <http://www.gov.je/News/2013/pages/CrownDependenciesStatementG8.aspx>, (accessed 5 July 2013).
[638] Ibidem.

have been explored and the Islands have continued to develop their "external personalities".[639]

Lastly, we should reiterate that it is important that both the BOTs and the CDs should adopt and implement the legislation to which that we referred as is a key issue for their relations with the EU, and with other international organisations, above all if they seek an active role on the international scene as real players. The EU has always been very active in combatting this type of privileged situation. Thus, should the BOTs the CDs wish to strengthen their ties with this organisation, they must continue working towards resolving their tax matters, not least the CDs that, lacking any partner status with the EU, feel that their interests in the UE are not being adequately represented by UK, and therefore have opened an representation office in Brussels.

A. CASE OF STUDY I: GIBRALTAR[640]

HISTORICAL FRAMEWORK AND THE SPANISH DISPUTE

The Rock has served as a fortress and sheltered port for the Phoenicians, the Carthaginians, the Romans, and the Visigoths. However, it remained inhabited until the Muslim occupation of the Peninsula. The city of Gibraltar was not founded until 1160, by the monarch Addel Mumin. In 1462, was conquered by the Spanish King Enrique IV, the Spanish control lasted until the early eighteenth century. But, the history of Gibraltar is linked to the Spanish dispute of the War of Succession and the Treaty of Utrecht of 13 July 1713.

Curiously, the War of Spanish Succession involved several Foreign powers, so we could say there was an internationalisation of an internal conflict. When the Spanish King Carlos II dead, there were no provision regarding who was the successor of the throne of Spain. The Prince Joseph Ferdinand of Bavaria was designated to be the Spanish king, however he dead in 1699. Thus, the other candidates were the Duke Philip of Anjou (the grandson of Louis XIV of France) and the Archduke Charles of Austria (The Austrian Emperor's second son, Leopold I). This apparently internal matter affected to the main powers of that time, mainly to England, France, Germany and Austria.

a) The first group: In favour of the Archduke, was supported by the Alliance of the Hague or the Grand Alliance (1701): Austria, England, Holland, Denmark, Brandenburg and other German princes, later was joined by Portugal and Savoy. Likewise, within the framework of the peninsula, the states that were part of the Catalan-Aragonese Crown were in favour of the Archduke Charles. The Main reason was to prevent that France and Spain ended under the same crown, and regarding the Catalan-Aragonese Crown, they had deeper reasons in order to be against Philip d'Anjou, since his nomination meant the loss of the Furs and self-government rights.

b) The second group which advocated for Philip d'Anjou as the King of Spain, was formed by France and Spain, mainly the Castilian Crown, together with the American possessions.

This two different stances regarding the successor of Carlos II, led to the War of Succession in Spain. The peace negotiations were initiated between 1713 and 1715, as a result of these, the parties involved signed the treaties of Utrecht, Rastatt, Baden and Antwerp.

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[639] SUTTON, A., *The evolving legal status of the Crown Dependencies under UK*, European and International Law, Jersey, White and Case Pbl, 2008, p.4.

[640] This section includes the papers I presented in the three conferences about Gibraltar issues where I participated in 2012, at the University of london, the Institute of Commonwealth Studies.

Article X Utrecht Treaty: The strict interpretation of this article states that Spain transferred the sovereignty of the town and castle of Gibraltar together with the port, the defenses and the forts. During the negotiation of this Treaty, the British also claimed the cession of the isthmus which separates the territory of Gibraltar from the rest of the Iberian Peninsula, but their pretension was rejected.

In addition, Article X has a clause especially relevant for the Spanish interests, this states that Spain would have a preferential right of recovering Gibraltar in case Britain decides to abandoned it.

However, the dispute is not only about the interpretation of the Treaty of Utrecht, it also concerns the burdens of the territory, the territorial waters and the airspace, as well as the gradual occupation of the isthmus.

The geostrategic value of Gibraltar: Still relavant?

Throughout most of history, the Strait of Gibraltar acted as the only oceanic passage out of the Mediterranean, and control over the Rock of Gibraltar offered dominance over distant lands.

After the American Revolution, the Port of Gibraltar was an important Royal Navy base, and it was an important factor in the 1805 Battle of Trafalgar. Likewise, the opening of the Suez Cannel in 1856, made the Port of Gibraltar's strategic value increased. Gibraltar remained of strategic importance during World Wars I and II as a key point in anti-submarine campaigns. However, the geo-strategic value of Gibraltar has not always been highlighted. In fact, as early as 1903, in an article from the Boston Evening, the author questioned the geostrategic value of Gibraltar, and he clearly advocated for the geostrategic value of Menorca

Other authors, such Gold[641] note that in the early years of the 18th century, Britain was more focused on the struggle for political dominance within Europe than control of the Strait of Gibraltar. Weiz[642] states that despite its considerable contributions to trade and military logistics throughout history, Gibraltar as most of the strategic checkpoints seems to have diminished in importance since the end of the Cold War. Thus, nowadays it has emerged as an international financial center, focused on the tourist industry too.

It is important to note that Overseas Territories retain their connection with the UK because it is the express wish of their peoples that they do so. This is the case of Gibraltar. In 1984 the United Kingdom and Spain agreed the Brussels communiqué, which provided for "the establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar". It was made clear at the time that "both sides accept that the issues of sovereignty will be discussed in that process[643]".

Infrequent but regular meetings under the Brussels Process continued throughout the 1980s and 1990s, but with little progress. On 10 December 1997, at the last meeting under the

Brussels Process before the Process was relaunched in July 2001, the then Spanish Foreign Minister, Matutes, proposed joint British and Spanish sovereignty over Gibraltar—the Matutes

[641] GOLD, P., "Identity Formation in Gibraltar", *University of West England Research Papers*, Geopolitics, Vol. 15, 2010, Num. 2, pp. 367-384.
[642] Ibidem.
[643] House of Commons, "Gibraltar, Eleventh Report of Session 2001-2002", House of Commons: Foreign Affairs Committee, 19 June 2002.

proposals. Throughout the period between December 1997 and July 2001, the British Government conspicuously declined to reject the Matutes joint sovereignty proposals, saying instead that the British response would be made at the next Brussels Process meeting. As the then Minister for Europe, Joyce Quin, said in the House on 4 March 1999 "We have made clear that we will respond to Sr Matutes' proposal at the next meeting of that process [the Brussels Process]. The Foreign Secretary confirmed to Sr Matutes that we were happy to have such a meeting".

The Brussels Process was restarted in the summer of 2001 with the aim of achieving a lasting resolution to the Gibraltar dispute. By July 2002, after several months of negotiations, the UK and Spain had reached broad agreement on many of the principles that could underpin a lasting settlement, but a number of issues remained unresolved.

Finally, on 7 November 2002, the Gibraltar Government held a referendum to ask the people of Gibraltar whether they accepted the principle of joint sovereignty with Spain and 98.5% voted 'no'.

CONSTITUTIONAL CURRENT STATUS

Gibraltar is one of the fourteen British Overseas Territories (BOTs), so it does not form part of the UK itself, but fall under its jurisdiction and sovereignty. What we currently know as BOTs were acquired during the British Empire and have not become independent since their citizens have not wished to initiate a self-determination process in order to become sovereign states, on the contrary, they prefer to remain under UK sovereignty.

The Gibraltar Constitution of 2006 states:

> "And whereas the people of Gibraltar have in a referendum held on 30th November 2006 freely approved and accepted the Constitution annexed to this Order which gives the people of Gibraltar that degree of self-government which is compatible with British sovereignty of Gibraltar and with the fact that the United Kingdom remains fully responsible for Gibraltar's external relations[644]".

As we have already seen, before 1980 Gibraltar was considered to be a Dominion or a Colony, the British Nationality Act of 1981 replaced the name to British Dependent Territory until 2002, when the British Overseas Territories Act, introduced the name of British Overseas Territories, and their nationals became British Overseas Citizens, and in 21 May 2002, British overseas territories citizens became British citizens automatically.

All the overseas territories have their own Constitution, we must take into account that at the end of the 1990s, after the 1999 White Paper, the modernization process of the BOT's Constitutions was initiated. Regarding Gibraltar, on 2nd January 2007, the Gibraltar Constitution Order of 2006 came into effect[645]. This Order revoked the Gibraltar Constitution Order 1969, which established the previous Constitution of Gibraltar. The new Gibraltar Constitution was approved by a referendum held the 30 of November of 2006 and sets the internal organization, government and Institutional framework of this Overseas Territory.

[644] Government of Gibraltar, "The Gibraltar Constitution Order 2006", supplement to the Gibraltar Gazette, 28 December 2006, Num. 3574.
[645] Ibidem.

The 2006 Constitution decided to keep the preamble of the previous Constitution, which states that Gibraltar will keep on being considered a "Majesty's dominion", in current terms will keep on being a British Overseas Territory, since this is the will of the people of Gibraltar and what is more relevant, clearly referrig to the conflict with Spain, the UK Government agreed not to confer Gibraltar sovereignty to another state, without the express assent of the citizens of Gibraltar, following a democratic process.

> "Whereas Gibraltar is part of Her Majesty's dominions and Her Majesty's Government have given assurances to the people of Gibraltar that Gibraltar will remain part of Her Majesty's dominions unless and until an Act of Parliament otherwise provides, and furthermore that Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes".

Unlike the British Constitution, which is not codified in a single document, but is the result of an amalgamation of many years of traditions, customs, conventions, precedents and Acts of parliament, Gibraltar has a written constitution, which is structured along the similar lines to other codified constitutions. The first chapter of Gibraltar's constitution regulates the protection of fundamental rights and freedoms, the list of fundamental rights and freedoms is a classic list that enshrines the right to life, the prohibition of slavery, freedom of expression and of conscience.

Chapters II to VII govern Gibraltar's institutional framework, including the organs and institutions of the three classical branches of power (legislative, executive and judicial) with the characteristic particularities of the sui generis status of such territories, and it also incorporates financial institutions. Chapter VIII covers the Crown Lands and Chapter IX, the last one, comprises a variety of provisions, such as Mayor of Gibraltar, the powers of pardon or the reference to public office.

Regarding the institutional framework, the constitution states that the main Institutions are as follows:

1. The British Monarch, Queen Elisabeth II is the Head of Gibraltar.

2. The Governor, who is appointed by Her Majesty, is Her Majesty's representative in Gibraltar and shall carry out the duties assigned to him by the Constitution and those determined by the Crown in the exercise of the Royal prerogative. Below we will see that in particular, the Governor has certain legislative material powers.

3. Deputy to Governor: provision 23 of the Constitution of Gibraltar stipulates that in the event of absence or illness of the Governor for a period which he/she has reason to believe will be of short duration, the Governor may appoint Deputy, who will be entrusted those functions deemed appropriate during the period of absence or illness. The Deputy may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor.

4. Legislature: Provision 24 states that the legislature de Gibraltar, consists of Her Majesty the Queen and the Gibraltar Parliament. The 2006 Constitution restyles the House of Assembly as the Gibraltar Parliament.

The Parliament of Gibraltar consists of the Speaker and at least 17 elected members. The Speaker will be appointed by the Parliament by resolution passed by a simple majority of its Members. Both the Speaker and the elected must be British citizens or citizens of British

overseas territories citizens by virtue of a connection with Gibraltar who have attained the age of eighteen years old. Furthermore, provision 28 sets out a list of disqualifications to be elected members, among other demerits, an elected member cannot have shown allegiance, obedience or adherence to a foreign power or state; be a member of the regular armed forces of Her Majesty; be declared insane or be adjudged or declared bankrupt under any law in force in or outside Gibraltar.

Provision 32 states that the Parliament is subject to this Constitution and is granted legislative power; it may make laws for the peace, order and good government of Gibraltar. Legislative power will be exercisable by bills passed by the Parliament and assented to by Her Majesty or by the Governor on behalf of Her Majesty. All laws made by the Legislature shall be styled "Acts" and the words of enactment shall be "Enacted by the Legislature of Gibraltar." Laws will come into effect once they are published in the Gazette.

Despite the self-government that Gibraltar enjoys, we should not overlook the fact that it is under British sovereignty as this is the will of the people of Gibraltar. This implies that British Parliament is the supreme legislative body in Gibraltar and in the rest of the British Overseas Territories as we have mentioned above.

Provision 34 regulates **the special legislative powers of the Governor**; in the event that the Government is unwilling to support the introduction into the Parliament of a bill and, therefore, the Parliament is unlikely to pass it, the Governor will be granted the legislative powers and may adopt a bill. Provided it:

a) Has been consulted with the Chief Minister,
b) Has the prior approval of a Secretary of State and,
c) The enactment of legislation is necessary or desirable with respect to or in the interests of any matter for which the Governor is responsible under section 47(1) of the Constitution.

5. Provision 45 states that the Government of Gibraltar is made up by Her Majesty the Queen (represented by the Governor) and the Council of Ministers. This Council shall consist of a Chief Minister and other Ministers (not being less than four), the Chief Minister is appointed by the Governor, acting in his discretion, among the elected Member of the Parliament who in his judgment is most likely to command the greatest measure of confidence. While, the rest of the Ministers shall be appointed by the Governor, acting in accordance with the advice of the Chief Minister, also from among the Elected Members of the Parliament.

Provision 47 of the Constitution establishes a number of matters excluded from the Council of Ministers and that **may only be exercised by the Governor**, acting in his/her discretion. He/she is responsible for the conduct (subject to this Constitution and any other law) of the following matters:

(a) external affairs;
(b) defence;
(c) internal security, including (subject to section 48) the police;
(d) such functions in relation to appointments to public offices.

It is important to note that in external affairs, as far as practicable, the Governor shall act in consultation with the Chief Minister of Gibraltar.

Lastly, Gibraltar's judicial design is governed by Chapter VI of the Constitution, articles 60 and subsequent It explains in detail that the two main judicial bodies, at the top of the judicial pyramid is the Supreme Court for Gibraltar which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings, followed by the Court of Appeal for Gibraltar which shall have the jurisdiction and powers conferred by this Constitution or any other law, after which come the rest of the courts and judges. As an Overseas Territory, Gibraltar has the Judicial Committee of The Privy Council (JCPC), which is the court of final appeal for the UK overseas territories.

None of the Overseas territories including Gibraltar have diplomatic representations abroad, however Gibraltar as most of the BOT has a representative office in London. The United Kingdom Overseas Territories Association, represents the interest of the territories in London. Likewise, regarding the coin Gibraltar uses the Gibraltar Pound and is entitled to print its own notes, under the rate of one Gibraltar pound to one pound sterling.

GIBRALTAR AND THE EUROPEAN UNION

Gibraltar enjoys a special status within the European Union. When the UK joined the European Economic Community in 1973, Gibraltar was included in the Accession Treaty as a territory for whose external relations the UK is responsible. Article 28 of the 1971 UK Accession Treaty exempts Gibraltar from common market provisions, the common agricultural policy and the harmonization of turnover taxes, in particular VAT.

> "In Community law, Gibraltar is a European territory for whose external relations a Member State is responsible within the meaning of Article 299(4) EC and to which the provisions of the EC Treaty apply. The Act concerning the conditions of accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and the adjustments to the Treaties (OJ 1972 L 73, p. 14) provides, however, that certain parts of the Treaty are not to apply to Gibraltar[646]".

Since 1992 Gibraltarians were not granted full British citizenship, it was achieved thanks to the Treaty of Maastricht, which recognised the statute of the European Union citizenship, therefore, the UK Government was forced to recognise the British Citizenship to Gibraltarians. But, despite their status of EU citizens resident in the EU, elections to the European Parliament were not held in Gibraltar until 2004. The inclusion resulted from the European Court of Human Rights 1999 ruling in Matthews v. United Kingdom which deemed that Gibraltar's exclusion violated Article 3 of Protocol 1 to the European Convention on Human Rights[647].

[646] European Court of Justice, Case of Kingdom of Spain c. United Kingdom of Great Britain and Northern Ireland, Judgment of the European Court of Justice (Grand Chamber), 12 September 2006, Case C-145/04.
[647] European Court of Justice, Case of Matthews c. The United Kingdom, Judgment European Court of Human Rights, Strasbourg, 18 February 1999, Application Num. 24833/94.

"The applicant (Denise Matthews, a British citizen resident of Gibraltar) submitted that she had been completely deprived of the right to vote in the 1994 European elections. She stated that the protection of fundamental rights could not depend on whether or not there were attractive alternatives to the current system.

The Court (ECHR) makes it clear at the outset that the choice of electoral system by which the free expression of the opinion of the people in the choice of the legislature is ensured – whether it be based on proportional representation, the "first-past-the-post" system or some other arrangement– is a matter in which the State enjoys a wide margin of appreciation. However, in the present case the applicant, as a resident of Gibraltar, was completely denied any opportunity to express her opinion in the choice of the members of the European Parliament. The position is not analogous to that of persons who are unable to take part in elections because they live outside the jurisdiction, as such individuals have weakened the link between themselves and the jurisdiction. In the present case, as the Court has found, the legislation which emanates from the European Community forms part of the legislation in Gibraltar, and the applicant is directly affected by it.

In the circumstances of the present case, the very essence of the applicant's right to vote, as guaranteed by Article 3 of Protocol No. 1, was denied. It follows that there has been a violation of that provision.

The applicant in addition alleged that, as a resident of Gibraltar, she had been the victim of discrimination contrary to Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Government did not address separately this complaint.

> "In view of its above conclusion that there has been a violation of Article 3 of Protocol No. 1 taken alone, the Court does not consider it necessary to consider the complaint under Article 14 of the Convention"[648]

Thus, as a result of this ruling, in 2004 the first elections to the European Parliament 2004 were held whereby the citizens of Gibraltar were allowed to elect their representatives as part of the area of the South West England constituency of the United Kingdom. The inclusion was unsuccessfully challenged by Spain before the European Court of Justice.

Spain accused the UK of acting illegally in making Gibraltar a part of the South West of England region at the 2004 European Parliament elections. Therefore, it took the case to the European Court of Justice in Luxembourg. It is interesting to examine the arguments of each of the parties: Spain held that the United Kingdom was in breach of the EU requirement that the election of the representatives to the European Parliament had to be done by direct universal suffrage, this provision is contained in EU primary and secondary law, so the fact of including Gibraltar as part of the area of the South West England did not allow the citizens of Gibraltar to vote directly for their own representatives. Furthermore, "according to the Kingdom of Spain, only citizens of the Union could be recognised as having the right to vote in elections to

[648] European Court of Justice, Case of Matthews c. The United Kingdom, Judgment European Court of Human Rights, Strasbourg, 18 February 1999, Application Num. 24833/94.

the European Parliament because of the direct link between citizenship of the Union and the nationality of a Member State, on the one hand, and the enjoyment of rights conferred by the Treaty, on the other (…) So, any extension of those rights to other persons must be made expressly, either by the Treaty or by provisions of secondary legislation. Since recognition of the right to vote and to stand as a candidate thus comes within the powers of the Community, any change in the scope ratione personae of such rights can be effected only by Community law[649]".

The United Kingdom argued that its decision to link Gibraltar to the region of South West of England for the European elections was so as not to discriminate against the other electoral constituencies of the UK since the size of the Gibraltarian electorate was too small to count as an electoral constituency in itself. Moreover, the European Commission supported the UK, stating that the decision of including Gibraltar as part of South West England it was a an internal matter as the United Kingdom was the sole competent authority to determine the national identity of its citizens and those of the Overseas Territories and, accordingly, the EU was bound to respect the national identities of its Member States.

The European Court of Justice ruled in favour of United Kingdom, considering that its arguments were correct and that the option adopted was understandable given that its aim was to devise an option to enable the citizens of Gibraltar to vote under conditions equivalent to those laid down by the legislation applicable in the United Kingdom. The Court also referred to the case of Matthews vs. United Kingdom, which we have examined above, indicating that the ruling by the European Court of Human Rights contained no demand of any local requirements which would have to be taken into account to enable the citizens of Gibraltar to participate in the European Parliamentary Elections therefore it was the competence of the United Kingdom to determine the content and way in which to exercise this right[650].

The European Court of Justice decided that:

> "In the light of that case-law of the European Court of Human Rights and the fact that that Court has declared the failure to hold elections to the European Parliament in Gibraltar to be contrary to Article 3 of Protocol No 1 to the Convention in that it denied 'the applicant, as a resident of Gibraltar' any opportunity to express her opinion on the choice of the members of the European Parliament, the United Kingdom cannot be criticised for adopting the legislation necessary for the holding of such elections under conditions equivalent, with the necessary changes, to those laid down by the legislation applicable in the United Kingdom.
>
> The transposition to the territory of Gibraltar, with the necessary changes, of the United Kingdom legislation is all the less open to challenge since, as is clear from paragraph 59 of the judgment in Matthews v the United Kingdom, the European Court of Human Rights found no indication in the status of Gibraltar of any local requirements which would have to be taken into account, under Article 56(3) of the Convention, for the application of that Convention to a territory for whose international relations a Contracting State is responsible[651]".

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[649] European Court of Justice, Case of Kingdom of Spain c. United Kingdom of Great Britain and Northern Ireland, Judgment of the European Court of Justice (Grand Chamber), 12 September 2006, Case C-145/04, Par. 39.

[650] European Court of Justice, Case of Kingdom of Spain c. United Kingdom of Great Britain and Northern Ireland, Judgment of the European Court of Justice (Grand Chamber), 12 September 2006, Case C-145/04.

[651] European Court of Justice, Case of Kingdom of Spain c. United Kingdom of Great Britain and Northern Ireland, Judgment of the European Court of Justice (Grand Chamber), 12 September 2006, Case C-145/04.

Thus, like the UK, Gibraltar does not form part of the Schengen Area, so this entails that the border between Spain and Gibraltar is an external Schengen border through which Spain is legally obliged to perform full entrance and exit controls. However Gibraltar does participate in certain police and judicial cooperation aspects of the Schengen acquis in line with the UK's request to participate in the same measures.

Regarding the implementation of EU Treaties to Gibraltar, the Governments of Spain and the United Kingdom made the Declaration Declaration 55 by Spain and the United Kingdom annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon on 2009.

> "The Treaties apply to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned."

Finally, the transposition of an EU directive in the UK does not have any effect in Gibraltar and the Gibraltar parliament is required to pass its own legislation transposing all applicable EU directives in Gibraltar as primary legislation, or in some instances ministers may make national regulations to transpose obligations by secondary legislative means.

GIBRALTAR IN THE COMMONWEALTH

Gibraltar is a British territory, so it is part of the Commonwealth. However, it is not a full member of the Commonwealth so it can’t have full participation in any of the Commonwealth (CMW) Institutions, so it cannot attend the CHOGMS or other meetings. In spite of Gibraltar´s Constitution which gives them a tremendous autonomy, they are still a dependent territory of the UK, so the representation of Gibraltar in the CMW is carried out by the British Foreign Office. However, there are some exceptions, and Gibraltar participates in:

- CMW Games
- CMW Parliamentary Association (NGO), under the umbrella of the CMW.
- Program for students, Scholarships, under the umbrella of the CMW Foundation.

Lastly, in several meetings this author had with the United Kingdom’s Representative for Gibraltar,[652] Albert Poggio, expressed his desire that Gibraltar should be able to have a more active role in the Commonwealth and not only through the United Kingdom. One of the proposals we discussed was the acquisition of observer status, which I refer to in the section on Commonwealth relations with the British Overseas Territories, which we have discussed at length.

B. THE SPECIAL CASE OF THE BRITISH SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA

Geographically, the British Sovereign Base Areas of Akrotiri and Dhekelia are located as in the case of Gibraltar, in the territory of an EU member state, Cyprus. Although not part of the UE, the bases have a different regime to the one enjoyed by Gibraltar. The bases are listed as one of the fourteen British Overseas Territories,[653] but they are not included among the 26 Overseas Countries or Territories referred to in Part IV of the Treaty on the Functioning of the European Union. Therefore, they are not subject to the provisions for these territories. It is

[652] Meetings I had with the Representative of Gibraltar in the United Kingdom, in 2010 and in 2012.
[653] UK Government, “Britain and the Overseas Territories -A Modern Partnership White Paper”, UK Office of Foreign and Commonwealth Affairs, from: <http://www.ukotcf.org/pdf/charters/whitepaper99textonly.pdf>, (accessed 7 July 2013).

important to recall that OCT nationals or citizens are, in principle, EU citizens, but their territories are not part of the EU or directly subject to EU law. These countries and territories enjoy a special 'associate' status with the EU. Nevertheless, while not recognised as OCTs they enjoy a special regime.

The Sovereign Bases are under British jurisdiction and they have remained British sovereign territory as a result of the 1960 Treaty of Establishment, which created the independent Republic of Cyprus. The bases take up around 2.7% of the island,[654] since they are run as military bases, the Sovereign Base Area Administration reports to the British Ministry of Defence in London rather than the Foreign and Commonwealth Office. Nevertheless they are a British Overseas Territory with a civilian administration working under an Administrator who is Commander, British Forces Cyprus. The Chief Officer, Administrative Secretary, Resident Judge, Chief Constable and other senior officials are recruited from or seconded from UK departments[655].

Regarding their status and role in the European Union, Akrotiri and Dhekelia, since the entry of the United Kingdom and Ireland into the Union with the Act of Accession of 1972[656], the SBAs have been excluded from the adoption and implementation of the acquis communautaire. The adoption of the Lisbon Treaty did not alter their status and according to the Treaty's article 355 (5):

> (b) **the Treaties shall not apply to the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia** in Cyprus except to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the Sovereign Base
>
> Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus annexed to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union and in accordance with the terms of that Protocol Kingdom and Ireland into the Union with the Act of Accession of 1972".

The Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus stipulates the exceptions, namely, the provisions of the EU Treaty that apply to the SBAs[657]:

> Article 2

1. The Sovereign Base Areas shall be included within the customs territory of the Community and, for this purpose, the customs and common commercial policy acts listed in Part One of the

[654] Central Intelligence Agency (CIA), "Full List- Import Partners", The CIA World Fact Book, from: <https://www.cia.gov/library/publications/the-world-factbook/fields/2061.html>, (accessed 4 March 2013).
[655] UK Overseas Territories Conservation Forum, "British Sovereign Base Areas of Akrotiri and Dhekelia", UK Overseas Territories Conservation Forum, from: <http://www.ukotcf.org/territories/cyprus.htm>, (accessed 5 July 2013).
[656] Article 26 of the UK Act of Accession 1972, source: UK Parliament, "European Communities Act 1972", UK Parliament Legislation, 17 October 1972, OJ L 73 of 27.3.1972.
[657] 12003T/PRO/03, Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Protocol No 3 on the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, Official Journal L 236 , (23/09/2003), pp. 940 – 944.

Annex to this Protocol shall apply to the Sovereign Base Areas with the amendments set out in the Annex.

2. The acts on turnover taxes, excise duties and other forms of indirect taxation listed in Part Two of the Annex to this Protocol shall apply to the Sovereign Base Areas with the amendments set out in the Annex

Article 3

The following Treaty and related provisions shall apply to the Sovereign Base Areas:

(a) Title II of Part Three of the EC Treaty, on agriculture, and provisions adopted on that basis;
(b) Measures adopted under Article 152 (4) (b) of the EC Treaty

Regarding the Schengen Area, as we have previously explained, the UK is not part of the Schengen area, despite of adopting some provisions and enjoying certain rights. As a general rule the British Overseas Territories Citizens have a right of abode in the UK if they simultaneously possess British citizenship. We can not forget that in 2002 British Overseas Territories Act made all existing British Overseas Territories Citizens (BOTCs), except those whose BOTCs status derived solely from a connection with the Cyprus Sovereign Base Areas (CSBA), automatically become British citizens[658]. So, all British citizens, except those connected solely to CSBA, enjoy the rights of free movement and establishment conferred by or under the EC Treaty and, therefore, visa free access to the Schengen area.

We consider that given the strictly military nature of these bases, the specific characteristics of their regime are justified. However, as well as limiting the sovereignty of Cyprus, they constitute an obstacle to the normalisation of the territory and contribute to complicating the situation of this State, which is already complex. The possibility that the totality of Cyprus might one day join the UE is weakened not only by the Turkish occupation but also by these bases, which despite their special regime do not form part of the EU. In fact, the Cypriot press published some statements by the Cypriot President of the House of Representatives, Yiannakis Omirou, in which he expressed his irritation that the bases continue to remain in British hands.

> "British bases in Cyprus are illegal" (…) "the remnants of colonialism and are therefore illegal based on resolutions of the UN General Assembly[659]".

[658] UK Parliament, Letter to the Clerk of the Committee from the Parliamentary Relations and Devolution Team, Foreign and Commonwealth Office, Select Committee on Foreign Affairs, UK Parliament: House of Commons Reports, from: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmfaff/166/6121309.htm>, (accessed 20 July 2013).
[659] Famagusta Gazzette, "Cyprus Have Your Say: British bases", Famagusta Gazzette, from: <http://famagusta-gazette.com/cyprus-have-your-say-british-bases-p13866-69.htm>, (accessed 20 July 2013).

CHAPTER V: THE ROLE AND STATUS OF THE ACP GROUP IN THE COMMONWEALTH AND THE EUROPEAN UNION

In this chapter, we examine the African, Caribbean and Pacific Group (ACP), focusing on those countries that are members of the Commonwealth and using the same methodology we have used throughout this thesis. Thus, from the historical perspective we establish when and why this group was created. We also examine the historical, political and trading role the United Kingdom and the Commonwealth have played in its development and consolidation up to the present day. We should point out that the economic approach is limited to examining the trading information of the group since, as we will see, the trade component is so pervasive in UE-ACP relations that we have had to address the rest of the approaches transversally. In the legal approach, we examine the Cotonoú agreement and its impact on the group. We ponder the specific status of South Africa within the group, which is also a member of the Commonwealth and lastly, in the political approach, we conduct a critical analysis of the Commonwealth's role regarding the relationship between the EU and this group.

<u>HISTORICAL APPROACH</u>: <u>The Constitution of the Africa Caribbean and Pacific Group: From Yaoundé to Cotonou</u>

The relationship between the so-called Africa Caribbean and Pacific Group and the European Union dates from the adoption of the 1957 Treaty of Rome, which created the European Economic Community (EEC). This treaty refers to the states that would later be called the Africa Caribbean and Pacific Group , in particular it included them as part of the Overseas Countries and Territories (OCTs) and grants them a special relationship with the then European Economic Community. This relationship would be primarily focused on the areas of commerce and cooperation in economic and social development. Of the six founding members, France was the most interested in establishing a relationship of association between the recently created EEC and its African colonies and former colonies. In fact, this interest is shown in its own negotiations of the abovementioned Treaty:

> "**The French were particularly keen that Francophone Africa should be closely associated with the new Economic Community**. In part, this was due to the vicissitudes of the French colonial model, though economic incentives were arguably the most important motivating factor, (Two-thirds of Francophone Africa's trade went through Paris and the colonies provided France with a preferential status for French exports and resulted in additional stability for the franc. In turn, the Francophone states enjoyed guaranteed Markets for their primary products at inflated prices as a result of the surprix above world prices enjoyed in metropolitan France" (...)

But, not all of the Six displayed the same enthusiasm as did the French for some kind of incorporation of the colonies by the embryonic Community.

> "The Germans were, for example, at pains to point out the hazards of tainting the Community with the colonial stigma. (One has to remember this was a period when the Germans were particularly sensitive on this issue, and when the great Pan-African moviment was at its zenith.)[660]"

Having consolidated this relationship of association, the treaty adopted indicated in its preamble that the EEC is bound to the Overseas Countries and Territories through a relationship of partnership and therefore, the Community has the desire:

[660] VALE, C., "The Lome Conventions: From Sunday Charity to a New International Economic Order", *The South African Institute of International Affairs Journal*, 1980, p. 5.

> "to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations[661]."

In addition, the third article of the Treaty of Rome expressly mentions that one of the main tasks of the EEC consists in articulating and giving life to this relationship of association with the Overseas Countries and Territories with the two-fold objective of increasing trade and cooperation for development.

> "(...) The activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein the association of the overseas countries and territories in order to increase trade and to promote jointly economic and social development[662]".

A more detailed regulation of the Overseas Countries and Territories system is found in the fourth part of the 1957 Treaty entitled "PART FOUR: ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES", articles 131 to 136.

Article 131 defines the territories and countries that make up the Overseas Countries and Territories category. Geographically, they are "non-European countries and territories", historically having had "special relations with Belgium, France, Italy and the Netherlands.

Furthermore, the Treaty lists these countries and territories in Annex IV to this Treaty.

- French West Africa
- Senegal
- Guinea
- Ivory Coast
- Dahomey
- Mauritania
- The Niger and The Upper Volta
- French Equatorial Africa
- The Middle Congo
- Ubangi-Shari
- Chad
- Gabon
- Madagascar
- The autonomus Republic of Togoland
- The French Trusteeship in the Cameroons
- The Belgian Congo
- Rwanda-Urundi
- The Italian Trusteeship Territory of Somiland

Article 132 explains the objectives to be pursued in establishing this relationship of association between the European Economic Community and the Overseas Countries and Territories. To summarise, they are:

[661] European Commission, "The treaty of Rome, 25 March 1957", European Commission, from: <http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf>, (accessed 3 May 2013).
[662] Ibidem.

a) The Member States will grant the same trade relations status to OCTs that it does to the other Member States.
b) The OCTs will grant the same trade relations deal to the Member States that it does to the states with which they have a special relationship.
c) The Member States shall contribute to the investments required for the progressive development of these countries and territories.
d) Participation in tenders and supplies of the Community will be open on equal terms to Member States and the countries and territories.
e) The the right of establishment will follow the provisions and procedures laid down in the Chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 136.

Articles 133 and 134 regulate the customs duties system that must be regulated in trade relations between them. Basically, it concerns the requirement to gradually abolish the customs duties on imports of goods originating in the countries and territories into the Member States and vice-versa. The third section of article 134 indicates an exception:

> "The countries and territories may, however, levy customs duties which meet the needs of **their development and industrialisation** or produce revenue for their budgets".

In article 135, another exception is indicated for the free movement of workers from the countries and territories; this can be restricted for reasons of public health, public security or public policy and are governed by agreements unanimously approved by Member States.

Article 136 complies with the adoption of a Convention that will be appended to this Treaty and will be charged with regulating "the details of the procedure for the association of the countries and territories with the Community."

These provisions make up the general framework that guided relations between the OCTs and the Member States. It would be necessary to develop it and make it more specific since it did not set up a limited time period and the international community was undergoing a general process of decolonisation that would affect all of the Overseas Countries and Territories. As O'Malley[663] indicates, the main problem is that the Treaty of Rome made no mention of how the association would function when the Overseas Territories became independent, since that time the colonial powers had always made decisions for their overseas territories but after independence, these territories became sovereign states, so capable of making their own decisions.

Part fourth of the Treaty provided for the creation of European Development Funds (EDFs), aimed at giving technical and financial aid to African countries still colonised at the time and with which some States of the Community had historical links. As we have said, it was necessary afterwards to develop a general framework to establish the Treaty and as stated in article 136, an Implementing Convention limited to five years was adopted and the first European Development Fund was established for the period 1959-1964.

It basically established a system where the Overseas Countries and Territories[664]:

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[663] O'MALEY, C., "Some Legal Issues involved in the association of the European Economic Community with the African and Malagasy States", University of Birmingham, *Journal of Legal Pluralism and Unofficial Law*, Vol.1, 1970, Issue. 1, p. 64.

[664] BARTELS, L., "The Trade and Development Policy of the European Union", *The European Journal of International Law*, Vol. 18, 2007, Num. 4, p. 743.

> a) Were to reduce duties and open up quotas for EEC imports according to the standard transitional timetable, but, by implication, were still permitted to impose quantitative restrictions on non-quota imports.
>
> b) There were also some obligations with respect to inter-territory trade: here duties but not quantitative restrictions were to be reduced.
>
> c) There was provision for infant industry protection: the territories could impose 'customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets '. This exception (which was reproduced in the two later Yaoundé Conventions) was controversial within the GATT, but in fact it was only once invoked during the life of these three instruments.
>
> d) This arrangement was completed by a protectionist EEC Common External Tariff (CET), which imposed high tariffs on products of interest to the associates. These included coffee and cocoa, to the disadvantage of Brazil, Colombia, Ghana, Nigeria and Uganda, and bananas, to the disadvantage of Ecuador, Honduras and Costa Rica.

The system set up by the Treaty of Rome and the Implementing Convention was roundly criticised both by the group of African nations and by international organisations since according to them it had a markedly neo-colonial character and divided the African continent between those states that were part of the agreements and those that were not.

> "This convention included provisions to secure preferential trade agreements and financial and technical assistance but they also provided European access to African raw materials. Not surprisingly, this arrangement came under early criticisme inside and outside Africa as an essentially "neocolonial" arrangement (...)"
>
> "Questions on the nature of the relationship had been raised at both meetings of GATT and the Economic Commission for Africa where the European-African link was charged **as being a perpetuation of colonialism**. However, a more important political consideration was that the existing system divided Africa between those who were a party to the Rome arrangements and those, mainly Anglophone states, which were not. It should be borne in mind that the African states were particularly sensitive to the issue of unity for the OAU had been formed in May 1963, under extremely tenuous circumstances[665]".

As we have mentioned, the decolonisation process entailed that the territories listed in Appendix IV would acquire Independence and be converted into sovereign states. At first 18 African nations ended up coming out of this and then 19. Together with Madagascar and Mauritius, they would make up the so-called African States Madagascar and Mauritius (ASMM) group that was associated with the EEC under the two Yaoundé Conventions. The first[666] of them was in force for the period (1964–69).[667] It had similar objectives as the Implementing Convention, which as we just explained, marked the beginning of greater cooperation between the two sets of countries. It articulated a basic institutional framework where the Council of Association was established composed of members of the Council of European Communities

[665] VALE, C., "The Lome Conventions: From Sunday Charity to a New International Economic Order", op. cit., p.13.

[666] ACP Group of States, "Convention de Yaoundé", ACP Group of States, from: <http://www.acp.int/node/150>, (accessed 3 May 2013).

[667] Further information: DJAMSON, E.C., *Dynamics of Euro-African Co-operation*, Leiden, Martinus Nijhoff, 1976, p.98.

Ministers, members of the European Communities Commission and representatives of the Associates, which was charged with instituting general lines of technical and financial cooperation and increasing the resources of the Economic Development Fund (EDF).

Given the subject of this thesis, it is of interest to stop and analyse this historical moment. On the one hand, the United Kingdom, which was not a member of the EEC and was seeking to be one after a brief period of membership in the European Free Trade Association, presented its candidacy to the European Community. We should note that it was vetoed twice by General de Gaulle. Strangely, he blamed them for being more interested in the United States and in the Commonwealth than in Europe. Paradoxically, France was also very interested in maintaining special bonds with its colonies and former colonies and prompted it to insist on articulating a system of association of the overseas territories with the EEC, despite opposition from other members of its own Community like Germany. On the other hand, the vetoing of the United Kingdom's entry into the EEC not only resulted in the United Kingdom seeing itself outside of the European Communities, it also resulted in that its colonies and former colonies not being allowed to form part of the agreements of association enjoyed mainly by the French Group of African States. This entailed certain unease in the Commonwealth. As we will see next, the position of the United Kingdom would differ from that of its colonies and former colonies, who did not share the same interests:

> **British stance**: "When the Macmillan Government applied for membership to the EC he had hoped that their colonies and ex-colonies would be offered "association" under the same terms as the Francophone states" (...)
>
> **The stance of the British coonies and former colonies in Africa**: "The Anglophone states were not altogether enthusiastic about the proposed relationship. The opposition was lead by Kwame Nkrumah, who regarded the Eurafrican relationship **as the most virulent form of neo-imperialism[668]"**.

These matters came to a head at the 1962 Commonwealth Conference in London, when the **African members of the gathering rejected association with the Community**. The objections of the Anglophone grouping of states were political and economic and they were leaded by the Prime Minister Kawawa of Tanganyika:

> "First, on the **political** level, he maintained that association would link East Africa to the security circumstances of NATO, and that this was incompatible with the policy of non-alignment.
>
> Second, **economically**, Kawawa maintained that association would prejudice trade agreements with other parts of the world like India and Japan, and that association would inhibit economic development by forcing the associates to specialise in the agricultural sector.
>
> However, the overriding reason for the hesitancy of the Anglophone grouping lay in their hesitant about the British negotiating on their behalf, thus ignoring their new found political independence. [669]".

But none of the colonies' and former colonies' objections had external repercussions since the United Kingdom's candidacy was again rejected.

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[668] VALE, C., "The Lome Conventions: From Sunday Charity to a New International Economic Order", op. cit., p.14.
[669] Ibidem.

The general outcome of the first Yaoundé Convention was positive since it established the basis for bilateral cooperation between both parties on more egalitarian terms, although much remained to be done. Once the first Convention expired, which could be renewed every five years, a second Yaoundé Convention took place that would govern the period from 1971 to 1975. The objectives to be achieved did not differ much from the first. It was primarily concerned with the promotion of economic and social cooperation. The Economic Development Fund was increased to $900-million over a five-year period. Funds were mostly allocated to the Fren ch-speaking African States. The institutional system was left intact. The number of products that remained under the European Community Common External Tariff reductions was increased. It also clarified that the system established in the Agreement was not incompatible with the adoption of the global system of generalised preferences. However, what undoubtedly signified a big step forward was the change in mentality with respect to the African States that made up this agreement. The paternalistic mentality that had reigned under the Treaty of Rome and the Implementing Convention was left behind and they began to be treated like true sovereign nations capable of being responsible for their own development and future.

> "The institutional framework remained intact, though in purpose and philosophy it had changed. The EDF was increased. It stressed that the eighteen Associates had a primary responsibility for their own development — a 180 degree turn about from the paternalistic approach of Rome. More products were included under the reductions of the EC Common External Tax. Moreover, African economic co-operation was encouraged under the Agreement, the protocol stipulated that association in no way prevented the Africans from participating in a global system of generalised preferences[670]".

At the time that Yaoundé II ended, the Lagos Agreement of 1966, which tried to bring Nigeria into the European-African nexus, was signed but not ratified However, the Convention of Arusha (1971–75) was adopted, which established trade links with the EEC and the three East African States of Kenya, Uganda and Tanzania. The signing of these agreements with the former colonies can seem contradictory with their position in the Commonwealth Conference of 1962. We should recall that these members had shown their opposition to forming a relationship of association with the European Economic Community with the understanding that this was a new form of colonialism. Nevertheless, there was a radical change in its position that would lead them to sign these agreements. The primary motive was that Anglophone-African trade with Europe was suffering as a result of the Yaoundé agreement and the entry of the United Kingdom, which would have assured them of becoming a party to a system similar to that of Yaoundé, was rejected for the second time.

> "In addition, Nigerian foreign policy Nigerian foreign policy moved from an isolationist position vis-a-vis the Francophone states to a more outward one and, contrary to Nkrumah's (the leader of Ghana) confident predictions, the Europeans displayed restraint in involving themselves overtly in the foreign policies of the Associates. It even became clear that Ghana saw the advantages of a link to Europe but there was an enourmous anti-Common Market campaign.[671]"

It was clear to most of the Anglo-African nations, although some would not openly acknowledge it, that their trade position would improve if they became part of relationship

[670] Ibidem.
[671] Ibidem.

similar to the one enjoyed by the French African nations. However, they wanted one of a specific character. They did not want to be included in the general system of Yaoundé.

> "It is important to note that neither Nigeria nor the East African states sought linkage with the EC under the Yaounde agreement. They were more interested in securing free entry for their commodities into the EC and not financial aid through the EDF[672]".

The desire to sign a specific agreement outside of the general framework of Yaoundé resulted in problems. France was the member nation with that most objections. Specifically, their arguments against it were based on three points:

a) The problem of duality: these states were part of the Commonwealth and, therefore, enjoyed Commonwealth trade preferences for which the new systems of preferences offered with the European Economic Community could be incompatible.
b) The already existing Associate members: these ad hoc agreements could cause setbacks for the members of Yaoundé that had a special link with France
c) It was not clear to France that that an agreement of this type with the Anglophone countries would result in considerable advantages for the members of the EEC.

Finally, France showed itself more flexible and ended up adopting the Arusha Convention.

As we have explained, when the Yaoundé Conventions were signed, the United Kingdom was not a member of the EEC and the former British colonies stood outside these arrangements. However, the situation changed at the beginning of the seventies when it was now eligible viable for the United Kingdom to join the EEC and in 1975 Yaoundé II and the Arusha Agreement would no longer be in effect. This made it necessary to negotiate a new framework of relationships for the members that were party to these agreements. As mentioned, the United Kingdom had an interest in agreeing to a similar system for the members of the Commonwealth. In addition, these were now less reluctant to reaching a special agreement with the European Economic Community.

Finally, in January 1973, the United Kingdom together with Denmark and Ireland became new members of the European Economic Community. Protocol No. 22 annexed to the United Kingdom Accession Act opened up the way for negotiating a special relationship of some twenty Commonwealth members (except India) with the EEC. In this sense, this protocol made several options possible when it came time to negotiate: adopt a third Yaoundé agreement, reach a new group agreement or adopt specific agreements with different states. In addition, it offered the possibility that other African States that were not members of the Commonwealth or the ASMM group would enjoy the same option.

These events resulted in expanding the range of countries to which the negotiation of the associate status was directed. The establishment of a special relationship was no longer directed only at the region of Africa but broadened to include the Caribbean and the Pacific.

The heterogeneity of the states implied in the negotiations resulted in that three regional groups with distinct interests (Africa, Caribbean and the Pacific) were formed at the beginning. They soon understood that it was better to negotiate together in order to have a better position and obtain a more favourable agreement. This was especially true for the Caribbean and Pacific groups if they wanted to reach agreements as favourable as those enjoyed by the African states.

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[672] Ibidem.

a) **African Group**: "In February 1973 there was a conference of African Ministers held in Accra in Ghana. The Conference recommended to the Summit of the African Heads of State and Government held in Addis-Ababa in March 1973, that should form the basic principles for future negotiation with the EEC. With the acceptance of this recommendation, African countries were able to form the African group for joint negotiation with the Community".

b) **The Caribbean countries**: "The Caribbean countries were very united. This was demonstrated in the Georgetown Accord of 4th July 1973 which established the Caribbean Common market. Since the idea of seeking relations with the EEC had been conceived in 1972, the structure and organisation of the Caribbean commonwealth market were developed to facilitate negotiations with the EEC. The Caribbean group wanted a more open type of Cooperation, a position that was influenced by its relations with the United States and Canada[673]".

c) **The Pacific Group:** mainly made up of Fiji, Papua-New Guinea and Solomon Islands, which had less power of influence if they were acting alone.

> According to Solignac, "the Caribbean countries (consisting of Guyana, Trinidad Tobago, Jamaica and Barbados) "felt that they might not obtain better terms than Africa if they opted for a separate negotiation. They therefore opened dialogue with others a view to negotiating together. Similarly, Britain urged the Pacific countries of Fiji, Papua-New Guinea and Solomon Islands to join the others in negotiating with Europe[674]".

Finally, a new group agreement was opted for that encompassed the three regions: Africa, the Caribbean and the Pacific and left behind the two options indicated, that is, a third Yaoundé or specific agreements with each state or each region. So, the negotiations were concluded with the signing on February 28, 1975, of the first Lome Convention (Lome I) in Togo, by the then nine EEC member states and the 46 Africa Caribbean and Pacific Group countries, a newly born international economic grouping, which was formally established by the Georgetown Agreement in 1975.

> "The ACP as a group was officially created in June 1975, soon after the signing of the first Lomé Convention, **upon the signing of the Georgetown Agreement**, by the original forty-six ACP states.
>
> The agreement instituted a Council of ACP Ministers, a Committee of ACP Ambassadors, and set up an ACP Secretariat in Brussels to service them. The essence of the agreement was to consolidate and strengthen solidarity among the African, Caribbean and Pacific countries that were seeking the special aid and trade relationship with the EEC[675]."

Thus, the Lome Convention I was indeed heralded as the most ambitious and comprehensive North-South agreement of its time, but the results were not as extraordinary as expected. It basically concerned institutionalising a true cooperation on an equal basis between the EEC and a new broader group of states that had been primarily formed as a consequence of the

[673] SOLIGNAC, H. B., "Effectiveness of Developing Country Participation in ACP-EU Negotiations", *Overseas Development Institute Working Paper*, 2001, p. 32.
[674] Ibidem.
[675] Ibidem.

accession of Britain to the Community and the inclusion of the Commonwealth countries in the cooperation programme set up in Yaoundé, that being the Africa Caribbean and Pacific Group.

At the institutional level, the institutions do not differ much from those of Yaoundé, but the names changed. The relationship between the 9 members of the European Economic Community and the 46 members of the Africa Caribbean and Pacific Group is mainly governed by a Council of Ministers comprised of a representative of each state from both blocs and also from the European Commission. The presidency alternated between the two blocs. The Council would meet yearly and designed the overall strategic guidelines. The decisions that they made were binding for both parties and they were required to implement them. In addition, they had a Consultative Assembly and a Committee of Ambassadors in Brussels.

At the trade level, it contained a system of non-reciprocal preferences for most exports from Africa Caribbean and Pacific Group countries to the EEC with the objective of promoting and diversifying Africa Caribbean and Pacific Group countries' exports in order to favour their growth and development. Furthermore, it introduced the STABEX System that was made up of the aid programme where the EEC paid the price difference if the Africa Caribbean and Pacific Group exports experienced adverse fluctuations with respect to previous years.

> "This system covered twenty commodities ranging from groundnuts to iron ore. In order to claim Stabex, the country must prove that the goods claimed for, accounted for 7,5% of its total export (2,5% in the case of landlocked and poor nations and islands), and that the earnings from export of the commodity to the EC were lower than the previous four years. The payments are in the form of interest-free loans to be repaid when recovery is assured[676]".

The main criticism levelled at this first Convention is that its provisions were not able solve the massive problems associated with poverty, disease and under-development. The Africa Caribbean and Pacific Group countries made their doubts known about the effectiveness of the Agreement since they did not consider that their exports would have been particularly encouraged with respect to the products of other countries and the European assistance for Industrial Development had not been enough to boost their indigenous development. In any case, at a political level, it was an important achievement in initiating the foundations for establishing true cooperation where common interests were identified and was reflected with respect to the sovereign equality of both parties and the existence of the right of each state to determine its own policies.

After Lome I expired and despite the harsh criticism that the EEC received from the Africa Caribbean and Pacific Group, it was decided to go for a second Lome Convention. The negotiations were not easy. The European Economic Community was looking for more of the same, whereas the Africa Caribbean and Pacific Group were trying for a renewed, much more ambitious agreement. The main criticisms can be summarised as follows:

> "Accusations (from the ACP) were made that the EC was being "miserly", that they were "timid" in their approach to the trade and aid sections of the new agreement, and that they were trying to rush the new agreement through[677]".

In the end an agreement was reached and a second Lome Convention was signed in 1979. Although there were some improvements, more involvement in Industrial Development and

[676] Ibidem.
[677] VALE, C., "The Lome Conventions: From Sunday Charity to a New International Economic Order", op. cit., p.17.

more trade concessions on the part of the EEC, with regards to agriculture and beef products, the list of agricultural products that could enter into duty-free arrangements was expanded and the beef-producers no longer had to renegotiate their quota annually but instead had a five year quota. European Development Fund resources were also increased and the Stabex System was improved by increasing the total list of goods affected by this system. In addition, the fluctuations were reduced from the 7.5% provided for in Lome I to 6.5% and the Minex system (Sysmin) was set up based on the Stabex system, which afforded a degree of protection to mineral exporters in the face of world mineral price fluctuations. However, in general terms, Lome II did not differ substantially from its predecessor and the complaints from the Africa Caribbean and Pacific Group continued. They considered that the trade preferences system established was not sufficiently beneficial and that:

> "The financial aid that they had received under the Stabex program during Lomé II was unsatisfactory[678]".

Once Lome II expired it was not at all clear that an agreement could be reached on a third Lome Convention. The Africa Caribbean and Pacific Group had shown a strong interest it; they had made known their complaints about Lome II,

> "(According to the ACP opinions) the negotiations proved to be more difficult and protracted than any of their predecessors. No other Lome Convention took six ministerial-level meetings before being finalized[679]".

In addition, the EEC took into consideration that the agreements would last five years and that it would have to be renegotiated was not advantageous to the Africa Caribbean and Pacific Group-European Economic Community relationship, but rather it destabilised it. In this sense:

> "The Commission said that a permanent convention would provide a lasting framework for relations and development cooperation between the EEC and the ACP[680]."

Nevertheless, despite difficulties arising from the reservations indicated, a third Lome Agreement was chosen that was signed on 8 December 1984 and came into force in 1985 with the same format lasting five years until 1990. However, the socio-economic situation for these countries was rather negative when the third Lome Convention was negotiated in 1983-84 with food shortages being a serious problem for many Africa Caribbean and Pacific Group countries.

> "Their causes were variously seen as drought, increasing deforestation and neglect of the small farmer. Lome III consequently placed great emphasis on food security, rural developmentand measures to haltsoil erosion and the advance of the desert[681]".

The Convention thus also raised economic cooperation and increased the resources of the European Development Fund. It wanted to cover other areas of cooperation in the social and human fields in order to mitigate the effects of deforestation and the impact that this had on farmers. In the commercial and political realm, according to the European Commission, it tried

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[678] YARD, T., "Promises, Promises: A Critical Analysis of Lome III's Private Investment Provisions", *Fordham International Law Journal*, Vol.9, 1985, Issue.3, p. 636.

[679] The Courier, "ACP-EEC Conventions: Lomé III", The Courier, 1985, Num. 89.

[680] European Commission, "Memorandum on The Community's development policy", European Commission, Bulletin European Community, 4 October 1982.

to make a big change and go from the mere promotion of industrial development to self-reliant development on the basis of self-sufficiency and food security. Although Lome III enhanced the interdependence that was a principal feature of the historical trade relationship between the EEC and the Africa Caribbean and Pacific Group,[682] many of the criticisms continued to be valid. One example is that the instability brought about by the five year renewal period and the reality of the economic crisis experienced by the Africa Caribbean and Pacific Group resulted in them needing more aid and therefore, increasing their interdependence.

Once again the negotiations were difficult, however, in 1990, a fourth Lome Convention was adopted that was to be in effect until 1995. Finally, the criticism of its short term of five years was overcome and they decided to carry out a mid-term review in 1994-1995, known as Lome IV-bis, which assured its continuity by lengthening its life from five to ten years so that Lome IV was in effect until 2000.

The adverse economic situation for the Africa Caribbean and Pacific Group continued such that the European Commission noted "The fourth Convention should be seen as a major instrument in arresting and reversing the economic crisis in Africa Caribbean and Pacific Group States[683]". Lome IV continued the long-term development aims of Lome III while containing measures to help arrest the economic crisis. Thus, it increased financial aid and provided technical support for structural adjustment that helped the Africa Caribbean and Pacific Group countries to continue economic reforms. Furthermore, it emphasised the need to improve the mechanisms for the protection of the environment.

It is important to note that this Convention advocated for self-sufficiency of the Africa Caribbean and Pacific Group with the objective of reducing their interdependence with respect to the EEC and making them responsible for analysing their problems and preparing reforms.

> "Once undertaken, these reforms will be jointly assessed by the ACP country and the Community. Greater ACP involvement in planning should lead to reforms better suited to individual countries, and to amore realistic timetable[684]".

At a trade level, the agreement maintained the existing non-reciprocity access to the Community market for the vast majority of Africa Caribbean and Pacific Group exports (Reciprocal arrangements were not compulsory; the Africa Caribbean and Pacific Group countries were merely required to grant the European Union most-favoured-nation status)[685]. The list of agricultural and food products that benefited from the preferential system was expanded by reducing the existing restrictions. The special arrangements for beef, veal and rum were also improved. More liberal rules of origin were adopted and a promise of post-1992 protection for Africa Caribbean and Pacific Group bananas and liberalisation for rum.

With the objective of confronting the economic crisis from which the Africa Caribbean and Pacific Group was suffering, Lome IV used the traditional instruments for assisting these countries, Stabex and Sysmin, which were both improved and strengthened financially.

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[682] YARD, T., "Promises, Promises: A Critical Analysis of Lome III's Private Investment Provisions", *Fordham International Law Journal*, Vol.9, 1985, Issue. 3, p.637.

[683] The Courier, "ACP-EEC Conventions: Lomé III", The Courier, 1985, Num. 89.

[684] Ibidem.

[685] European Parliament, "Relations with the Countries of Africa, the Caribbean and the Pacific: from the Yaoundé and Lomé Conventions to the Cotonou Agreement", Fact Sheets on the European Union, The European Parliament, 2013.

As we have noted, in 1995 it was decided to revise Lome IV by extending its validity period. The revision of this agreement, Lome IV-bis, had to take into account the major changes that the EEC had undergone. With the Treaty of Maastricht, the structure of the Communities had been completely transformed, one of the main changes is that the EEC had become the European Community and in addition to the Community pillar, two new intergovernmental pillars were added, thus all together making up the European Union. Furthermore, the European Union was in constant expansion. For its part, the Africa Caribbean and Pacific Group was also undergoing profound changes. In particular, the political realm was in a full process of democratisation and internationalisation. Lome IV-bis introduced several provisions in accordance with the new political situation it was undergoing and went on to include policy clauses that try to encourage respect for democracy and human rights. It also called for greater participation in civil society in this relationship and attempted to reduce interdependence by not increasing European Development Fund aid. According to the European Commission,[686] the primary new features that this Lome IV revision introduced is based on three main points:

a) Human Rights and Democracy: the respect for human rights, democratic principles and the rule of law become essential elements of the Convention. This meant that ACP countries that do not fulfill these criteria risk the retrieval of allocated funds;
b) Funding- Development aid: for the first time EDF is not increased in real terms;
c) Descentralised cooperation: in the form of participatory partnership including a great variety of actors from civil society.

In 2000 Lome expired, there was no lack of critics although there was also praise. It was mostly pointed out that they had set up a fairly unjust system of relationships and that equal sovereignty was not respected. It thus continued the European colonial model while encouraging the "exploitation of their former colonies".[687] For the detractors of these agreements [688] Lome perpetuated interdependence in two ways:

1. The European Economic Community fostered good trade relations with the Africa Caribbean and Pacific Group and granted compensatory financing and trade preferences only because those in the EEP with scarce resources were interested in getting raw materials from those in the Africa Caribbean and Pacific Group that had them.

2. Once the products made from Africa Caribbean and Pacific Group raw materials are manufactured in the European Economic Community, they are then reintroduced in the markets of the Africa Caribbean and Pacific Group because they lack an advanced manufacturing sector.

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[686] European Commission, "From Lomé I to IV", European Commission: Development and Cooperation-Europe aid, from: <http://ec.europa.eu/europeaid/where/acp/overview/lome-convention/lomeitoiv_en.htm>, (accessed 17 May 2013).

[687] YARD, T., "Promises, Promises: A Critical Analysis of Lome III's Private Investment Provisions", *Fordham International Law Journal*, Vol.9, 1985, Issue. 3, p.637.

[688] Ibidem.

For those supporting the Lome agreements, it was undoubtedly seen that the system that was established marked an important change in the relationship between the Africa Caribbean and Pacific Group and the EEC. These agreements brought a number of significant gains for the Africa Caribbean and Pacific Group countries, as well as for the EEC.

In this sense, we have come to understand that overall, if we weigh the cooperation between the Africa Caribbean and Pacific Group and European Union, from the Treaty of Rome in 1957 to Lome IV bis ending in 2000, (more than 40 years) and exclude specific achievements and the possibility of having articulated more ambitious agreements, the Yaoundé generation laid the foundation of the relationship between what later would become the Africa Caribbean and Pacific Group and the EEC and the Lome generation. It would go further by consolidating and institutionalising the North – South relationship or Africa Caribbean and Pacific Group and European Union. If today the EU-ACP enjoys a true partnership, as we will explain next, it is indebted to that generation of agreements that gradually started to build a special relationship or a true association that went further than mere trade interests. So when it is time to evaluate it, it has to be done from a global perspective.

Starting in 2000, the Lome agreements were replaced by the Cotonou Agreement, which currently provides the general framework for relations between the Union and the 79 Africa Caribbean and Pacific Group countries. This framework is reinforced by regional and national components and supplemented by a financial component represented mainly by the European Development Fund,[689] which we will explain in depth in the legal approach.

We cannot finish this section without stopping to note that each one of these agreements started bringing in new members in both parts of the relationship or association. From the initial 18 states listed in Appendix IV of the Treaty of Rome, to the first 46 states of the Africa Caribbean and Pacific Group created in 1975 with the signature of the Georgetown Agreement, there are currently almost 80 members of the Africa Caribbean and Pacific Group. As for the European Union, from six founding members of the European Community, with the joining of Croatia in July 2013, it now has 28 members.

It is worth emphasising that after the United Kingdom joined the European Community, and with the exception of the Arusha Treaty in 1972 where three members of the Commonwealth joined to form part of the preferential agreements with the EEC without the aid of the United Kingdom (Kenya, Uganda and Tanzania), the United Kingdom took the Commonwealth into account and was able to include provisions that assured preferential conditions for its members in its accession agreement despite opposition from some states, mainly France Protocol 22, appended to the United Kingdom's Act of Accession, served as a basis for extending the preferential relationship that the colonies and former colonies enjoyed (mainly French) of the six founding members of the communities to twenty members of the Commonwealth. Later, the number of Commonwealth states that joined the Africa Caribbean and Pacific Group started to increase until reaching 40 today. This represents more than half of the group who are still members of the Commonwealth.

[689] European Commission, "African, Caribbean and Pacific states (ACP): summaries of EU legislation", European Commission, from:
<http://europa.eu/legislation_summaries/development/african_caribbean_pacific_states/index_en.htm>, (accessed 17 May 2013).

ACP STATE	COMMONWEALTH MEMBER
1. ANGOLA	No
2. ANTIGUA and BARBUDA	Yes
3. BAHAMAS	Yes
4. BARBADOS	Yes
5. BELIZE	yes
6. BENIN	no
7. BOTSWANA	Yes
8. BURKINA FASO	No
9. BURUNDI	No
10. CABO VERDE	No
11. CAMEROON	Yes
12. COMORES	No
13. CONGO	No
14. COOK ISLANDS	No
15. CÔTE D'IVOIRE	No
16. CUBA	No
17. DJIBOUTI	No
18. DOMINICA	Yes
19. ERITREA	No
20. ETHIOPIA	No
21. FIJI	Yes (suspended)
22. GABON	No
23. GAMBIA	No
24. GHANA	Yes
25. GRENADA	Yes
26. GUINEA	No
27. GUINEA ECUATORIAL	No
28. GUINÉ-BISSAU	No

29. GUYANA	Yes
30. HAITI	No
31. JAMAICA	Yes
32. KENYA	Yes
33. KIRIBATI	Yes
34. LESOTHO	Yes
35. LIBERIA	No
36. MADAGASCAR	No
37. MALAWI	Yes
38. MALI	No
39. MARSHALL ISLANDS	No
40. MAURITANIA	No
41. MAURITIUS	Yes
42. MICRONESIA	No
43. MOÇAMBIQUE	Yes
44. NAMIBIA	Yes
45. NAURU	Yes
46. NIGER	No
47. NIGERIA	Yes
48. NIUE	No
49. PALAU	No
50. PAPUA NEW GUINEA	Yes
51. REPUBLICA DOMINICANA	No
52. RÉPUBLIQUE CENTRAFRICAINE	No
53. RÉPUBLIQUE DÉMOCRATIQUE DU CONGO	No
54. RWANDA	Yes
55. ST KITTS and NEVIS	Yes
56. ST LUCIA	Yes

57. ST VINCENT and THE GRENADINES	Yes
58. SAMOA	Yes
59. SÃ0 TOMÉ E PRÍNCIPE	No
60. SÉNÉGAL	No
61. SEYCHELLES	Yes
62. SIERRA LEONE	Yes
63. SOLOMON ISLANDS	Yes
64. SOMALIA	No
65. SOUTH AFRICA	Yes
66. SUDAN	No
67. SURINAME	No
68. SWAZILAND	Yes
69. TANZANIA	Yes
70. TCHAD	No
71. TIMOR LESTE	No
72. TOGO	No
73. TONGA	Yes
74. TRINIDAD and TOBAGO	Yes
75. TUVALU	Yes
76. UGANDA	Yes
77. VANUATU	Yes
78. ZAMBIA	Yes
79. ZIMBABWE	No

2. POLITICAL APPROACH: SPECIAL FOCUS ON COOPERATION DEVELOPMENT AND HUMANITARIAN AID

This part will be focused on the areas of trade policy, development cooperation and humanitarian aid and will be placed in relation to the action carried out by the Commonwealth.

The Africa Caribbean and Pacific Group is made up of 79 countries coming from three different regions: Africa, the Caribbean and the Pacific, amounting to more than 700 million people. Thanks mainly the United Kingdom's EC membership in 1973, there was a big push for this group to be established by the Georgetown Agreement. Most of the countries were colonies of one the European Union Member States, but not all of them. This was a heterogeneous group whose heterogeneity was found not only in their geographic origins but also in terms of the size and development level of the individual countries. Therefore , out of the 50 countries classified as least developed by the OECD, 41 are members of the ACP Group, with the sub-Saharan subgroup of ACP States, considered to be the region lagging furthest behind on the path to achieving most of the core Millenium Development Goals[690]. The list of Least Developed Countries include one Caribbean country, Haiti, and five Pacific countries, Kiribati, Western Samoa, Solomon Islands, Tuvalu and Vanuatu. The others are mostly categorized as Middle Income Developing Countries, such as Mauritius or The Seychelles. Some Caribbean countries enjoy high Human Development Indicators, such as Barbados, Bahamas, Antigua, Trinidad. As we have previously mentioned, there are, however, a range of vulnerabilities manifested by various ACP countries, many of which are Small Island Developing States, some are Landlocked States and some are Highly Indebted Developing Countries[691].

ACP High Income Countries	Commonwealth Members
1. Antigua and Barbuda[692]	**Yes**
2. Bahamas	**Yes**
3. Barbados	**Yes**
4. Trinidad and Tobago	**Yes**

[690] European Commission, "Intra- ACP Cooperation – 10th EDF, Strategy Paper and Multiannual Indicative Programme (2008-2013)", European Commission, from: <http://ec.europa.eu/development/icenter/repository/strategy_paper_intra_acp_edf10_en.pdf>, (accessed 30 May 2013).
[691] United Nations, "UN List of Least Developed Countries", United Nations, December 2003, from: <www.un.org/special-rep/ohrlls/ldc/hsi>, (accessed 30 May 2013).
[692] Depending on the consulted sources, such as Byron, they classify it as a Higher Income ACP State, and other bodies, such as the European Centre for Development Policy Management, conider it as an upper-middle income ACP State.
BYRON, J., "Singing From the Same Hymn Sheet': Caribbean Diplomacy and the Cotonou Agreement", *Revista Europea de Estudios Latinoamericanos y del Caribe*, 2005, Num. 79, pp. 1-24., and European Centre for Development Policy Management, "Differentiation in ACP-EU Cooperation: Implications of the EU's Agenda for Change for the 11th EDF and beyond", *European Centre for Development Policy Management Discussion Paper*, October 2012, Num. 134, pp. 1-36.

ACP Upper-Middle Countries	Commonwealth Members
1. Botswana	Yes
2. Cook Islands	No
3. Dominica	Yes
4. Dominican Republic	No
5. Gabon	Yes
6. Grenada	Yes
7. Jamaica	Yes
8. Mauritius	Yes
9. Namibia	Yes
10. Nauru	Yes
11. Niue	No
12. Palau	No
13. Seychelles	Yes
14. St Kitts and Nevis	Yes
15. St Lucia	Yes
16. St Vincent and the Grenadines	Yes
17. Suriname	No

In our opinion this heterogeneity results in complicating the development of a uniform and generalised policy of cooperation for the whole group. In other words, if it had not been for the action and pressure of some of the European Union members interested in forming this group, basically for preserving their historic and trade ties, it would not have been formed on its own. Despite this, to which we will return to later, the European Commission and the Africa Caribbean Group of countries indicate in their Strategy Paper for 2008-2013[693] that the ACP, as a group, faces a set of shared challenges that are reflected in its performance on the world stage. In this sense, although this Group represents 12% of the world's population, they only generate 2.8% of the world's trade, and only 1.1% of world domestic product.[694] A positive aspect that the Strategy highlights is that the Africa Caribbean and Pacific Group share of world trade has more than doubled over the last 25 years.

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[693] European Commission, "Intra- ACP Cooperation – 10th EDF, Strategy Paper and Multiannual Indicative Programme (2008-2013)", European Commission, from: <http://ec.europa.eu/development/icenter/repository/strategy_paper_intra_acp_edf10_en.pdf>, (accessed 30 May 2013).

[694] United Nations, "Statistical Yearbook 2006-2007", The United Nations Conference on Trade and Development (UNCTAD), 21 July 2011.

The Strategy Paper puts forward a series common challenges facing the Africa Caribbean and Pacific Group, most of these countries suffer from at least one of the above-mentioned constraints and, more often, from a combination of several of them, particularly in Sub-Saharan Africa. We will next select and reproduce the most relevant questions in 14 points:[695]

1. **SMALL ECONOMIES**: Within the ACP Group do exist a common concern that affects a large number of these countries: Half of the ACP are considered to be small economies, these countries have fewer than 2 million inhabitants and a GNI, expressed in purchasing power parity, of less than USD 5 billion. They also have small domestic markets and undiversified economies, sensitive to external shocks.

2. **SMALL ISLAND DEVELOPING STATES:** The overwhelming majority of the small island developing States are members of the ACP Group. In addition to their small size and undiversified economies, these countries are also disaster-prone. This fragility is being amplified by climate change.

3. **LACK OF ENERGY RESOURCES:** The majority of ACP countries lack indigenous fossil fuel resources and therefore spend a large share of their export revenue on energy imports. Increasing energy prices are placing a heavy burden on their economic development. In landlocked African countries energy shortages can be amplified by political crises in neighbouring countries.

4. **LANDLOCKED TERRITORIES**: A majority of the developing countries which are truly landlocked or which are landlocked de facto because of poor access to the sea and weak internal infrastructure are also members of the ACP Group. This increases the costs of integration into the regional and world economy, due to high transport costs and lack of interconnectivity.

5. **POVERTY AND LOW PRODUCTIVITY**: Agriculture, livestock farming, forestry and fishing form the economic base for most of the poor population in ACP countries. Nevertheless, due to low productivity and heavy dependence on rain-fed agriculture, both food insecurity and malnutrition are highly prevalent in rural areas, particularly in sub-Saharan Africa.

6. **LACK OF INTERNATIONAL COMPETITIVINESS**: Sanitary and phytosanitary measures remain a key challenge. The findings of inspections by the European Commission's Food and Veterinary Office confirm that far more effort is needed to bring the SPS systems into compliance with EU standards. These deficiencies are affecting successful integration, diversification and competitiveness and undermining the major contribution made and role played by agriculture as a whole in rural development and, in turn, growth and employment.

7. **MALNUTRITION AND HEALTH ACCESS:** The indicators of malnutrition and of access to health demonstrate that the situation is particularly worrying in subSaharan Africa, although progress is also required in other parts of the ACP region. SubSaharan Africa, with only 20 percent of the world's young children, accounts for 50 percent of all deaths among young children and almost half of the world's maternal deaths. It is also the region hardest hit by HIV/AIDS, malaria and tuberculosis.

[695] European Commission, "Intra- ACP Cooperation – 10th EDF, Strategy Paper and Multiannual Indicative Programme (2008-2013)", op. cit.

8. **INSTITUTIONAL WEAKNESS AND DEMOCRATIC FRAGILITY**: Most ACP countries are relatively young nations; weak nation-building, institutional capacity or democratic governance and a heavy dependence on natural resources have led to instability, fragility and conflict at national and regional levels. Compliance with dimensions of governance, such as good governance in the tax area has increasingly become an issue to be dealt with, for small and vulnerable ACP countries in particular.

9. **EDUCATION ACCESS:** Apart from primary education, ACP countries have also been facing challenges at higher education level, with many students having insufficient access to quality university education in their home countries. Although higher education is not part of the Millenium Development Goals (MDGs) agenda, it often has a direct impact on the ability of countries to achieve the MDGs. In this sense the Strategy notes that, unless countries are able to produce and retain a sufficient number of well educated doctors and teachers, for example, they are unlikely to be able to make faster progress towards health and education MDGs.

10. **HUMAN RIGHTS AND MIGRATION POLICY:** The November 2006 Tripoli Conference on migration and development identified several areas for further action, such as improved migration management, remittances, the brain drain and diasporas, human rights and integration, facilitating legal migration and addressing illegal migration, fighting smuggling and trafficking of human beings and protecting refugees, amongst others.

11. **ENVIROMENTAL NEGATIVE IMPACT:** Over the last few decades most ACP countries have witnessed a rapid degradation of their environment and natural resources base. Climate change is having a big impact on ACP countries in the form of increased incidence of droughts, desertification, floods, heat stress and water management problems in general, affecting agriculture and livestock but also health and migration. Least developed countries and Small Island Developing States will be hardest hit by climate change but, at the same time, have the least capacity to face them.

12. **SCIENCE AND TECHNOLOGY (S&T):** Capacity strengthening needs to be built across a broad spectrum of policies and measures. These range from policy development, to basic S&T capacity building, adaptation of existing technologies to local conditions, making research results accessible to ACP users (including through public web archives) and providing infrastructures and risk capital at appropriate scales to unleash the significant innovation potential that exists in ACP countries.

13. **INFRASTRUCTURES:** The Strategy is espiacially focused on the lack of achievement of the MDG targets on water and sanitation, the appropriate technologies, as well as to reduce poverty and water and sanitation-related diseases. There's a need to improve governance in water and sanitation and management of water resources at regional/transboundary, national and local levels.

14. **PEACE AND SECURITY**: Most ACP Countries have difficulties on conflict prevention, as well as on crisis management capacity. One of the most important challenges they face regards to secure peace and stability at regional, and national levels.

THE ACP GROUP: A REAL REGIONAL AND COMPACTED GROUP?

The big question we ask is if the Africa Caribbean and Pacific Group can be considered a true group of states, whose existence goes beyond a mere "artificial" creation resulting from the 1975 Georgetown Agreement of 1975 and the insistence on continuing the special bond with the former colonies of some of the then members of the European Communities. Beyond being beneficiaries of cooperation policy to development and receivers of European Union financial and humanitarian aid, we have doubts whether the Africa Caribbean and Pacific Group feels part of real cohesive group. Would the Africa Caribbean and Pacific Group continue to exist if the European Union cut ties with the ACP, or would it end up falling apart?

We just explained that there are a series of challenges and questions that the Africa Caribbean and Pacific Group faces together such as the handling of immigration and the impact of climate change. These are questions of transnational scope that need action and management in common since they cannot be solved individually. Furthermore, throughout this chapter we have argued for the European Union to give priority to backing the regionalisation and cohesion of the group.

But, beyond the colonial past that ties most of the Africa Caribbean and Pacific Group with various members of the European Union, they do not share common bonds. We have also explained that the Africa Caribbean and Pacific Group has a disparate geographic, social, cultural profile, which is why it is difficult to state that this group would have an autonomous existence if the European Union stopped maintaining special relations with them. In the last few years several efforts have been carried out to give cohesive, even identifying, elements to this group. In fact, last **17 June 2013**, the Africa Caribbean and Pacific Group unveiled a new flag and anthem at the opening ceremony of the ACP-EU Joint Parliamentary Assembly.

The ACP Secretary General Alhaji Muhammad Mumuni explained to the press the meaning of the ACP flag and anthem:

> "Our flag consists of three diagonal bands of colour green, gold and blue. Green represents fertility and natural beauty and resources of our countries, gold symbolises the sun and the warmth of our people and blue symbolises the bodies of water that surround many of our nations, as well as the peace we all strive for.[696]"
>
> The ACP Secretary General said the anthem "conveyed both the spirit and vision of the ACP family of nations." He added that "the aim is to feature the ACP flag and the anthem at all major international events involving the Group[697]."
>
> The authorities explained that the anthem was the result of an open competition completed last year with entries from African, the Caribbean and the Pacific. The winning entry was a composition by Manuel Jimenez of the Dominican Republic.
>
> "It was selected because of its upbeat rhythm, which expressed joy, positivity, as well as a cultural aspect and authenticity that set it apart from other anthems rooted in the traditional Western style and tradition. The lyrics communicated a clear ACP message

[696] The Jamaican Observer, "New flag and anthem for ACP", The Jamaican Observer, 18 June 2013.
[697] Ibidem.

> (...) the musical score was a complete production, with detailed scores for a full band[698]."

So, since its foundation in 1975, it is the first time ever for the Group to feature such symbols of common identity. Furthermore, in the words of the ACP Secretary General, it is interesting to pause on the following affirmation. The new symbols represent "the spirit and vision of the ACP family of nations". Thus, the Secretary defines the ACP as a "family of nations". Strangely enough, they are the same words used to describe the Commonwealth:

> "The Commonwealth is described as a "family" of nations, originally linked together in the British Empire, and now building on their common heritage in language, culture and education, which enables them to work together in an atmosphere of greater trust and understanding than generally prevails among nations[699]".

In fact, on an institutional level, we encounter several elements of the Africa Caribbean and Pacific Group that share a certain similarity with the Commonwealth. Both are groups of states that share an undeniable colonial past. They share the same pragmatic philosophy: maintain ties with the former colonies, which in principle, as we have explained, were eminently commercial. In the case of the Commonwealth, with the exceptions of Mozambique and Rwanda, it only related to keeping them with the United Kingdom. Unlike the Africa Caribbean and Pacific Group, the old mother country, meaning the United Kingdom, in turn is part of the Commonwealth. In the case of the Africa Caribbean and Pacific Group, the former mother countries, like France, Portugal or the very United Kingdom are not part of it.

Furthermore, the two gave foundational documents, the 1949 London Declaration, which marked the birth of the modern Commonwealth and, in the case of the Africa Caribbean and Pacific Group, the Georgetown Agreement. Both have a similar institutional structure: a Secretariat, the summit of Heads of States and Government or the meeting of Ministers. As to territorial scope, both the Africa Caribbean and Pacific Group and the Commonwealth include territories from different continents, which is why they are of a trans-regional in nature. In fact, a large number of the Africa Caribbean and Pacific Group nations are members of the Commonwealth.

We cannot state with absolute certainty in either of these cases that these two groups of states constitute international organisations with their own international and legal personality. Both comply with most of the features indicated by international law for being considered international organisations, both being associations of more than one state, undertaking common tasks and fulfilling concrete ends and objectives for which they were created. These appear in several documents as well as in foundational documents and a permanent organic structure. Especially in the case of the Africa Caribbean and Pacific Group, we cannot point to whether this group has a legal existence distinct from the sum of the states that form it, but it is more of a partially institutionalised discussion and cooperation forum. In the case of the Commonwealth, the discussion is more complex and we refer back to the first chapters of this thesis, where we address the subject in more depth. We will only point out that currently most of authors like Slynn agree in considering it an international institution. As we explain, the question of the Commonwealth's international legal character engenders the biggest doctrinal controversy because a specific authorising document does not exist, although in the early chapters we present the theory of acquisition of tacit, implied or practically derived

[698] Ibidem.

[699] The Commonwealth of Learning, "About the Commonwealth", The Commonwealth of Learning, from: <http://www.col.org/about/commonwealth/Pages/default.aspx>, (accessed 5 June 2013).

international legal character. In the case of the Africa Caribbean and Pacific Group, for the moment, there is no expressed authorising document of this character, nor is it derived from practice.

We have no doubt that both the Commonwealth and the Africa Caribbean and Pacific Group are actors on the international scene and play an important role in their field of activity. The international scene has varied and broadened considerably. Along with the classical international scene, new ones are appearing that interact and exercise a complementary role to those subject to international law. In addition, as we have defended throughout this thesis, the acquisition of international legal standing and the will to establish itself as an international organisation depends on the political will of the members. International law would act as an instrument or route to materialise these desires. In any case, there is no legal impediment for establishing itself as such.

The future is uncertain. Both the Africa Caribbean and Pacific Group and the Commonwealth could end up being true subjects of international law. It is a question of will, although in the case of the ACP, it is much more difficult that in the case of the Commonwealth since the idea of establishing itself as a group is not an idea that arises from this group but rather from third party nations actively participating that would then not be a part of it. Despite the European Union pushing for regionalisation of the group (and they are adopting some identifying signs), it is necessary that this group does not conceive itself as an external artificial creation and that it maintains the will of staying united, even if one day the European Union decides to end this relationship.

The heart of the European Union relationship with the Africa Caribbean and Pacific Group has gone through various stages. Currently, the European Union is accused of a lack of interest in the Africa Caribbean and Pacific Group:

> "According to Laporte, the lack of reference to the ACP Group in the Lisbon Treaty and the less prominent place of the ACP in the internal Development and Cooperation and European External Action Service institutional framework are also signs that the EU is losing its interest in the ACP as a group.
>
> The ACP Group seems to be increasingly worried over the way the EU is treating them. Long-standing controversial issues such as the EPA negotiations have done more harm than good to the reputation of the EU in different parts of the ACP. While, in formal and official declarations, the EU expresses a strong commitment to respect the contractual obligations of the Cotonou Agreement until the 2020 expiry date, many ACP interlocutors remain quite suspicious about the future intentions of the EU.
>
> The overall impression exists that there is a strong decline in common interests and trust between both parties. The ACP-EU Partnership is at a crossroads and clear choices will have to be made in the coming years between options to continue as "business as usual", to terminate or to revitalise this partnership[700]".

Laporte clarifies that the lack of interest is not directed toward the entire Africa Caribbean and Pacific Group since the group is heterogeneous and is made up of countries from three different regions. Rather, this disinterest relates to certain Africa Caribbean and Pacific Group countries or (sub) regions. In this sense, with the promising growth perspectives and gradual

[700] LAPORTE, G., "What future for the ACP and the Cotonou Agreement? Preparing for the next steps in the debate", op. cit, p. 3.

opening up of societies, the European Union seems to remain strongly interested in Africa and, to a lesser extent, in the Caribbean and Pacific regions.

> In Laporte's opinion "With the Lisbon Treaty, the EU aims to bring more coherence to its external relations by engaging first and foremost with homogenous geographic continental and regional groupings, and developing bilateral strategic partnerships with regional powers such as South Africa. The EU clearly aims to reinforce relations with Africa through the AU, covering the whole of Africa, rather than through the ACP Group[701]".

We will next analyse the reasons for the lack of interest by the European Union towards the Africa Caribbean and Pacific Group. However, as previously, we must first make reference to the current governing system. In the previous section we explained that in 2000 the Cotonou agreement was adopted, which is the current framework governing EU-ACP relations. This gradually phases out the preferential non-reciprocal trade regime enjoyed by the Africa Caribbean and Pacific Group and does it for two main reasons. The first is that the European Union must comply with the requirements of the WTO, which prohibits these types of accords and the second is because the preferential regime is not considered to have produced the results hoped for in terms autonomous development of the developing nations. On the other hand, the European Union thought that liberalisation and the establishment of a free-trade area would contribute to encouraging the competitiveness of this group of states and therefore, making them less dependent. However, the requirement of reciprocity and liberalisation expressed in the EPA agreements has been the subject of harsh criticism for being considered as a tool for serving European Union economic interests.

> The stop EPA campaign considered that the "overwhelming emphasis on liberalisation in the EPA negotiations proved that these negotiations were about expanding Europe's access to ACP markets, rather than about ACP countries' development (…)The EU had narrowed down the Cotonou objectives of poverty eradication and sustainable development to a self-serving trade and investment liberalisation agenda. EPAs would increase the domination and concentration of European firms, goods and services.[702]"

For its part, the Africa Trade Network (2007) issued a declaration during its 9th Annual Meeting that puts EPAs as the latest stage of a long standing trend:

> 'Over the past two decades, [the] right of African countries to pursue their own individual and collective developmental agenda have been attacked and subverted by the countries of the north that dominate the world economic system, as part of their never-ending attempts to further open up the economies of African and other developing countries for the benefit of their transnational corporations[703].'

> "The European Commission clearly wants to use EPAs as a tool to open markets and further its own interests. This is not good. EPAs in their current form would be detrimental to development. They are free trade agreements by any other name and are currently designed to get the most for Europe without the necessary consideration of the negative effects on weaker developing country partners[704]".

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[701] Ibidem.
[702] Stop EPA Platform, "The Stop EPA Campaign", Stop EPA Platform, from: <http://www.stopepa.org/stopepa/campaign_english.php>, (accessed 27 June 2013).
[703] Ibidem.
[704] ELLIOTT, L., "EU move to block trade aid for poor", The Guardian, 19 May 2005.

The reasons explaining the lack of interest can be summarised in the following:

1. THE EU'S DISINTEREST BECAUSE OF THE ACP GROUP'S LACK OF ECONOMIC AND TRADE CLOUT: authors like Faber and Orbie question the previous argument that the European Union is interested in the EPAs as a tool to open the Africa Caribbean and Pacific Group's markets and further its own interests. Instead they consider the opposite, for them, the Africa Caribbean and Pacific Group's trade and economic importance for the European Union is not significant. The European Union would not have a special interest in penetrating the markets of this group because it would have lost interest in this trade relationship and, on the other hand, it would prefer other regional areas that bring greater benefits. In fact, "The Commission explicitly mentions some priority countries/regions for free trade agreements: ASEAN, Korea, Mercosur, India, Russia, the Gulf Cooperation Council, and even China (...) However, the ACP group is absent. The Commission suggests that the EPAs with the ACP countries do not serve Europe's 'main trade interests' and that development concerns prevail in this trade relationship".[705] The line adopted by the European Union of ending the non-reciprocal privileges and going with a free trade system would ease the establishment and strengthening of the relationships with new areas of interest.

> "The mentioned authors note that Europe's economic interests in terms of export opportunities to and energy dependence from the ACP countries no es suficientemente relevante. "Europe's strong insistence on reciprocity is disproportionate to the economic significance of these countries for the EU.
>
> They elaborate an alternative explanation for the Union's position: "Although compatibility with the rules of the World Trade Organization provides a superficial explanation for the EU's drive for reciprocity, this is more fundamentally driven by Europe's economic interests with non-ACP countries and by its ideological belief in free trade as an alternative to old recipes."
>
> Furthermore, in their opinion, the ACP group is not a market like Japan or Switzerland. It is very thinly spread over three continents and not homogeneous in terms of climate, culture and consumer preferences (...) and even if one would assume that the ACP countries would shift to a higher growth trend in combination with free access for EU products, it would take a long time before the countries concerned would become substantial larger relative markets for the EU than is the case at present[706]".

2. DIVISION OF THE MEMBER STATES OF THE EU IN TERMS OF STRATEGY WITH THE ACP: Authors like Schieder[707] emphasise that the European Union is divided in terms of strategy to follow with the Africa Caribbean and Pacific Group. For some European Union member nations, like France and the United Kingdom, the Africa Caribbean and Pacific Group must continue being priorities within the context of European Union special relations. On the other hand, countries like Germany and Sweden resolutely advocate moving away from the exclusive

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[705] European Union, "Regulation (EC) No 1907/2006 of the European Parliament and of the Council, cconcerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency Objective", 18 December 2006, Official Journal of the European Union, L 396.

[706] FABER, G., ORBIE, J., "The EU's insistence on reciprocal trade with the ACP group Economic interests in the driving seat?", Paper for the European Union Studies Association, Tenth Biennial International Conference Montreal, 17-19 May 2007.

[707] SCHIEDER, S., KARLS, R., "Why some European member states are prioritizing the group of ACP countries more than other developing countries? The EU's development aid puzzle", Università Roma, XXVI Convegno Società Italiana di Scienza Politica (SISP) Paper, 13 – 15 September 2012.

EU-ACP relationships in favour of an overall European development cooperation involving all poor countries. For this author, the different lines of action cannot be sufficiently explained by geopolitical or trade interests and considers that one of the main reasons that explain the existing division is due to the colonial past. The countries with colonial ties with the Africa Caribbean and Pacific Group, like France, have always defended this special relationship while countries without these ties, like Sweden or Germany are in favour of dissolving the EU-ACP special relationship, since this relationship discriminates against least developed countries with no colonial ties.

Germany's traditional rejection of exclusive relations with a colonial background also became apparent in the Cotonou negotiations and received support across all political parties:

> "The burdens of the colonial past must no longer be allowed to prevent objective decisions. The European Union has changed […] with the Eastern enlargement. Now we need principles that will no longer be led by this colonial thinking from the 1950s[708]"

3. HETEROGENEITY AND ARTIFICIAL UNITY BASED ON COLONIAL TIES: We must add to the previous authors that the cohesion and very existence of this group, as we have explained earlier, seems weak and artificial. The only element that binds them is their colonial past. However, even this is not homogenous as it occurred in the case of the Commonwealth, since the Africa Caribbean and Pacific Group countries were subject to different colonial powers and governed by different mother countries. Thus, the way that the different European empires organised and managed the colonies was very different as well as their cultural and social influence. In addition, the only element that tied them, a shared colonial history is not sufficiently binding and will end up being an obsolete element - "it becomes increasingly less important for the new generation of young African, Caribbean and Pacific citizens."[709]

Our conclusion is that the European Union cannot lose interest and disassociate itself from this group of nations that it itself contributed to creating and for which it argued so much on behalf of its regionalisation, financing and institutionalisation. This is even less so if this lack of interest is based on reasons of economics and trade. In a certain way, the European Union is responsible for the future of this group. Not only for the enormous colonial debt we have with them but because the European Union must continue representing values like "partnership", it must continue being the world's largest aid donor and cannot allow the undermining of its global leadership in development policy. Abandoning them now would be nothing less than cruel and inhumane. The reciprocal trade that the European Union requires of them in such a short deadline seems utopian and unsupportive. As we have said, we argue for flexibility in the time limits and understanding in each special case. The heterogeneity must not serve as an excuse for undoing the group, but for understanding the distinct realities and adjusting to a more just solution.

These nations, but in particular its citizens, are making true efforts to get ahead and unfortunately, many of them are dependent on aid from the European Union. But to abandon them will not make them self-sufficient, but even poorer. The European Union must serve as an example by understanding their needs and lending them a hand. It is clear to all of us that, for the moment, the relationship between the two is going to be completely asymmetrical,

[708] Deutscher Bundestag, "Zur Politik der Bundesregierung der Lomé-Abkommen", Berlin, Deutscher Bundestag, 1997, Drucksache 13/8628.

[709] LAPORTE, G., "What future for the ACP and the Cotonou Agreement? Preparing for the next steps in the debate", op. cit, p. 4.

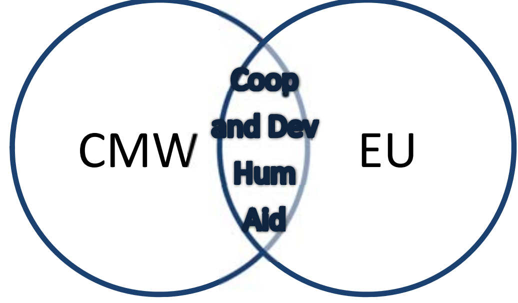
especially if it is framed in terms of trade. However, the relationship that must be maintained with them has to go beyond this scope. If this group is able to successfully face the challenges before it like immigration, security and climate change, the benefits for it and for the European Union will be incredible.

As we have noted, heterogeneity must not serve as an excuse when dismantling the special relations that have been maintained with this group of states since heterogeneity has always been present and when the European Union helped formally create this group, this heterogeneity did not matter to it.

Lastly, the establishment of special relations with the Africa Caribbean and Pacific Group does not necessarily involve non-compliance with WTO regulations, nor can it be extended to other countries that also need it. The legal adaptability is more or less easy, always viable as long as there is the will and flexibility on part of both parties.

COMMONWEALTH-ACP-EU TRIANGLE OF RELATIONS

Throughout this thesis we have examined the activities put in practice by the Commonwealth and the European Union and we have highlighted the areas where they come together. Without wanting to repeat the conclusions we have reached and given the subject of this chapter, we are going to focus on two areas of converging activity: cooperation in development and humanitarian aid that they both carry out. Although, as we have pointed out, each organisation does it using distinct but totally compatible work policies, means and instruments.



In fact, the Africa Caribbean and Pacific Group as we will show in this section, demonstrates that understanding between the two organisations is possible. They symbolise the obvious example that the Commonwealth and the European Union can and must establish relationships and adopt common projects since it is precisely their additional action that insures the success of any joint action. As we have seen, the traditional argument that the Commonwealth and European Union are very different organisations, that do not have common elements, or areas of overlapping interest, is not a valid argument. Independent of the organisational similarities and differences, both share common elements (as member states), are concerned with problems of transnational scope and common development activities like cooperation in development and humanitarian aid.

In the case of the ACP, the majority of states that make up this group are members of the Commonwealth. Their action when defending the interests of this group, in addition to being totally justified, can become of great utility for the interests of the EU. The Commonwealth can mediate in those areas where there is no understanding between the parties and propose a beneficial solution for those countries that find themselves, as we have seen, in an asymmetric position with respect to the EU, and specifically, in an impasse situation in the EPA negotiations.

For the moment, as we will see, the Commonwealth's collaboration is focused on the agreed-upon areas, cooperation in development and humanitarian aid. However, there is no impediment when extending this collaboration to a greater number of areas. Let us recall that the Cotonou agreement in effect until 2020 covers more areas that are strictly commercial. Both organisations need to institutionalise and stabilise their relations and maintain regular contact, something which is not currently occurring.

The last data available to us indicate that the last official encounter between Commonwealth and European Union representatives took place on 15 July 2010 when Secretary-General Kamalesh Sharma and European Development Commissioner, Andris Piebalgs met in London at the Secretary-General's headquarters.

> "**This was the first visit** by a Development Commissioner to Marlborough House, the Secretariat's headquarters, though European Commission President José Manuel Barroso had met the Secretary-General both in London and in Brussels over the last few years[710]."

In fact, we are not aware that Jose Manuel Barroso has met bilaterally with Kamalesh Sharma. They have met in some multilateral meetings like in 2011 in the Pacific Islands Forum and in 2010 in New York at the High Level Plenary Meeting of the United Nations General Assembly, which focused on the Millennium Development Goals. Barroso had previously met with Commonwealth Secretary General, Don McKinnon in 2005 and in 2006, just before he stepped down in 2008.

Since the Commonwealth has strong links with Africa, where it is already engaged, the October 2005 European Union strategy for Africa was addressed at the 2006 meeting held in London. The possibility of EU/Commonwealth cooperation in the field of development assistance to the Pacific region was also discussed[711].

Don McKinnon had earlier met with the President Commission in 2005 and the Secretary-General also held talks with other European Commissioners and the EU High Representative for Common Security and Defence Policy, Javier Solana, as well as the new ACP Secretary-General, Sir John Kaputin.[712] The meeting that was focused on trade issues, especially the strategy to follow with the developing countries, also was used to offer a greater degree of cooperation in other areas of common interest.

> "Apart from trade, McKinnon said that he had tabled several strategic options for the European Commission to consider in **taking forward the relationship with the Commonwealth Secretariat in the future through practical ways**. These proposed **new areas of collaboration and partnership** included the promotion of democracy and

[710] The Commonwealth, "EU Development Commissioner meets Secretary-General", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/news/34580/226931/150710piebalgsmeeting.htm>, (accessed: 3 March 2010).

[711] The Commonwealth Secretariat, "EU Commission President and Commonwealth Secretary-General to discuss Africa strategy", The Commonwealth News Release, 13 October 2006, from: <http://www.thecommonwealth.org/press/31555/34582/155158/eu_commission_president_and_commonwealth_secretary.htm>, (accessed 6 July 2013).

[712] The Commonwealth Secretariat, "Commonwealth and EU to strengthen strategic partnership", The Commonwealth News Release, 2 March 2005, from: <http://www.thecommonwealth.org/news/34580/34581/142737/commonwealth_and_eu_to_strengthen_strategic_partne.htm>, (accessed 6 July 2013).

> good governance within the Commonwealth, and the promotion of trade and development, particularly for small island developing states[713]".

Returning to the 2010 meeting, it seems interesting to highlight the Secretary-General's call for a deepening of the relationship between the two institutions on a number of important policy areas of common interest, given that the European Union and the Commonwealth share basic values of freedom and democracy.

In addition, both parties took the opportunity to address the subject of the Africa Caribbean and Pacific Group at the meeting:

> "The Commissioner expressed satisfaction at the role of the Secretariat in delivering trade related capacity-building in conjunction with the Organisation Internationale de la Francophonie, to all member states of the African, Caribbean and Pacific (ACP) grouping. He believes that a Phase II of this programme was within reach and that the two sides should meet again in September in Brussels to resolve outstanding issues[714]".

Before moving on to analyse the Hubs and Spokes project, which was referred to in the last meeting, it is obvious that the meetings between both international organisations should have been held more frequently, especially in these critical times like today for the Africa Caribbean and Pacific Group where some of its members are not going to be able to adopt the EPA.

During the EPA negotiations process, the Commonwealth has been present, acting as trade adviser to the Africa Caribbean and Pacific Group. We must note, however, that the Commonwealth is not subject to international law with full legal capacity. On the other hand, the Commonwealth Secretariat is expressly recognised as an international organisation which is why throughout this thesis we will refer to the role that it has developed.

The role developed by the Commonwealth Secretariat in the ACP-EPA negotiation process is suited to its philosophy and its action as a soft power actor by opting for technical consulting, recommendations, holding meetings and dialogue forums, the issuance of reports and project creation. We should recall that this organisation does not adopt binding decisions for its members and its work method is based on consensus and voluntary cooperation of its members. As to the EPA negotiation and adoption process, the Commonwealth Secretariat (CS) has been very critical of the European Union position, which it considers as not very realistic and inflexible given that the Africa Caribbean and Pacific Group does not have sufficient time to adapt itself to the free-trade requirements and even less, within the set time period. The Commonwealth Secretariat has made its dissatisfaction known in several meetings and reports.

> "The Commonwealth Secreatariat expressly mentioned that despite ACP countries commitments and good intentions, some of these countries or EPA regional groupings might not find themselves in a position to sign an EPA before 2008 or to successfully complete its ratification process. In this vein, it is necessat to adopt an agreed solution, that reconciles the respective obligations of the EU and the ACP under the Cotonou Partnership Agreement and the World Trade Organisation, keeping in mind that the core objectives of the CPA and the EPAs are sustainable development and the

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[713] Ibidem.

[714] The Commonwealth, "EU Development Commissioner meets Secretary-General", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/news/34580/226931/150710piebalgsmeeting.htm>, (accessed: 3 March 2010).

> reduction of poverty in the ACP countries, building on their regional integration processes and compatible with WTO rules[715]".

For the Commonwealth Secretariat, the argument used by the European Union for modifying the non-preferential regime enjoyed by the Africa Caribbean and Pacific Group based on WTO requirements is not totally satisfactory, since it reminds the European Union that they have also concluded agreements with the Africa Caribbean and Pacific Group in which they get rid of binding legal obligations, some of them are part of the so-called Lome Agreement and, therefore, an integral part of the EU law.

> "The EU gives primary importance to its commitment to comply with WTO rules, instead of its ACP commitments (...) but several ACP trade provisions refer simultaneously to development-related objectives and the requirement for WTO compliance.
>
> The Legal Opinion starts by noting that ALL international agreements (also ACP ones) shall be binding on the institutions of the Community and on the Member States, in the sense that they form an integral part of Community law. It goes on by arguing that in Community jurisprudence, the ACP-EC partnership agreements (or at least some of their provisions) have been regarded as having a 'direct effect[716]"

Furthermore, we know that in April 2008, a conference pushed by the Commonwealth Secretariat was held in Cape Town where the Africa Caribbean and Pacific Group were invited to take stock as to how the EPA negotiation and adoption process was developing. The title was "Evaluating EPA's: The way forward for the ACP". Dr Robert Davies, Deputy Minister of Trade & Industry of South Africa, referred to his great concern as to how the process was unfolding, where only one Africa Caribbean and Pacific Group region had signed a full EPA. While several other regions and individual countries initialled interim EPA's, a considerable number of Africa Caribbean and Pacific Group countries had signed neither.[717] However, what is really troubling is that as of today, in 2013, we have checked and the situation has not significantly improved and some Africa Caribbean and Pacific Group countries have not been able to or will be able to adopt the EPA. This is why they will see themselves obliged to abandon this process. Although not all will be left defenceless because they have entered into other protection systems, like the Everything But Arms Initiative, they will not now be part of a group trying to unite and move towards regionalisation. The failures will contribute to their division and possible fragmentation. It is not right or supportive to abandon a project that was born out of the very creation of the European Communities, whose foundations were established in the Treaty of Rome.

The Commonwealth Secretariat has shown its concern for the serious adverse consequences that would result from the failure by an Africa Caribbean and Pacific Group country to sign or ratify an EPA along with its regional partners because it would undoubtedly have an effect on

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[715] BILAL, S., "Concluding EPA Negotiations Legal and institutional issues", Policy Management Report 12, 2007, from: <http://www.fes.de/cotonou/OTHER_BACKGROUND_TRADE/EPA_LEGAL_ISSUES_26JULY2007.PDF>, (accessed 8 July 2013).

[716] Ibidem.

[717] DAVIES, R. (Deputy Minister of Trade & Industry of South Africa), "Evaluating EPA's: The way forward for the ACP", Welcoming Remarks at Commonwealth Secretariat/ ACP Secretariat Conference, Cape Town, The Commonwealth Files, 7 – 8th April 2008, from: <http://www.thecommonwealth.org/files/177990/FileName/speakingnotes-EPAConference7-8April2008.pdf>, (accessed 16 July 2013).

the coherence and, possibly, relevance of the regional integration process in the EPA configuration. The effective conclusion of a truly development-oriented EPA as perceived by all the parties involved, rather than one with an arbitrary deadline, is recommended. However, it is understandable that the solution adopted will ultimately depend on the political will of all the parties, notably the European Union. We would add that it also depends on itself and the role that it adopts from now on. We consider that the Commonwealth could and should adopt a more active role in this process. Its actions until now have been valuable. It has shown its disagreement with the line followed by the European Union in this process, but we consider that it has not used either the appropriate mechanisms or avenues. The holding of conferences and the issuance of reports is useful but at this time the Africa Caribbean and Pacific Group needs a partner that can influence the opinion of the European Union. Let us not forget that the Commonwealth includes nations like India and South Africa, which are of great interest to the European Union and should show themselves supportive of their fellow members now that they need them. Holding regular bilateral meetings between the Commonwealth Secretariat and the European Union and the adoption of a common working framework would be of great help to the survival of the Africa Caribbean and Pacific Group.

HUBS AND SPOKES PROJECT

We will next analyse the project that shows that cooperation between the Commonwealth Secretariat and the European Union is not only possible, but highly beneficial. The "Hub and Spokes Project", that was born in 2004, when the European Commission, Commonwealth Secretariat and Organisation Internationale de la Francophonie with the support of the ACP Secretariat launched a joint initiative titled 'Building the Capacity of ACP Countries in Trade Policy Formulation, Negotiations and Implementation'. This project was designed to have a specified duration. It was expected to expire in 2010 and had an initial grant of €17 million, with the European Community being the principal funding source "contributing just over €10 million, funded by the European Commission under the 9the European Development Fund. The Commonwealth Secretariat contributed over €4million and the Francophonie approximately €3 million[718]".

The Hub and Spokes Project is an **Aid-for-Trade initiative** aimed to:

a) Strengthen the trade negotiating capacity of Africa, Caribbean and Pacific Countries
b) Enhance their capacity to formulate, negotiate and implementtrade policies,
c) Enable them to take advantage of new market opportunities and
d) Improve their integration into the global economy.

This project includes "a network of senior ACP advisers based in the secretariats of regional organisations (the 'hubs'[719]) who are coordinating networks of advisers ('spokes[720]') installed in

[718] Organisation for Economic Co-operation and Development, "The World Trade Organization, AID-FOR-TRADE: CASE STORY CARIBBEAN COMMUNITY (CARICOM): The EDF (European Development Fund)", Funded Commonwealth Secretariat Trade Policy Formulation, Negotiation and Implementation ("Hub and Spokes") Project, Organisation for Economic Co-operation and Development, from: <http://www.oecd.org/aidfortrade/47479439.pdf>, (accessed 16 July 2013).

[719] "Hubs" were made available to Regional organizations such as African Union (AU); Common Market for Eastern and Southern Africa (COMESA); Economic Community of West African States (ECOWAS); Economic and Monetary Community of Central Africa (CEMAC); West African Economic and Monetary Union (UEMOA); Caribbean Community (CARICOM); Southern Africa Development Community (SADC); Organization of Eastern Caribbean States(OECS); and Pacific Islands Forum (PIF).

[720] At the peak in 2009, there were twenty-six "Spokes."

trade ministries of individual countries"[721] . The aid and assistance offered to the ACP is based on four main components[722]:

1. Support ACP countries in analyzing, formulating, negotiating and implementing trade policies;
2. Train and sensitise key stakeholders in ACP countries on trade policy issues;
3. Support ACP countries in developing national and regional consultative networks for improved stakeholder consultation and involvementin trade policy formulation;
4. Establish appropriate mechanisms for notification of trade policy measures to the WTO.

The negotiation and adoption of the CARIFORUM-EU EPA Agreement in 2008 was the programmes biggest success. One of the main objectives of this agreement was to advise on the implementation of trade agreements, including the EPAS. Thus, after it expired in 2010, there was broad support among project partners for a Hub & Spokes Phase II and it was decided to renew it again since the Africa Caribbean and Pacific Group countries continued to require assistance on trade policy matters. However, it was adapted to the situation beyond 2010, where needs and abilities had varied and the differences between the states of the group were more obvious. To design the second phase, a long process of consulting was undertaken where a large variety of actors were interviewed. In 2010, the Commonwealth Secretariat published a document: Hubs and Spokes II Design Document[723] where the first phase was positively evaluated but pointed out aspects that needed improvement and that therefore, together with newly added objectives, went on to be basic objectives of phase II:

- Hub & Spokes has been successful, **but capacity building assistance across the trade policy spectrum is still needed** in ACP countries.
- The overall objective of Hub & Spokes II continues to be —Building capacity of ACP countries in trade policy formulation, negotiation and implementation with an added focus on exploitation of **new/enhanced market opportunities**.
- Hub & Spokes II is positioned as a capacity building programme with a trade development focus, not a trade development programme with an element of capacity building.
- The priority objective of Hub & Spokes II should be —**the building of national and regional (trade) capacity** through institutional strengthening and organisational development.
- foster **greater self-sufficiency** for the trade policy machinery of the ACP[724].

Beyond commercial achievements, this project seems interesting from the perspective of international relations because it knew how to adapt itself to the new international scene. This scene is broader than the traditional one where the subjects of classic international law interact with other international actors in the professional as well as civil and institutional areas. However, this is a multilateral project that favours more democratic and participative

[721] The Commonwealth Secretariat, "Commonwealth Secretariat wins 11m Euros for trade project from European Union", The Commonwealth News Release, 30 July 2003, from: <http://www.thecommonwealth.org/press/31555/34582/35075/commonwealth_secretariat_wins_11m_euros.htm>, (accessed 16 July 2013).
[722] Organisation for Economic Co-operation and Development, "The World Trade Organization, AID-FOR-TRADE: CASE STORY CARIBBEAN COMMUNITY (CARICOM): The EDF (European Development Fund)", op. cit.
[723] The Commonwealth, "The Hub & Spokes Phase II Plan", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/Internal/191502/214699/hub_spokes_phase_ii/>, (accessed 18 July 2013).
[724] Ibidem.

global governance. In fact, the Commonwealth Secretariat refers to this aspect when it highlights the success of the project.

> "A key consideration in the Hub and Spokes Project design and implementation has been the adoption of a consultative approach when formulating trade policy which incorporates all relevant stakeholders[725]".

The work model or design used in the Hubs and Spokes project is completely in agreement with the spirit and flexible structure of the so-called Commonwealth Network or Commonwealth Family, a network of associations, organisations, and charities affiliated with the Commonwealth. They are associated with the Commonwealth, but not fully a part of it. We consider that this is an excellent way of developing the international or regional activity since there is normally a lack of involvement by civil society in projects. This means that they are unknown to citizens. However, active participation by them improves the reputation of the project.

We cannot overlook that the effects of this project and that its two phases have vital importance because they demonstrate our hypothesis, the compatibility and need for the Commonwealth and European Union to establish a stable, cooperative policy. Hubs and Spokes is able to articulate Commonwealth Secretariat – EU bilateral relations in an area of coincidental interest and activity where the Africa Caribbean and Pacific Group (of whom most are members of the Commonwealth) are used as a bond or linking element between these two organisations.

In addition, we argue for the political will to institutionalise and regulate what should be a natural relationship. The holding of bilateral meetings between representatives of the Commonwealth and European Union should be a priority for both. Beyond trade matters, there are a number of aspects and areas to collaborate on that represent large important transnational challenges. Each of these organisations, with their distinct methods and tools enrich and complement the work of the other. On the subject of humanitarian aid and support, the European Union must continue being the indisputable leader and the Commonwealth must share in this prominence. Undoubtedly, the Commonwealth and the European Union must continue to collaborate. The success of projects like Hubs and Spokes depend on the understanding of these two organisations.

Annex VII of the Cotonou Agreement dedicated to "POLITICAL DIALOGUE AS REGARDS HUMAN RIGHTS, DEMOCRATIC PRINCIPLES AND THE RULE OF LAW"[726] offers a very interesting regulatory framework that both parties (CS-EU) should examine in depth. It makes possible the adoption and implementation of a new agreement that goes beyond trade relations. It is in an area of common interest, where the two expend a lot of effort and where joint collaboration or work would be very beneficial for both parties and for the Africa Caribbean and Pacific Group in particular. Once again, the Africa Caribbean and Pacific Group would act as a link between the two parties.

Thus, in the second article of this Annex, it is pointed out that "The parties (EU-ACP) may jointly develop and agree specific benchmarks or targets with regard to human rights, democratic principles and the rule of law within the parameters of internationally agreed

[725] Organisation for Economic Co-operation and Development, "The World Trade Organization, AID-FOR-TRADE: CASE STORY CARIBBEAN COMMUNITY (CARICOM): The EDF (European Development Fund)", op. cit.

[726] European Commission, "The Cotonou Agreement", signed in Cotonou on 23 June 2000, revised in Luxembourg on 25 June 2005 and in Ouagadougou on 22 June 2010.

standards and norms, taking into account special circumstances of the ACP State concerned". It is clear that in this process, the Commonwealth, through the Commonwealth Secretariat could develop very valuable work.

In short, our proposal consists of broadening the Commonwealth and the European Union joint action beyond trade relations to areas like democracy and the promotion of human rights through joint projects in which several international actors collaborate. Given the lack of a common path and the single joint experience it is confined to the scope of the Africa Caribbean and Pacific Group. The new project that we propose would also be thought of and directed at this group. Undoubtedly, the creation and adoption of a new project beyond the trade area would favour regionalisation of the group and would bring more stabilising cohesive elements, which would help them to model themselves as a true regional group.

3. LEGAL APPROACH: POST LOME SCENARIO AND THE EUROPEAN PARTNERSHIP AGREEMENTS

In the Historic Approach we explained that the Lome system ended in 2000 and, due to several reasons, it was decided to not continue with a fifth Lome. The trade system based on non-reciprocal preferential treatment to the Africa Caribbean and Pacific Group no longer seemed the most appropriate given the changes and new challenges that were being faced in the new international context. According to the European Union[727], the main reasons for not continuing with this system were:

- **Fall in exports**: The preferential regime set up in the Lome system did not bring about the results hoped for. From Lome I to Lome IV the share of Africa Caribbean and Pacific Group exports in European markets fell by half, from nearly 8% to about 3%, while in other developing countries – e.g. in Southeast Asia – which enjoyed a lower level of preferential access to the European Union (GSP), it substantially increased.

- **Changing conditions**: two significant global phenomena contributed to eroding the preferential regimes. The first impact for the Africa Caribbean and Pacific Group's preferential regime were the free-trade principles established by the World Trade Organisation (WTO). The European Union, in complying with these principles, had been progressively lowering its trade barriers in favour of all WTO members. In addition, it was increasing its preferential agreements with other developing countries. Thus, the Africa Caribbean and Pacific Group countries were no longer the only ones to enjoy these types of benefits. Secondly, the type of preferences granted are becoming 'outdated': tariff and quantitative restrictions are no longer the only instruments of European protection. Other obstacles, such as veterinary and quality standards, anti-dumping measures or the distortions caused by national legislation, play an increasing role.

- **Incompatibility with WTO rules**: this is the key argument put forward by the European Union to justify the termination of non-reciprocal preferences. Preferences infringe upon the principle of non-discrimination established by Article I of the GATT, whereby all preferences granted to one member must automatically be extended to all others. They cannot be justified through exceptions since it was a non-reciprocal preferences regime and this type of regime has to be specifically reciprocal. Furthermore it is a discriminatory regime; it gives trade preferences to certain developing countries,

[727] SOLIGNAC, H. B., "Effectiveness of Developing Country Participation in ACP-EU Negotiations", *Overseas Development Institute Working Paper*, 2001, p.46.

specifically a sub-group of former European colonies, and does not give them to other much poorer developing countries.

Therefore, it was clear that once Lome ended it would not continue with the same preferential system. Attempts were made to adopt agreements that would establish a true partnership beyond mere trade cooperation. In 2000 a new agreement was adopted, the Cotonou Agreement, that would govern the new era of relations between the European Union and the Africa Caribbean and Pacific Group based on the idea of extending the areas of cooperation beyond trade. On the subject of trade, it argued for moving towards achieving a free trade zone although it would provisionally and temporarily extend the validity of the trade preferences until 2008.

In the current legal framework which governs relations between the Africa Caribbean and Pacific Group and the European Union is the Cotonou Agreement[728], signed in 2000 and revisable every 5 years until 2020. In 2005 the first revision was made, which prepared the groundwork for the 2007-2013 financial framework[729] and in 2010[730] the second. If we examine the Cotonou Agreement, we already see in the Preamble that it states that it concerns a "Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part," which is extended to "the political, economic, social, cultural and environmental aspects of development". It is made up of six parts, which are in turn divided into different titles and chapters.

The first part talks about the objectives and the new political dimension of the agreement; the second part is based on the institutional framework; the third part on cooperation strategies; the fourth on the Development Finance Cooperation; the fifth is focused on the least developed countries; and the sixth are general provisions. Seven appendices are attached as well as 3 protocols, including one dedicated to South Africa, a member of the Commonwealth, and a Final Act. Next, we will analyse the main aspects of the Agreement.

The first article points out that the main purpose of the agreement is the promotion of the economic, cultural and social development of the Africa Caribbean and Pacific Group States. Therefore, it goes beyond a mere trade dimension by impacting other areas. The main objectives can be summarised in the following list:

- Reduce and eventually eradicate poverty;
- Promote sustainable development;
- Promote the gradual integration of the ACP countries into the world economy;
- Foster Regional and sub regional integration processes of the ACP Countries;
- Promote Democracy and respect of Human Rights;
- Improve the institutional framework in order to achieve social cohesion;
- Implement sustainable management of natural resources and the environment;

[728] European Commission: Development and Cooperation: Europeaid, "The Cotonou agreement", signed in Cotonou on 23 June 2000, Revised in Luxembourg on 25 June 2005 and in Ouagadougou on (22 June 2010).
[729] European Union, "Council of the European Union, the New Financial perspective", 19 December 2005, 15915/05, CADREFIN 268.
[730] European Union, "Second Revision of the Cotonou Agreement", Agreed Consolidated Text, (11 March 2010), from:
<http://ec.europa.eu/development/icenter/repository/second_revision_cotonou_agreement_20100311.pdf>, (accessed 12 June 2013).

Articles four and six talk about the actors participating in this partnership relation. It is interesting to note that the primary actors are the very Africa Caribbean and Pacific Group countries. Its full sovereignty is called for when deciding on their development principles, strategies and models of their economies and societies. It next talks about the European Community, which together with the Africa Caribbean and Pacific Group will be charged with establishing the cooperation programmes provided for under this Agreement. The participation of the non-state actors (private sector, economic and social partners, including trade union organisations, and civil society in all its forms) that play a complementary role is also recognised. In the 2005 revision, participation of other actors like the Africa Caribbean and Pacific Group national parliaments, local decentralised authorities, Africa Caribbean and Pacific Group regional organisations and the African Union is added in:

Article 8 is dedicated to political dialogue among the parties, which must have as objectives:

- to exchange information,
- to foster mutual understanding,
- to facilitate the establishment of agreed priorities and shared agendas,
- to facilitate consultations between the Parties,
- to encompass cooperation strategies.

The areas covered under political dialogue are “all objectives laid down in this Agreement as well as questions of common, general or regional interest, such as arms, trade, excessive military expenditure, drugs, organised crime”. In the 2005 update, the list was expanded to more sectors “child labour, or discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” in order to “contribute to peace, security and stability and promote a stable and democratic political environment.”

In addition, it is determined in the third section that political dialogue will be focused on global as well as sectorial policies, including: environment, gender, migration and questions related to cultural heritage. In 2005, dialogue was argued for and specifically included to also address the phenomenon of climate change.

As to the way in which to articulate this dialogue, the article indicates that “this shall be conducted in a flexible manner. It shall be formal or informal according to the need, and conducted within and outside the institutional framework.”

In 2005, the number of actors that have to participate in this dialogue was increased. In addition to the EC and Africa Caribbean and Pacific Group countries, it had to involve all levels of the Africa Caribbean and Pacific Group, national, regional, and continental such as, Africa Caribbean and Pacific Group regional organisations and the African Union, as well as, Africa Caribbean and Pacific Group national parliaments where appropriate. Finally, the parties were committed to include a regular assessment of the developments concerning respect for human rights, democratic principles, the rule of law and good governance.

The essential elements of this agreement, which underpin the ACP-EU Partnership, are indicated in article nine, is about respecting:

- Human rights,
- Democratic principles,
- The rule of law,
- Good governance (the transparent and accountable management of human, natural, economic and financial resources),
- Sustainable development

An important point was added in 2005 that underlines the sovereign equality of the parties. All the mentioned elements in which this partnership is based must be respected by both parties, which is why it is not only directed at the Africa Caribbean and Pacific Group. “The principles underlying the essential and fundamental elements as defined in this Article shall apply equally to the ACP States on the one hand, and to the European Union and its Member States, on the other hand”.

Articles 11, 11a and 11b, focus on peace building policies, conflict prevention and resolution and to the current threats to peace and international security, specifically, the means to fight terrorism and arms of mass destruction. The parties commit to condemning these threats and actively fighting against them by using international cooperation.

Furthermore, article 13 deals with another of today’s big challenges, the sustainable and respectful handling of the immigration phenomenon, which “shall be the subject of in depth dialogue in the framework of the ACP-EU Partnership. The Parties reaffirm their existing obligations and commitments in international law to ensure respect for human rights and to eliminate all forms of discrimination based particularly on origin, sex, race, language and religion”.

The second part establishes the institutional framework of this partnership, which is made up of three main joint institutions:

- **The Council of Ministers** compuesto por the members of the Council of the European Union, the members of the Commission of the European Communities and, a member of the government of each ACP State. Se encarga principalment de conduct the political dialogue and adopt the policy guidelines. **It may take decisions that are binding on the Parties** and frame resolutions, recommendations and opinions. Sus decisions las toma por consenso.

- **The Committee of Ambassadors** comprise the permanent representative of each Member State to the European Union, a representative of the Commission, and the head of mission of each ACP State to the European Union. Mainly, the Committee shall assist the Council of Ministers in the fulfilment of its tasks and carry out any mandate entrusted to it by the Council, this shall meet regularly, in particular to prepare the Council sessions and whenever it proves necessary.

- **The Joint Parliamentary Assembly** comprise members of the European Parliament and members of parliament or, failing this, representatives designated by the parliament of each ACP State. In the absence of a parliament, the attendance of a representative from the ACP State concerned shall be subject to the prior approval of the Joint Parliamentary Assembly. The Joint Parliamentary Assembly is a consultative body, its

role consists to promote democratic processes through dialogue and consultation; facilitate greater understanding between the peoples of the European Union and those of the ACP States and raise public awareness of development issues and to discuss issues pertaining to development and the ACP-EU Partnership. This Institution, shall meet shall meet twice a year in plenary session, alternately in the European Union and in an ACP State.

In 2005, the requirement of the Committee of Ministers to report annually to the Joint Parliamentary Assembly on the implementation of this Agreement was added during the annual regular meeting. Moreover, in article 14ª, another institution was included, the Meetings of Heads of State or Government, but it is not specified as to what their mission entails, and it is limited to simply naming them.

The third part focuses on the cooperation strategies, these are "based on development strategies and economic and trade cooperation which are interlinked and complementary." These strategies must incorporate locally owned economic, social, cultural, environmental and institutional elements. It is very important to note that this cooperation will mean a "coherent enabling framework of support to its own development strategies" for the Africa Caribbean and Pacific Group. Therefore, it once again advocates for respect for the sovereignty of the Africa Caribbean and Pacific Group nations. They are the ones that must be in charge of developing their own strategies and the participation of the EU must contribute."

Articles 35 to 38 establish the economic and trade regime through which the parties are governed in this new agreement. First of all, without giving up the legacy left from the previous ACP-EC Conventions, it argues that this relationship is based on "a **true, strengthened and strategic partnership**". We next explain the partnership that Cotonou establishes while taking into account the changes in 2005 and 2010.

1. The main objective of this new regime consists of fostering smooth and gradual integration of the ACP States into the world economy, especially by making full use of the potential of regional integration and South-South trade.

2. The new trade regime means the progressive removal of barriers to trade between the parties and the advance towards free trade with the objective of establishing a free trade area between the parties. As we have mentioned previously, it would provisionally and temporarily extend the trade preferences expiration date until 2008.

3. Unlike the earlier system of non-reciprocal preferences established in Yaoundé and Lome, the regime set up in Cotonou is completely in accord with the relevant WTO rules.

4. The Cotonou trade regime requires negotiating the Economic Partnership Agreements with the Africa Caribbean and Pacific Group countries. Therefore, we find ourselves facing a new generation of much more complete trade instruments than previously encountered.

5. That said, the negotiations over the Economic Partnership Agreements are not automatically extended to all the Africa Caribbean and Pacific Group countries, except that "will be pursued with those ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group".

6. These new trading arrangements shall be introduced gradually, so during the negotiation process a timetable for the progressive removal of barriers to trade between the Parties will be adopted.
The European Union is aware that the dismantling of the preferential trade system can entail negative effects for the Africa Caribbean and Pacific Group countries and, therefore, the

European Union must attempt to pursue measures to overcome possible negative impacts of liberalisation.

8. Cotonou anticipated the establishment of a **Joint ACP-EC Ministerial Trade Committee**, composed of representatives of Africa Caribbean and Pacific Group countries and of the European Union, it meets at least once a year and its main tasks are to discuss trade-related issues of ACP Members concern, monitor the negotiations and implementation of Economic Partnerships Agreements (EPAs), observe multilateral trade negotiaions and examine the impact of the liberalisation measures on ACP-EC trade. Finally, it reports and can make recommendations to the Council of Ministers.

Article 39 argues for the importance of the parties participating in the international arena by becoming members of the WTO as well as participating in other relevant international organisations. The European Union is aware of the difficulties involved in the Africa Caribbean and Pacific Group complying with its multi-lateral obligations and therefore affords technical assistance to it in order to implement their commitments. This article is of interest because it enables the parties by providing the legal coverage needed to participate jointly in the Commonwealth.

Part 4 is focused on financial cooperation; it is made up of providing adequate financial resources and appropriate technical assistance for supporting and promoting the efforts of Africa Caribbean and Pacific Group nations so they can achieve the objectives set out in this Agreement. This type of assistance is based on two principles: mutual interest and interdependence. In this sense, the implementation of the initiatives financed by these agreements is appropriate for close cooperation between the Africa Caribbean and Pacific Group nations and the European Union. It calls for sovereign equality of the parties. The scope of the receivers of this aid is broad and includes both the private and public sector at their various regional, state and local levels.

Article 60 regulates the kinds of operations that could be subject of this financial aid:

- measures which contribute to attenuate the debt burden and balance of payments problems of the ACP countries;
- macroeconomic and structural reforms and policies;
- mitigation of adverse effects of instability in export earnings;
- sectoral policies and reforms;
- institutional development and capacity building;
- technical cooperation programmes;
- humanitarian and emergency assistance including assistance to refugees and displaced persons.

Article 61 regulates the nature of the financing:

- projects and programmes;
- credit lines;

- budgetary suport;
- human and material resources;
- sectoral and general import support programmes.

Part 5 is focused on the special protection of three types of Africa Caribbean and Pacific Group state entities that suffer for reasons of their geographic, social, economic and political characteristics or serious vulnerability and difficulty, which merit special treatment. This category concerns:

- Least developed ACP countries
- Landlocked ACP States
- Island ACP States

- Likewise, this article also includes those ACP Countries that are in a post conflict situation and deserve a special tretament

Cotonou sets up the adoption by the European Union of specific provisions and measures in order to support landlocked ACP States in their efforts to overcome the geographical difficulties and help Least Developed ACP States as well as ACP Islands to overcome obstacles hampering their development so as to enable them to step up their respective rates of development.

Finally, part 5 refers to Appendix VI where each one of the three categories of entities is listed that we have previously explained:

ANNEX VI

ARTICLE 1 Under this Agreement, the following countries shall be considered **least-developed**

ACP States:

ACP STATES	COMMONWEALTH MEMBER
1. Angola	NO
2. Benin	NO
3. Burkina Faso	NO
4. Burundi	NO
5. Republic of Cape Verde	NO
6. Central African Republic	NO
7. Chad	NO
8. Comoro Islands	NO
9. Democratic Republic of Congo	NO
10. Djibouti	NO
11. Ethiopia	NO
12. Eritrea	NO
13. Gambia	**NO**
14. Guinea	NO
15. Guinea (Bissau)	NO
16. Guinea (Equatorial)	NO
17. Haïti	NO
18. Kiribati	**YES**

19. Lesotho	**YES**
20. Liberia	NO
21. Malawi	**YES**
22. Mali	NO
23. Mauritania	NO
24. Madagascar	NO
25. Mozambique	**YES**
26. Niger	NO
27. Rwanda	**YES**
28. Samoa	**YES**
29. SâoTome and Principe	NO
30. Sierra Leone	**YES**
31. Solomon Islands	**YES**
32. Somalia	NO
33. Sudan	NO
34. Tanzania	**YES**
35. Tuvalu	**YES**
36. Togo	NO
37. Uganda	**YES**
38. Vanuatu	**YES**
39. Zambia	**YES**

As the figures show, 13 of the 39 states listed as least developed Africa Caribbean and Pacific Group countries belong to the Commonwealth. This represents almost 36% of all the countries, a sufficient percentage for justifying the strengthening of three-way relations between the Commonwealth, the European Union and the Africa Caribbean and Pacific Group, as we will analyse later in the political approach.

ARTICLE 2: **The landlocked ACP States**

ACP COUNTRIES	COMMONWEALTH MEMBERS
1. Botswana	**YES**
2. Burkina Faso	NO
3. Burundi	NO
4. Central African Republic	NO
5. Chad	NO
6. Ethiopia	NO
7. Lesotho	**YES**
8. Malawi	**YES**
9. Mali	NO
10. Niger	NO

11. Rwanda	**YES**
12. Swaziland	**YES**
13. Uganda	**YES**
14. Zambia	**YES**
15. Zimbabwe	NO

The percentage of Africa Caribbean and Pacific Group nations listed as landlocked states that are also members of the Commonwealth is greater than that of the least developed countries, reaching 50% of the total, not counting Zimbabwe, which after being suspended by the Commonwealth CHOGM on 11 December 2003, decided to end its membership in the Commonwealth. We once again argue for the advantages of strengthening relations between the three actors.

ARTICLE 5: **List of island ACP States**

ACP STATES	**COMMONWEALTH MEMBERS**
1. Antigua and Barbuda	**YES**
2. Bahamas	**YES**
3. Dominican Republic	NO
4. Fiji	**YES (SUSPENDED)**[731]
5. Grenada	**YES**
6. Haiti	NO
7. Jamaica	**YES**
8. Kiribati	**YES**
9. Barbados	**YES**
10. Cape Verde	NO
11. Comoros	NO
12. Dominica	**YES**
13. Madagascar	NO
14. Mauritius	**YES**
15. Papua New Guinea	NO
16. Saint Kitts and Nevis	**YES**

[731] Although Fiji was suspended from membership of the Commonwealth on 1 September 2009, still is a membre of the organisation.

17. Saint Lucia	**YES**
18. Saint Vincent and the Grenadines	**YES**
19. Samoa	**YES**
20. São Tomé and Principe	NO
21. Seychelles	**YES**
22. Solomon Islands	NO
23. Tonga	**YES**
24. Trinidad and Tobago	**YES**
25. Tuvalu	**YES**
26. Vanuatu	**YES**

The percentage increases even more in relation to earlier entities. Almost 70% of the island Africa Caribbean and Pacific Group states are also members of the Commonwealth. In this case, it becomes even more necessary to establish better guidelines and instruments of relations and cooperation between the European Union, the Commonwealth and Africa Caribbean and Pacific Group.

In short, 36% of the least developed countries are members of the Commonwealth, 50% of the landlocked states and 70% of the island Africa Caribbean and Pacific Group nations. This should justify the Commonwealth playing a more active role in the creation and application of the different aid measures in these territories that are more vulnerable or find themselves in a situation of great difficulty.

Part VI of the Cotonou Agreement is dedicated to the final provisions and, like all agreements of this nature it governs the scope of application, its effective date (1 March 2000 in this case) and duration (twenty years from the initial date). In addition, it specifies the financial protocols defined for each five-year period and the requirement of the parties to submit any dispute arising from the interpretation or application of the agreement to arbitration. The procedure calls for the dispute to be immediately submitted to the Council of Ministers and, secondly, that each party shall appoint an arbitrator within thirty days of the request for arbitration. In the event of failure to do so, either Party may ask the Secretary General of the Permanent Court of Arbitration to appoint the second arbitrator Permanent Court of Arbitration for International Organisations and States.

Appendix 1 sets up the FINANCIAL PROTOCOL, which we have noted is revisable every five years. The agreement specifically indicates the overall amount of the Community's financial assistance to the Africa Caribbean and Pacific Group nations for 2000-2005, which was 15,200 million EUR, including an amount up to 13,500 million EUR from the 9th European Development Fund (EDF). The tenth EDF covers the period from 2008 to 2013 and provides an overall budget of 22,682 million EUR. Of this amount, 21,966 million EUR is allocated to the Africa Caribbean and Pacific Group countries, 286 million EUR to the OCTs and 430 million EUR to the Commission as supporting expenditures for programming and implementation of the

European Development Fund. In particular, the amount for the Africa Caribbean and Pacific Group countries is divided as follows[732]:

- €17 766 million to the national and regional indicative programmes (81% of the total),
- €2 700 million to intra-ACP and intra-regional cooperation (12% of the total).
- €1 500 million to Investment Facilities (7% of the total).

It is important to note that each European Development Fund is not exclusive of the Africa Caribbean and Pacific Group; it also encompasses the Overseas Countries and Territories that we analysed in the previous chapter. They go to covering three key areas for cooperation: economic development, social and human development and regional cooperation and integration. The EDF is directly financed by the European Union countries, has its own financial regulation, and is managed outside the framework of the European Union's general budget[733].

Before assessing the last revision of the Cotonou agreement carried out in 2010, it is necessary that we stop at Protocol number 3 of this agreement that refers to the relations between South Africa, which is a member of the Commonwealth, and the European Union. This protocol has eight articles that establish the parts of the Agreement that are wholly applicable to this nation, the parts that are partially applicable and those that are not applicable. As we show in the following table it is an ad hoc system for South Africa.[734]

COTONOU AGREEMENT	SCOPE OF APPLICATION
Preamble	**Totally applicable**
First Part	**Totally applicable**
Second Part	**Partially applicable**: • (South Africa shall not have voting rights in any of the joint institutions or bodies in areas of the Agreement which are not applicable to South Africa)
Third Part	**Partially applicable**: • South Africa shall be associated as an observer in the dialogue between the Parties pursuant to Articles 34 to 40. • Not applicable Title II: "Economic and Trade Cooperation"
Fourth Part	**Not applicable** **Exception**: Only Article 75(i) and Article 78 are applicable (South Africa shall have the right to participate in certain areas of development finance cooperation, without enjoying voting rights in relation to provisions that do not apply to South Africa)
Fifth Part	**Totally applicable**
Sixth Part	**Totally applicable**
Annex I	**Not applicable**
Annex II	**Not applicable** **Exception**: only chapter 5 is applicable (South Africa shall have the right to participate in certain areas of development finance

[732] European Commission, "European Development Fund (EDF)", European Commission: Development and Cooperation Europeaid, from: <http://ec.europa.eu/europeaid/how/finance/edf_en.htm>, (accessed 15 June 2013).

[733] European Commission, "Financial Programming and Budget", European Commission, from: <http://ec.europa.eu/budget/biblio/documents/fin_fwk0713/fin_fwk0713_en.cfm>, (accessed 15 June 2013).

[734] European Commission, "The Cotonou Agreement", signed in Cotonou on 23 June 2000, revised in Luxembourg on 25 June 2005 and in Ouagadougou on 22 June 2010.

	cooperation)
Annex III	**Totally applicable** (South Africa shall have the right to participate in certain areas of development finance cooperation)
Annex IV	**Partially applicable:** Articles 1 to 5; 15 to 19; 27 and 34 to 38 are not applicable
Annex V	**Not applicable**
Annex VI	**Totally applicable**

The relations between South Africa and the European Union began in 1994. In 1999 both parties signed a Trade Development and Cooperation Agreement (TDCA) which entered fully into force on 1 May 2004. This covered political dialogue, the establishment of a free trade area, development co-operation, economic cooperation, and cooperation in a series of sectoral areas. It was ammended in 2009. Following the provisions of the Cotonou Agreement, in May 2007 South Africa and the EU concluded a Strategic Partnership[735], the only one concluded by the EU with an African country.

The South Africa-European Union Strategic Partnership Preamble argues that South Africa and the European Union consider each other as true strategic partners, and to this end, they chose to finalise an agreement along these lines with a double objective: to enhance political dialogue and cooperation on regional, African and world issues and strong cooperation in a number of economic, social and other areas. It aims for political and institutional dialogue including annual summits and ministerial level meetings focused on a variety of issues of mutual interest such as:

- Peace and security in Africa
- Global governance
- Climate Change
- Energy
- Space
- Transport
- Migration
- Education
- Research

Once again, the Commonwealth could play an important role with respect to relations maintained between South Africa and the European Union by sharing in most of the activity areas in which the two parties cooperate.

Finally, if we take stock of Cotonou's latest reform, we can say that it is centred on five themes:

1. **Broadening areas of cooperation**: beyond just economic, trade and financial cooperation. It includes areas of political and social cooperation (general and sectorial)
2. **Incorporating new challenges**: they specifically include new challenges to which new joint initiatives must be proposed to fight adverse effects and comply with the UN

[735] European Union, "The South Africa-European Union Strategic Partnership", Joint Action Plan, The Council of the European Union, 15 May 2007, 9650/07.

Millennium Development Goals such as climate change, security and terrorism, health, education and immigration.

3. **Broadening the list of participants**: it expanded the number of actors that participate in the areas of cooperation with the objective of insuring greater social cohesion. Thus, national parties, regional organisations, civil society and non-governmental organisations are included together with traditional actors.
4. **Supporting internal regionalisation**: the 2010 reform argues for the need the Africa Caribbean and Pacific Group area to support regionalisation, which is the key for the EU-ACP partnership to function.
5. **Trading regime:** As we have indicated, in 2008 the non-reciprocal preferences system ended and the reform reaffirms the will to establish a true EU-ACP free trade area through the adoption of EPAs (Economic Partnership Agreements).

THE EUROPEAN PARTNERSHIP AGREEMENTS (EPAs)

The Cotonou agreement in 2000 made provision for bilateral trade agreements (EPAs) to replace the preferential System by the end of 2007. The negotiations with the EU to establish EPAs began in September 2002, following a European Council Decision on 17 June 2002, which provides for WTO-compliant agreements, covering "substantially all trade" in goods (at least 80%) as well as services, investment and trade-related rules[736], these agreements would only replace the section of Cotonou dealing with trade, the rest of the areas covered by Cotonou: development finance cooperation, cultural, social and regional cooperation, would be governed by Cotonou until 2020, the date of its expiration.

> "The Economic Partnership Agreements (EPAs) are defined by the Cotonou Agreement as the major instrument of economic and trade co-operation between the EU and the ACPs. Therefore, despite their independent legal status, EPAs are an integral part of the Cotonou approach. Their objectives and principles are defined in detail in the Agreement.
>
> EPAs are being negotiated with ACP regions engaged in a regional economic integration process, and are thus intended to consolidate regional integration initiatives within the ACP. EPAs are designed to foster the smooth and gradual integration of the ACP countries into the world economy, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries. Thus, EPAs are, above all, an instrument for development[737]".

[736] European Commission, "Overview of EPA", European Commission, from: <http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf>, (accessed 20 June 2013).

[737] Delegation of the EU to the Republic of Namibia, "Where do EPAs come from?", Delegation of the EU to the Republic of Namibia, from: <http://eeas.europa.eu/delegations/namibia/eu_namibia/trade_relation/epa/background/index_en.htm>, (accessed 20 June 2013).

For the purposes of negotiations, the 79 ACP countries have been grouped into seven negotiation regions[738]:

- The Caribbean.
- West Africa.
- Central Africa.
- Eastern and Southern Africa.
- East African Community.
- Southern Africa Development Community.
- The Pacific.

But the negotiations are not going as planned. They reached a deadlock and it is very difficult to continue forward. The current situation for the Africa Caribbean and Pacific Group is troublesome and we can summarise it as follows:

Proposal from the Commission

1. In 2007, the Market Access Regulation (MAR) 1528/2007 was adopted that allowed the Africa Caribbean and Pacific Group countries' exports negotiated by the Economic Partnership Agreements in 2007 to continue to enjoy the European Union duty free and quota free provisions. Nevertheless, this was a provisional solution for the countries that had negotiated Economic Partnership Agreements but not yet signed and ratified.

   > "The Regulation was conceived as a temporary solution and not a permanent facility.[739]"

2. On 30 September 2011 the European Commission proposed to withdraw on 1 January 2014, those countries which have not signed or ratified their Agreements, should be removed from the list of beneficiaries the Market Access Regulation for the countries that have not taken the necessary steps towards ratifying the Economic Partnership Agreements signed with the EU.

   > "Four years of application has provided enough breathing space for ratification or further negotiation. It is therefore time to bring the process to a close, by amending the Regulation and concluding Economic Partnership Agreement negotiations[740]."

3. "Eighteen countries (14 countries in the Caribbean, Madagascar, Mauritius, Seychelles and Papua New Guinea) have taken the necessary steps towards ratification of initialled agreements, and will continue to use the facility. But the other 18 countries have not even signed their agreement or are still not applying it[741]".

[738] European Commission, "African, Caribbean and Pacific", The European Commission: DG Trade, Countries and Regions, from: <http://ec.europa.eu/trade/policy/countries-and-regions/regions/africa-caribbean-pacific/>, (accessed 20 June 2013).

[739] European Commission, "Access to EU markets for exporters from African, Caribbean and Pacific countries", European Commission: DG Trade, from: <http://trade.ec.europa.eu/doclib/docs/2011/september/tradoc_148215.pdf>, (accessed 20 June 2013).

[740] Ibidem.

[741] Ibidem.

ACP STATE- NOT SIGNED EPAs	MEMBERS OF THE COMMONWEALTH
1. Burundi	NO
2. Botswana	**YES**
3. Cameroon	NO
4. the Comoros	NO
5. Cote d'Ivoire	NO
6. Fiji	**YES (Suspended)**
7. Ghana	**YES**
8. Haiti	NO
9. Kenya	**YES**
10. Lesotho	**YES**
11. Mozambique	**YES**
12. Namibia	**YES**
13. Rwanda	**YES**
14. Swaziland	**YES**
15. Tanzania	NO
16. Uganda	**YES**
17. Zambia	**YES**
18. Zimbabwe*	**YES**

In 2011, when the European Commission developed this proposal, 66% of the Africa Caribbean and Pacific Group nations that had not signed or adopted an EPA were members of the Commonwealth (*Zimbabwe ratified the EPA in 2012). The Commonwealth Secretariat was specific in making its concerns known that these states were to lose their duty free and quota free access in 2014 and argues, as pointed out in its own proposal from the Commission[742], that the Council of Ministers and the European Parliament should revise this proposal by taking into account the impossibility of some states to finalise an EPA within the required time period. In addition, the International Trade and Regional Co-operation Section of the Economic Affairs Division of the Commonwealth Secretariat[743] warned of "the increasingly complex global economic context within which ACP–EU trade relations need to evolve".

[742]The proposal has been transmitted to the Council and European Parliament for discussion and eventually, adoption.
[743]BARTELS L., GOODISON, P., "EU Proposal to End Preferences of 18 African and Pacific States: An Assessment", *The Commonwealth Secretariat Trade Hot Topics Papers*, 2011, Issue 91, pp.1-47.

Criticism by the Africa Caribbean and Pacific Group:

According to Musonge,[744] the Africa Caribbean and Pacific Group is highly critical of the impact these types of agreements will have on it. The main arguments are centred on three reasons:

1. These countries fear that giving preferential access to EU products, under a reciprocal arrangement, would put their producers in numerous sectors at risk of increased competition.

2. They also fear that cutting tariffs for EU products would result in a sizeable loss of tariff revenue that would hurt their public budgets.

3. They claim that the timetable for the negotiations and their implementation is extremely tight given the numerous modalities still to be precisely determined.

4. In addition, we can point to a fourth reason why these types of agreements are unsatisfactory. In general, the Africa Caribbean and Pacific Group do not agree with the inclusion of binding obligations on trade in services. The liberalisation of this sector would have a negative impact on them since they consider that "their national services sectors must be developed before opening their markets to EU companies[745]". But it will result in large losses since that they will end up in the hands of companies of European origin. Nevertheless, for "many economists this argument is a fundamental political mistake and one of the reasons why development is not taking place[746]". Development of this sector is slow because there are few investors and furthermore, no real internal reforms have been carried out.

For its part, the European Commission defends itself against these and other criticisms by using the following arguments, which are extracted from its own 2011 proposal:

1. The Commission insists that the 2014 deadline is sufficient for the Africa Caribbean and Pacific Group to adopt the EPAs. In fact, it complains that some ACP countries have not even signed their agreement or are still not applying them.

> "Four years of application has provided enough breathing space for ratification or further negotiation. It is therefore time to bring the process to a close, by amending the Regulation and concluding Economic Partnership Agreement negotiations[747]".

2. The Commission argues that if other states have been able to at a minimum to negotiate and sign the EPAs within the set time period, there should be no impediment for the other 18 that have not done so.
3. The Commission points out that the requirement of adopting an EPA and the establishment of this deadline is completely justified. Otherwise, it would be discriminating against those Africa Caribbean and Pacific Group countries that actually

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[744] MUSONGE, W., "Current State of Play of EU-ACP Economic Partnership Agreements", *World Trade Institute Papers,* 2013, pp. 1-34.
[745] ACP-EU Trade Orgnisation, "EPAs: there is no Plan B, An interview with Peter Mandelson", Trade Negotiations Insights, Vol. 6, September 2007, Num. 5, pp. 1-16.
[746] Ibidem.
[747] European Commission, "Access to EU markets for exporters from African, Caribbean and Pacific countries", op. cit.

are complying with the requirement of adopting an EPA within the time period provided and with "other developing countries which are not getting free access to the EU".

It should also be recalled that in the case of the 18 countries that cannot adopt the EPA in time, the consequences will not be as negative for them and it separates them into three large groups depending on the protection regime to which they would belong.

1. **Group 1: Least Developed Countries**, Nine countries (Burundi, the Comoros, Haiti, Lesotho, Mozambique, Rwanda, Tanzania, Uganda, Zambia) **can benefit from duty- and quota-free access to the EU under the Everything But Arms scheme**.

2. **Group 2: Low-income Countries,** Seven countries (Cameroon, Fiji, Ghana, Ivory Coast, Kenya, Swaziland, Zimbabwe) that **could benefit from the Generalised System of Preferences regime**, a less advantageous, but still generous, unilateral scheme in place for all developing countries.

3. **Group 3: Upper middle-income Countries,** Two countries, Botswana and Namibia, if upper-middle status is confirmed in three consecutive years, **would not qualify for preferential access** under the proposed revision to the Generalised System of Preferences.

- The Commission argues that if they comply after the deadline, they can be readmitted through a fast track procedure: "If these countries, or any other of the beneficiaries of the Market Access Regulation, decide to go ahead with ratification of their Economic Partnership Agreement, they can be re-instated in the Market Access Regulation through a fast track procedure".

4. In the face of this criticism that this is a unexpected and suppressive measure for the Africa Caribbean and Pacific Group, as the International Trade and Regional Co-operation Section of the Economic Affairs Division of the Commonwealth Secretariat points out:

> "To the surprise of those countries in Africa and the Pacific that had been enjoying Duty Free Quota Free (DFQF) access to Europe while still negotiating EPAs, the European Commission on 30 September 2011 adopted a proposal recommending to the EU Council of Ministers an end to their DFQF access by1 January 2014[748]".

Nevertheless, the Commission argues that this proposal did not come from a new policy or a fundamental change of approach. "It has always been a cornerstone of the Commission's strategy to put ACP-EU trade relations on a solid legal footing based on the respect of WTO and EU law, balance and fairness towards other ACP and indeed non-ACP developing countries". In fact, the objective of the gradual liberalisation of the region and the ending of the preferential system seems to be expressly provided for in the 2000 Cotonou Agreement.

In our opinion, the Commission is too inflexible and shows little empathy for countries in great difficulty – countries that are most in need of these types of agreements. We agree that

[748] BARTELS L., GOODISON, P., "EU Proposal to End Preferences of 18 African and Pacific States: An Assessment", op. cit, p.39.

the Africa Caribbean and Pacific Group has started forming cohesive regional blocs but there are some major differences in terms of development in their geographic, economic and social situation which is why treating them like a homogenous bloc and requiring that all of the states act in the same way, with the same deadlines, seems rather utopian. We believe that the time limit for adoption of the EPA should be ad hoc and modulated for each state or group of states while addressing their problems.

In addition, although we agree that continuing with a system of non-reciprocal preferences would not be the solution from the legal point of view, it is counter to international obligations and from a political and economic point of view, it does not encourage self-sufficiency of these countries but rather its dependence on the European Union. We must not forget that the main objectives pursued by this ACP-EU relationship are to contribute to the regionalisation of this area, eradicate poverty and cooperate in its development. All these reasons alone should be sufficient for fighting for and reaching a lasting and stable agreement. The implementation of these agreements must strive for the greatest possible satisfaction of both parties; otherwise, while it is in effect and Cotonou expires, apprehension and tedious negotiations will return.

We also do not find the Commonwealth´s response adequate. In the report mentioned, the Secretariat is limited to explaining the facts and recommending that the Parliament and Council of Ministers revise the Commission's proposal. The Commonwealth should undoubtedly play a more active role. It is important to recall, that most of the Africa Caribbean and Pacific Group affected by the inability to reach an agreement with the European Union are Commonwealth members. The Commonwealth could give more of a negotiating effort and assistance. We cannot forget that several members of the Commonwealth, such as South Africa, have concluded an agreement of this type with the European Union. If an agreement is not reached, it will be the people who suffer the consequences and neither the Commonwealth nor the European Union can protect themselves if an agreement is not reached with most of these states that have other trade protection mechanisms. The European Union must continue to lead in the humanitarian area. We should recall that the European Union as a whole, the EU institutions and the member states, are the world's largest and most generous donor of official development aid, providing the largest share of the world's development assistance and helping people in over 150 countries.[749]

We also must not forget that there is also a strong asymmetry between the two trading partners. The trade interests between the parts differ substantially, "ACP countries are highly dependent on the EU market, largely due to their historical links. For the EU, on the other hand, despite this longstanding partnership, the ACP region remains of more modest economic importance, accounting for very little in terms of trade."[750]

The Commission proposal was revised by the European Parliament in 2012. It mainly considered that the deadline indicated by the Commission was not feasible and it was extended to 1 January 2016, keeping in mind the status of the EPA negotiations:

> "It is necessary to give more time for further negotiations to reach an agreement on the comprehensive EPAs, in order to avoid the risk that a number of ACP countries

[749] The European Commission, "Development aid: Europeans show overwhelming support for helping world's poor", European Commission, Press Release, 23 November 2011, IP/11/1390.
[750] FONTAGNE, L., MITARITONNA, C., LABORDE, D., "An impact study of the EU-ACP economic partnership agreements (EPAS) in the six ACP regions", CEPII-CIREM, Directorate General for Trade, Final Report, January 2008.

> which still have strong development needs and substantial levels of poverty would have significantly reduced market access to the EU[751]".

The solution offered by the Parliament also is not satisfactory to us since it once again establishes an unrealistic time limit. It only adds two years to the Commission's initial proposal and we continue to insist on the need to adjust different time limits depending on the characteristics of each sub-group of the Africa Caribbean and Pacific Group nations. The same quickness can be asked of all countries.

Again, Parliament hides behind the same arguments as the Commission to justify the establishment of a 2016 deadline. That is, most of the states that are not able to meet the deadline will enjoy other systems of trade protection like duty- and quota-free access to the European Union under the Everything but Arms scheme or the Generalised Preference System Regime. In addition, the door remains open if they comply later since they will be able to be readmitted through a fast track procedure. We make the same criticism of the Commission.

We must not forget that the main objectives of the ACP-EU relationship are to contribute to the regionalisation of this area, eradicate poverty and cooperate in development. These three reasons alone should be sufficient for striving for and reaching a lasting and stable agreement. The signing of these agreements must strive for the greatest satisfaction possible for both parties. Otherwise, while it is in effect and once Cotonou expires, apprehension will return along with tedious negotiations.

The European Parliament report includes the opinion of the Committee on Development that it makes of the Committee on International Trade, where it is against the Commission proposal. According to the Committee, the Commission does not take into account the great effort carried out by the Africa Caribbean and Pacific Group, while subjecting them to much pressure and without an appropriate time limit.

> "The Commission does not take into account the recent progress achieved in the negotiations, which the regions concerned are pursuing in good faith, the EU has decided unilaterally to impose a deadline. The main concern of the Committee on Development is that the proposed amendment to the regulation risks putting pressure on the governments of the ACP countries concerned to sign and ratify their respective EPAs within the specified timeframe, regardless of whether or not the contentious provisions have been resolved[752]".

The following is the current status of the negotiations:

1. At the end of 2007, six of the twelve states of the Eastern and Southern African negotiation region[753] (Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe) concluded an interim Economic Partnership Agreement (EPA) with the EU. Four countries went ahead and signed it in August 2009 in Mauritius. These four

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[751] European Parliament, "Report on the proposal for a regulation of the European Parliament and of the Council amending Annex I to Council Regulation (EC) No 1528/2007 as regards the exclusion of a number of countries from the list of regions or states which have concluded negotiations", European Paliament, 25 June 2012, (COM(2011)0598 – C7-0305/2012 – 2011/0260(COD).

[752] Ibidem.

[753] Made up by Djibouti, Eritrea, Ethiopia, Somalia and Sudan, Malawi, Zambia and Zimbabwe, Comoros, Mauritius, Madagascar and the Seychelles.

countries have now taken and completed steps towards ratification or notified application, so that the Agreement officially entered into force in May 2012[754].

Eastern and Southern African states that have ratified EPAs	Commonwealth Members
Madagascar	No
Mauritius	**Yes**
Seychelles	**Yes**
Zimbabwe	**Yes**

2. The rest of the regions have still not ratified and implemented this type of agreement. In addition, within the same region we find that some states have already signed this type of agreement and, on the other hand, others are under negotiation.[755] The following is a summary:

- The first agreement of this kind was the CARIFORUM-EU Economic Partnership Agreement (EPA), which was signed by 13 countries on 15 October 2008, followed by Guyana on 20 October 2008, and Haiti on 10 December 2009[756], the Agreement has not yet entered into force.

- We will next show how practically all of the CARIFORUM states are members of the Commonwealth:

CARIFORUM ACP Countries that have signed EPAs	Commonwealth Members
1. Antigua and Barbuda	Yes
2. Bahamas	Yes
3. Barbados	Yes
4. Belize	Yes
5. Dominica	Yes
6. Dominican Republic	No
7. Grenada	Yes
8. Guyana	Yes
9. Haiti	No
10. Jamaica	Yes

[754] European Union, “EU's first Economic Partnership Agreement with an African region goes live”, Europa Press Release, 14 May 2012, Reference: IP/12/475.
[755] European Commission, “Countries and Regions: Pacific”, The European Commission: DG Trade, from: <http://ec.europa.eu/trade/policy/countries-and-regions/regions/pacific/>, (accessed 30 May 2013).
[756] European Commission, “Agriculture and Preferential Trade Relations with ACP Countries, CARIFORUM EPA”, European Commission: Directorate-General for Agriculture and Rural Development, May 2010, from: <http://ec.europa.eu/agriculture/developing-countries/acp/detail/cariforum_en.pdf>, (accessed 30 May 2013).

11. St Lucia	Yes
12. St Vincent	Yes
13. St Kitts and Nevis	Yes
14. Surinam	No
15. Trinidad and Tobago	Yes

- The EU is currently in negotiations for an Economic Partnership Agreement with the 17 States that made up the West Africa negotiation region. In this sense, the EU signed an interim Economic Partnership Agreement with the Ivory Coast in November 2008. Ghana initialed an interim agreement in December 2007.

WEST AFRICA ACP Countries that have signed EPAs	Commonwealth Members
Ivory Coast	No
Ghana	Yes

- The EU is currently in negotiations for an Economic Partnership Agreement with the eight countries that form the Central Africa region. In 2009 Cameroon signed an interim Economic Partnership Agreement with the EU.

CENTRAL AFRICA ACP Countries that have signed EPAs	**Commonwealth Members**
Cameroon	Yes

- The East African Community countries initialled an interim Economic Partnership Agreement with the EU in 2007.

- The EU is currently in negotiations for an Economic Partnership Agreement with the Southern African Development Community Economic Partnership Agreement group. The other six members of the Southern African Development Community region – the Democratic Republic of the Congo, Madagascar, Malawi, Mauritius, Zambia and Zimbabwe – are negotiating Economic Partnership Agreements with the EU as part of other regional groups, namely Central Africa or Eastern and Southern Africa.

  An interim Economic Partnership Agreement was concluded with Botswana, Lesotho, Namibia, Swaziland and Mozambique in 2007. It was signed by Botswana, Lesotho, Swaziland and Mozambique in June 2009. The Namibia signature is still pending.

Southern African Development Community ACP Countries that have signed EPAs	**Commonwealth Members**
Botswana	**Yes**
Lesotho	**Yes**
Swaziland	**Yes**

Mozambique	**Yes**

- Regarding the Pacific Area, the EU concluded an Interim Partnership Agreement with Papua New Guinea and Fiji in 2007. The agreement was ratified by the European Parliament in January 2011, and by Papua New Guinea in May 2011.

Pacific ACP Countries that have signed EPAs	**Commonwealth Members**
Papua New Guinea	**Yes**

In short, the current situation is that negotiation processes have been started in all the regions but in very few cases have the EPAs been signed and even fewer implemented. We believe that any short term time limit and of a general nature is not very viable. We advocate for the adjustment of the deadlines depending on each group's characteristics and current situation.

> Laporte explains very graphically the uncertainty that the Africa Caribbean and Pacific Group is going through with the new era of EPAs: "How strongly committed are ACP actors to keeping the ACP Group and the ACP-EU Partnership alive? It is up to the ACP actors and leadership to define their own future as a group and the role of the ACP in the ACP-EU Partnership. This raises fundamental questions that should be addressed up front: Is there an "ACP identity" and a real ownership of the ACP Group? Can an ACP Group survive without EU funding? Do the ACP members feel that the Group is still relevant and are they willing to "pay" for it? What is the valueadded of Cotonou? Or is it just a "channel for aid distribution"?
>
> Not only should these fundamental questions be addressed to the Brussels ACP institutions (ACP Secretariat, ACP ambassadors), but the various actors in the different parts of the ACP should also have a say. Perceptions and vested interests might differ significantly according to the location and categories of actors consulted. It is therefore important to stimulate this debate in the individual ACP and EU countries as well[757]".

4. ECONOMIC APPROACH: ACP's TRADE DATA

1.1 **ACP'S TRADE WITH MAIN PARTNERS** (2011)

If we look at the trade data, we can show that the first major trade partner of the Africa Caribbean and Pacific Group is the **European Union**[758].

Imports	**Exports**	**Balance**
EU- 22,5% (75.575 million euros)	EU- 23,2% (71.968 million euros)	EU- 22.9% (147.543 million euros)

[757] LAPORTE, G., "What future for the ACP and the Cotonou Agreement? Preparing for the next steps in the debate", *European Centre for Development Policy Management Papers*, 2012, Num. 34, p.5.
[758] European Commission, "EU Bilateral Trade and Trade with the world", European Commission: DG Trade, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113363.pdf>, (accessed 7 January 2013).

The European Union is followed by the United States, China, India and Japan.

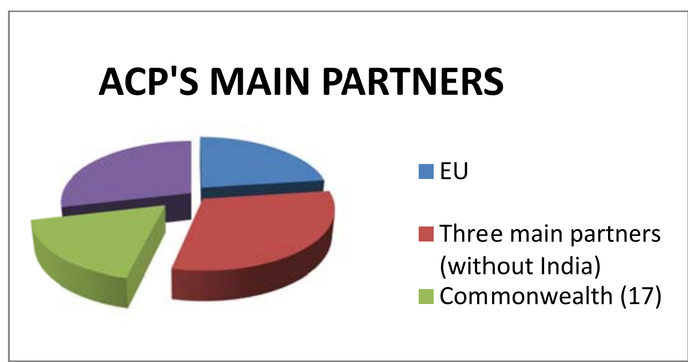
Imports	Exports	Balance
China 13.7% (45.775 million euros)	United States 19.1% (59.230 million euros)	**United States 14.2% (91.293 million euros)**
United States 9.6% (32.063 million euros)	China 12.9% (40.074 million euros)	**China 13.3% (85.849 million euros)**
India 5.1% (17.255 million euros)	India 5.7% (17.722 million euros)	**India 5.4% (34.977 million euros)**
South Korea 4.0% (13.306 million euros)	Japan 3.2% (9.801 million euros)	**Japan 3.1% (20.054 million euros)**

As indicated in the first chapter of this thesis, the Commonwealth does not act as a unitary regional trade bloc despite that it could become one by allowing its members to enjoy certain tariff preferences among themselves like a holdover of the Imperial Trade Preferences, but there is no will to develop this.

Without counting the United Kingdom, Cyprus and Malta, which are part of the EU-28 group, among the fifty-four member states of the Commonwealth, we find **sixteen** that are among the first fifty trading partners of the Africa Caribbean and Pacific Group. In rank order they are: **India**, which is among the first five positions in fourth place, **South Africa** in eighth place, **Australia** ninth, **Canada** tenth, **Nigeria** eleventh, **Malaysia** fourteenth, **Singapore** sixteenth, **Zambia** twenty-second place, **Trinidad and Tobago** twenty-sixth, **Kenya** twenty-ninth, **Mozambique** thirtieth, **Zimbabwe** thirty-first, **Cameroon** fortieth, **Pakistan** forty-first, **New Zealand** forty-fourth, **Tanzania** forty-sixth, **Uganda** forty-ninth.

Country	Imports	Exports	Balance
India	Position: 4 5.1% (17.255 million euros)	Position: 4 5.7% (17.722 million euros)	**Position: 4 5.4% (34.977 million euros)**
South Africa	Position: 6 3.4% (11,358 million Euros)	Position: 9 1.8% (5,613 million Euros)	**Positon: 8 2.6% (16,971 million Euros)**
Australia	Position: 15 1.4% (4,650 million euros)	Position: 8 2.1% (6,419 million euros)	**Position: 9 1.7% (11,069 million euros)**
Canada	Position: 20 0.9% (2,907 million euros)	Position: 7 2.2% (6,809 million euros)	**Position: 10 1.5% (9,716 million euros)**
Nigeria	Position: 10 1.9% (6,257 million euros)	Position: 21 0.5% (1,561 million euros)	**Position: 11 1.2% (7,818 million euros)**
Malaysia	Position: 16 1.3% (4,191 million euros)	Position: 16 0.8% (2,369 million euros)	**Position: 14 1.0% (6,560 million euros)**
Singapore	Position: 14 1.4% (4,722 million euros)	Position: 24 0.4% (1,334 million euros)	**Position: 16 0.9% (6,055 million euros)**
Zambia	Position: 43 0.3%	Position: 13 0.9%	**Position: 22 0.6%**

	(914 million euros)	(2,791 million euros)	**(3,705 million euros)**
Trin and Tob	Position: 21 0.7% (2,331 million euros)	Position: 40 0.2% (644 million euros)	**Position: 26 0.5% (2,975 million euros)**
Kenya	Position: 27 0.5% (1,700 million euros)	Position: 28 0.3% (1,061 million euros)	**Position: 29 0.4% (2,760 million euros)**
Mozambique	Position: 42 0.3% (935 million euros)	Position: 19 0.6% (1,824 million euros)	**Position: 30 0.4% (2,758 million euros)**
Zimbabwe	Position: 49 0.2% (668 million euros)	Position: 18 0.7% (2,069 million euros)	**Position: 31 0.4% (2,737 million euros)**
Cameroon	Non available data	Position: 26 0.4% (1,134 million euros)	**Position: 40 0.3% (1,651 million euros)**
Pakistan	Position: 33 0.4% (1,193 million euros)	Non available data	**Position: 41 0.3% (1,618 million euros)**
N. Zealand	Position: 31 0.4% (1,254 million euros)	Non available data	**Position: 44 0.2% (1,426 million euros)**
Tanzania	Non available data	Position: 31 0.3% (917 million euros)	**Position: 46 0.2% (1,374 million euros)**
Uganda	Non available data	Position: 37 0.2% (666 million euros)	**Position: 49 0.2% (1,224 million euros)**



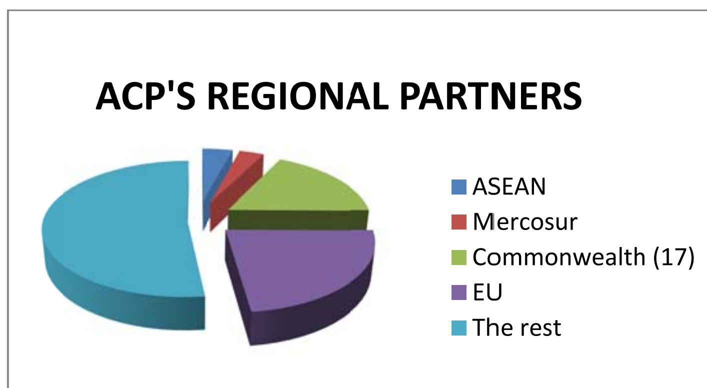
From this graphic we can see that relative to the Africa Caribbean and Pacific Group, the three main partners: the United States, China and Japan (not including India, which we have in the Commonwealth bloc) represent the greatest percentage of trade exchanges with the Africa Caribbean and Pacific Group, reaching almost 31% of the trade total. For the purposes of this thesis and in order to limit the scope of our study, we are not going to include the "other partners" category, which would encompass the rest of the countries of the international community. The second position would correspond to the 28 member states that make up the European Union representing 23% of the trade volume. Finally, with regards to the 17 member states of the Commonwealth that appear listed in the ranking of the 50 the Africa Caribbean and Pacific Group's major trade partners, among the first ten are four important members of the Commonwealth: India, South Africa, Australia and Canada. Thus, we argue that if the

Commonwealth states did not operate separately, but rather as a single trading bloc, they would have much greater trade relevance with respect to the Africa Caribbean and Pacific Group. Already, in 2011, the group of 17 represented almost 18% of the trade volume (only 5% less than the 28 European Union countries). The under realised trade potential is undeniable.

1.2 **ACP'S TRADE WITH REGIONAL MAIN PARTNERS (2011)**

As we have just seen, in 2011 the seventeen members of the Commonwealth add up to a total trade volume of nearly 18% of the Africa Caribbean and Pacific Group. This percentage would be even greater if the Commonwealth had been made up of a regional trade bloc since, among other aspects, they would add 37 more countries including the United Kingdom, Cyprus and Malta that make up part of the European Union and other members states for the same Africa Caribbean and Pacific Group. If we compare the percentage that these 17 countries represent with already established trading blocs like the European Union, the difference would not be so telling. The European Union represents a trade volume of nearly 23% and with ASEAN or Mercosur the trade volume of the Commonwealth (17) is significantly greater than the others. Thus, if we allow ourselves to be guided by the trade data, the Commonwealth has a large share of trade with the Africa Caribbean and Pacific Group even without being established as a trade bloc. This is why from a trade perspective, its involvement, influence and relationship capability is totally legitimate and looking at the statistics, should be much greater. As a consequence, with respect to the Africa Caribbean and Pacific Group, we argue that it is to the advantage of the Commonwealth to articulate a system that allows for establishment of a true trade bloc.

Regional Group	Imports	Exports	Balance
ASEAN	5.5% (18,486 million euros)	2.5% (7,643 million euros)	4.1% (26,130 million euros)
Mercosur	3.5% (11,607 million euros)	3.1% (9,539 million euros)	3.3% (21,146 million euros)



From the graphic we can note that if our analysis focuses on regional trading organisations, undoubtedly the EU represents for the ACP group its major trading partner and therefore it represents the highest level of trade exchanges, with a 23%. The Mercosur presence is not really significant, it only represents, a little more than the 3%, India has a market quota of a 5,4%, so it almost doubles the previous rate. The ASEAN is similar to the Mercosur one, the global value of the trade exchanges to ACP, do not overcome the 4%, therefore only represent a 1% more than in Mercosur case. Once again, the 17 Commonwealth members that are listed in this ranking would account the 18% of the global trade exchanges with the ACP, if they were grouped.

2. **EU TRADE WITH MAIN PARTNERS** (2012)

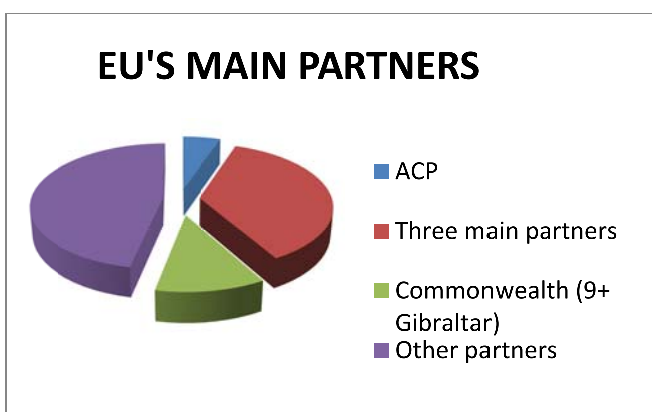
The five major trade partners of the European Union, (not taking into accont the EU Member states) in order of importance, in trade terms are: the United States, China, Russia, Switzerland and Norway.

Imports	Exports	Balance
3 United States 11.5% 205,778 million euros	1. United States 17.3% (291,880 million euros)	**1 United States 14.3% (497,658 million euros)**
1. China 16.2% (289,915 million euros)	2 China 8.5% 143,874 million euros	**2 China 12.5% 433,789 million euros**
2 Russia 11.9% 213,212 million euros	4 Russia 7.3% 123,262 million euros	**3 Russia 9.7% 336,474 million euros**
4 Switzerland 5.8% 104,544 million euros	3 Switzerland 7.9% 133,341 million euros	**4 Switzerland 6.8% 237,885**
5 Norway 5.6% 100,437 million euros	7 Norway 3.0% (49,821 million euros)	**5 Norway 4.3% 150,258 million euros**

If we expand the ranking positions, in 2012 we find nine Commonwealth member states (and Gibraltar) that are among the first fifty positions. In order of importance in trade terms, India occupies ninth place, Canada twelfth, Singapore fourteenth, Australia fifteenth, South Africa seventeenth, Nigeria nineteenth, Malaysia twenty-fourth, Bangladesh forty-fifth. Gibraltar is forty-eighth in the ranking despite being a British Overseas Territory rather than a state. It is the only one that is a part of the EU. At number fifty, Pakistan is in last place.

Imports	Exports	Balance
9 India 2.1% (37,295 million euros)	9 India 2.3% (38,468 million euros)	**9 India 2.2% (75,764 million euros)**
15 Canada 1.7% (30,514 million euros)	14 Canada 1.9% (31,291 million euros)	**12 Canada 1.8% (61,805 million euros)**
18 Singapore 1.2% (21,517 million euros)	15 Singapore 1.8% (30,342 million euros)	**14 Singapore 1.5% (51,859 million euros)**
26 Australia 0.8% (14,479 million euros)	12 Australia 2.0% (33,845 million euros)	**15 Australia 1.4% (48,324 million euros)**
19 South Africa 20,545 1.1% (20,545 million euros)	18 South Africa 1.6% (26,622 million euros)	**17 South Africa 1.4% (47,167 million euros)**
12 Nigeria 1.8% (32,937 million euros)	27 Nigeria 0.7% (11,444 million euros)	**19 Nigeria 1.3% (44,382 million euros)**
20 Malaysia 1.1%	26 Malaysia 0.9%	**24 Malaysia 1.0%**

(20,342 million euros)	(14,530 million euros)	**(34,872 million euros)**
35 Bangladesh **0.5%** **(9,212 million euros)**	No avaliable data	**45 Bangladesh** **0.3%** **(10,745 million euros)**
No avaliable data	31 Gibraltar 0.5% (9,233 million euros)	**48 Gibraltar** **0.3%** **(9,810 million euros)**
33 Pakistan **0.4%** **(1,193 million euros)**	No avaliable data	**50 Pakistan** **0.2%** **(8,174 million euros)**



From the graphic it can be seen that relative to the EU and without taking into account "other partners", which would encompass the rest of the states of the International Community that appear in the list of the 50 main trade partners of the EU and for the purposes of this thesis and in order to limit the scope of our study, we are not going to include the "other partners" category. The three main partners, the United States, China and Russia (with the exception of Russia, these three main partners, which in the case of the ACP are those that represent the highest percentage trade exchanges, reaching almost 37% of the total trade with the EU. The nine member states of the Commonwealth (plus Gibraltar) would have the second position that appear listed in the ranking of the EU's 50 major trading partners, resulting in more than 11% of the total volume of trade with the EU. Furthermore, among the top ten it is important to mention India in ninth position with 2.2%. We once again insist that if the Commonwealth states were not operating separately, but as a single trade bloc, they would have much more important trade relevance with respect to the European Union. Thus, in 2012, ten members alone of the 54[759] member Commonwealth had more than double the Africa Caribbean and Pacific Group in trade with the European Union, which represent a little more than 5%.

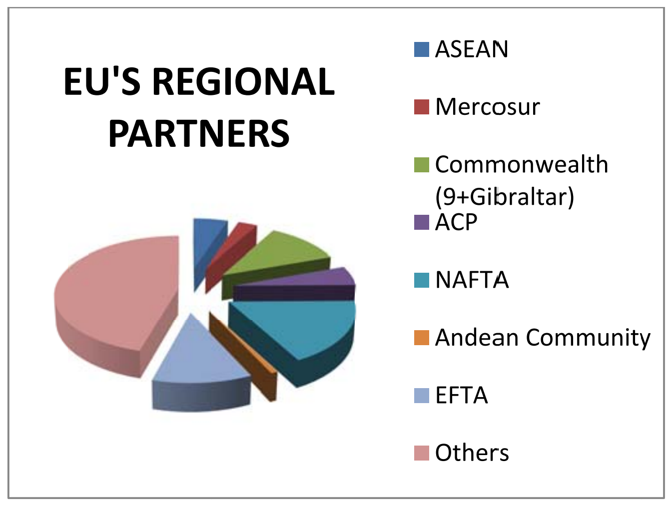
2.2 <u>EU TRADE WITH REGIONAL MAIN PARTNERS (2012)</u>

Ten Commonwealth members alone add up to 11.4% in trade volume for the European Union, which is why there is no doubt that if the Commonwealth were to act as a bloc it would have an even greater importance in its trade relations with European Union. Among other aspects, it would add up to 45 additional countries, including the United Kingdom, Cyprus and Malta that are also part of the European Union along with the other member states of the Africa Caribbean and Pacific Group. If we compare the total percentage that these 9 countries plus Gibraltar represent for the European Union with other established trade blocs, it is only

[759] In 2012, the Commonwealth included 54 member states. In 2013, Gambia left the Commonwealth, so nowadays 53 states are membres of the Commonwealth.

exceeded by NAFTA and is equal to EFTA, while it easily exceeds organisations like ASEAN and Mercosur. Thus, as it has occurred in the case of the trade relations with the Africa Caribbean and Pacific Group, if we let the data speak for themselves, the Commonwealth has great trading influence in its trade relations with the European Union. This is without counting the trading volume of the 53 countries and without these being organised as a commercial bloc. This is why from the perspective of trade, its involvement, influence and relationship capability is totally legitimate and looking at the statistics, should be much greater. As a consequence, with respect to the Africa Caribbean and Pacific Group, we argue that it is to the advantage of the Commonwealth to articulate a system that allows for establishment of a true trade bloc.

Regional Group	Imports	Exports	Balance
Andean Community	17,728 1.0% (million euros)	0.7% (11,738 million euros)	**0.8% (29,467 million euros)**
ASEAN	5.6% (100,035 million euros)	4.8% (81,324 million euros)	**5.2% (181,360 million euros)**
EFTA	11.7% (208,739 million euros)	11.0% (186,222 million euro)	**11.4% (394,961 million euros)**
Mercosur	2.7% (49,196 million euros)	3.0% (50,266 million euros)	**2.9% (99,461 million euros)**
NAFTA	14.3% (255,657 million euros)	20.8% (351,090 million euro)	**17.4% (606,746 million euros)**



For purposes of this thesis and to limit the scope of our study we will put the “others” category aside, which refers to the remaining organisations. Taking this into account we can see from the graphic that if we perform an analysis of regional trade organisations, NAFTA is the trading bloc with the largest volume of trade and, therefore, is the European Union’s main trading partner, resulting in 17% of trading volume. We should remember that Canada is one of the members of NAFTA and part of the Commonwealth. It is followed by EFTA with a percentage of 11.40% and the Commonwealth would equal it if it was an established regional trading bloc. Thus, we insist that if it were set up like this, it would be greater than the EFTA since our analysis only considers the nine members of the Commonwealth plus Gibraltar that are listed in the European Union’s main partners ranking and does not include the United Kingdom, Cyprus and Malta, which are already part of the European Union, or the rest of the members of the Commonwealth. The ASEAN share is not really significant, representing a little more than 5% for the European Union. The Africa Caribbean and Pacific Group have similar values as ASEAN. The volume of trade is 5.3%. Finally, Mercosur and the Andean Community

do not have significant relevance for the European Union, representing 3% and 1% respectively. India and Canada alone, two of the 53 members of the Commonwealth, make up 4% of the total trade with the European Union.

3. **INTRATRADE**

Trade indicators show us that the regionalisation process in the Africa Caribbean and Pacific Group is a slow. The trade volume between the countries comprising this group is slight and greater efforts are needed when the group is consolidated as a true trading group. Thus at the Africa Caribbean and Pacific Group level, intra-regional trade accounts for 11% of total trade, against more than 66% in the European Union. The level of intra-regional trade is even lower in the regional trading blocs in Sub-Saharan Africa.

ACP Partner

Regional Group	Imports	Exports	Balance
ACP-Group	11.4% (38,047 million euros)	11.6% 35,876 (million euros)	11.5% 73,922 (million euros)

EU Regional Partner

ACP	**5.5% (99,196 million euros)**	**5.1% (86,652 million euros)**	5.3% (185,848 million euros)

In short, we see that for the Africa Caribbean and Pacific Group, the European Union is the first major partner, making up almost 23% of the trade volume of the group, while the same has not occurred in the opposite case for the European Union. The Africa Caribbean and Pacific Group only represent 5.3% of total trade which is why it is understandable that the European Union would have lost trade interest with the group. On the other hand, for the Africa Caribbean and Pacific Group the relationship with the European Union is very relevant.

CHAPTER VI: THE ROLE AND STATUS OF THE GROUP OF ELEVEN IN THE COMMONWEALTH AND THE EUROPEAN UNION: TOWARDS A HOMOGENEOUS GROUP OF ELEVEN COMMONWEALTH MEMBER STATES

In this chapter, we analyse the eleven remaining states: Canada, Australia, New Zealand, India, Pakistan, Bangladesh, Sri Lanka, Brunei, the Maldives, Singapore and Malaysia, which are not combined with any of the groups in the previous chapters, that is, they are not members of the European Union, nor do they belong to the Overseas Territories and Countries group or the African, Caribbean and Pacific Group. They are heterogeneous states as occurred in the case of the African, Caribbean and Pacific Group. This raises the question as to whether it is possible to group them in a single group when they come into bilateral contact with the European Union, or rather, whether it is only possible to establish ad hoc relations with each one of them and whether the Commonwealth could play a role in the formation of such a group. Since they do not belong to any group, in order to respond to this question we carry out an individualised analysis to determine if there is any connection between them at the level of relations with the European Union. The analysis will is developed according to the same methodology used throughout the thesis. Afterwards, we draw conclusions and respond to the question by conducting a global analysis using different standardising criteria, if any.

1. **AUSTRALIA**:

TERRITORIAL AND HISTORICAL APPROACH

According to 2012 oficial data, the territory of Australia is 7,692 thousand sq km and has a population of 22.9 million[760].

The first known Europeans to land were Dutch, in 1606. The Dutch named this land New Holland, but showed no interest in further exploration. In April 1770, Captain James Cook claimed the east coast for the English Crown. Having just lost the American colonies, England needed new penal colonies, and the first ship load of Australian settlers were convicts, arriving with Governor Arthur Phillip in 1788. In 1831, Western Australia became the second colony, followed by South Australia in 1836, Victoria in 1851, Tasmania in 1856, and Queensland in 1859[761]. Australia was recognised as a Dominion of the British Empire in 1907[762]. In response to calls from some Dominions for a re-evaluation in their status under the Crown after their sacrifice and performance in the First World War,[763] the Balfour Declaration of 1926 was adopted, which provided that the United Kingdom and the Dominions were to be considered as:

> "Autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown[764]."

[760] Australian Government, "Australia Fact Sheet", Australian Government: Department of Foreign Affairs and Trade, June 2012, from:
<http://www.dfat.gov.au/geo/fs/aust.pdf>, (accessed 24 June 2012).
[761] The Commonwealth Network, "Australia Fact Sheet", The Commonwealth Yearbook 2012, from: <http://www.commonwealth-of-nations.org/xstandard/australia_country_profile.pdf>, (accessed 24 June 2012).
[762] ANDREWS, E.M., *The ANZAC Illusion: Anglo-Australian Relations During World War I,* Cambridge, Cambridge University Press, 1993.
[763] BLACKSHIELD, T., WILLIAMS, G., *Australian Constitutional Law and Theory*, Canberra, Federation Press, 1998.
[764] Government of Autralia, Founding Documents of Australia, "Balfour Declaration", Imperial Conference of British Empire, 15 November 1926, from: <http://www.foundingdocs.gov.au/scan.asp?sID=13>, (accessed 22 November 2010).

The Royal and Parliamentary Titles Act, 1927, and the Westminster Parliament Act recognised self-sovereignty to Australia and other Dominions, though it was not adopted by Australia until 1942 (retroactive to 3 September 1939).

Finally, Australia became a founder member of the Commonwealth in 1931 when its independence was recognised under the Statute of Westminster. Australia is a federal state and one of the 16 Commonwealth Realms, this means that Queen Elisabeth II is the Queen and Head of State of Australia.

Territorial Organisation: Currently, the Commonwealth of Australia is a Federation with six states – New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania – and two territories, Northern Territory and the Australian Capital Territory, where Canberra is situated. Australia also has external territories.These have small populations or are uninhabited and, apart from the vast Australian Antarctic Territory, are small islands.

The External Territories of Australia are: Australian Antarctic Territory; Ashmore and Cartier Islands, Christmas Island, Cocos (Keeling) Islands, Heard Island and the McDonald Islands (Indian Ocean); Coral Sea Islands Territory, Norfolk Island (Pacific Ocean).

THE EU, AUSTRALIA AND THE COMMONWEALTH RELATIONSHIP

The EU-Australia relationship is a complicated one that has been going through distinct stages. Australia's disapproval of the "EU's narrow and minimalist approach to global and agricultural trade[765]" has had a powerful impact on the shape of the relationship. Despite past tensions have been much reduced following the very significant ongoing reforms of the Common Agricultural Policy (CAP) since the early nineties and the EU's ever increasing commitment to world trade liberalisation, some differences of view on agriculture still remain.

As explained in the first part of this thesis, Australia was one of the members of Commonwealth that had the biggest objections to the United Kingdom's candidacy to the then European Communities and denounced the impact its entry would have for the Commonwealth members states, especially in the area of agriculture.

In this line, Geoff Spenceley[766] points out that Australian-European Community (EC) relations have had a less than satisfactory history, and that disagreements with respect to the Common Agricultural Policy (CAP) have been at the core of the problem. I believe that the accession of the UK to the European Communities was interpreted by Australia as a betrayal. The atmosphere of bitterness and mistrust which the accusation of Britain's betrayal, first leveled by Doug Anthony in 1971, left Australia and which the EC's later intransigence over agriculture, only seemed to confirm.

The failure of the EC to respond Australia's complaints about the CAP was therefore interpreted as being a deliberate policy of great-power arrogance in the international trading system. The EC became typrecast, in the words of Malcolm Fraser, as "a narrow, self-interested trading group, seeking to make the rest of the world dance to their tune". The longevity of Australia's sense of injustice was demonstrated in 1992 when Prime Minister Keating revived the accusation that Britain had "walked out" on Australia when it joined the community in 1973.

[765] HOLLAND, M., "EU in the Views of Asia-Pacific Elites: Australia, New Zealand and Thailand", National Centre for Research on Europe (NCRE), University of Canterbury Research Series, 2005, Num. 5, p.1-14.
[766] SPENCELEY, G., WELCH, C., "Australia-EU Relations and the common Agricultural Policy since 1970: Causes and consequences of policy failure", Monash University of Australia and Macquarie University of Australia, paper presented at ECSA Conference, Seattle, USA, May 1997.

The history of Australia-EU relations since 1970 has some broader implications for studies into the external effects of the Common Agriculture Policy (CAP). One of these, the policy dilemmas faced by successive Australian Governments demonstrate the difficulties in negotiating with an organization characterized by multiple levels of bargaining. Australian Governments were clearly undecided about whether their main focus should be on strengthening ties with the Commission, negotiating on a bilateral basis with member governments, or even intervening directly in public debates in individual member states.

By analysing these fragments, I would like to make note of an idea that will be extensively developed in the upcoming pages. As Spenceley[767] points out, Australia had problems trying to articulate a relationship with the then European Community because it did know with whom it had to formalise it. As we explain in the first part of this thesis, this situation has been recently resolved after the implementation of the Treaty of Lisbon because it made the European Union a legal entity. At that time it was not a simple question to resolve.

Looking from an historical perspective, the action of the United Kingdom as the most active intermediary was not easy since its entry had been vetoed twice by De Gaulle, who accused it of having other interests beyond those of the Communities. For its part, the United Kingdom needed to demonstrate the opposite, that it was focused on Europe and the old colonies in order to be accepted as a member. The only option would have been to show a united Commonwealth, a true organisation capable of offering numerous economic and trade advantages to the Communities. In other words, an attractive network with who stable relations could be established. Nevertheless, the image was very different. The Commonwealth was immersed in a process of "disintegration"; its heterogeneity and disunity weakened its capacity to exert pressure and for negotiating with one of the most powerful structures in history from an international relations perspective.

Likewise, the mentioned author[768] suggests that the history of Australia-EC relations falls into four distinct phases:

1) 1970-75: Australia's adjustment to the UK's accession to the EC;

2) 1976-1986: head-to-head negotiations over agriculture and diplomatic disaster;

3) 1986-1993: negotiations through the GATT;

4) 1994- ; reconciliation and broadening of the relationship.

5) Currently, The Government of Australia has remarked the necessity for Australia to be "an alert and active" partner with the EU.

Nowadays, Australia is interested in a "strong and united Europe" more able to effectively tackle problems of increasing importance to Australia that escape the jurisdiction of the nation-state alone; namely, terrorism and security, trade, and the international drug market. These are the areas "where Australia's interest are strongly engaged" and intertwined with those of the European Union.

[767] Ibidem.
[768] Ibidem.

POLITICAL AND LEGAL APPROACH

Chronologically the bilateral relationship is set in the context of the following agreements[769]:

A) 1982 Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community[770], This aimed to establish conditions to ensure the furtherance of the objective of non-proliferation under which nuclear material can be transferred from Australia to the Community for peaceful purposes.

B) 1994 Agreement Relating to Scientific and Technical Cooperation between the European Community and Australia (expanded in scope in 1999)[771] The Agreement aimed to facilitate cooperation by appropriate means in areas of mutual interest in which the parties wanted to foster scientific and/or technological progress. This was the first such co-operation agreement concluded by the European Community with an industrialised country outside Europe. Originally limited to six clearly defined areas, the agreement has been broadened in 1999 to allow Australia to participate in all EU thematic research programmes and to access all large-scale research facilities of the EU.

The examples of areas of mutual interest: biotechnology, medical and health research, marine science, environment, and information and communication technology.

C) 1997 Australia-European Union Joint Declaration on Relations, which was replaced by the 2008 Partnership Agreement. The 1997 Joint Declaration was a preliminary framework for the relations between both, on the basis of close historical, political, economic and cultural ties and shared values. This document declared the need for consolidating and developing a long-lasting relationship which is mutually beneficial.

D) 1999 Agreement on mutual recognition in relation to conformity assessment, certificates and markings between the European Community and Australia[772] was the first fully operational Mutual Recognition Agreement (MRA) of its type in the world. The aim was to facilitate trade by allowing conformity assessment (testing, inspection and certification) of products traded between Europe and Australia and between Europe and New Zealand to be undertaken in the exporting country rather than have to be carried out at destination.

In the case of Australian and New Zealand exporters, this meant compliance with the requirements of the relevant EC Directives (or regulations) can be established in Australia / New Zealand and the EC marking applied to the product prior to export. In this way the product can be placed on the EU market with no further intervention by EC authorities. Conversely for European Union exporters it means compliance with the relevant Australian and New Zealand regulatory requirements.

These MRAs are binding treaties between the Governments of Australia and the European Community and between the Governments of New Zealand and the European Community (the Parties).

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[769] Delegation of the European Union to Australia, “Delegation of the European Union to Australia”, from: <http://www.delaus.ec.europa.eu/eu_and_australia/index.htm>, (accessed 24 June 2012).

[770] European Union External Action Service, “Treaties Office Database”, European External Action Service, from: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=5761>, (accessed: 24 June 2012).

[771] Ibidem.

[772] Delegation of the European Union to Australia, “Delegation of the European Union to Australia”, from: <http://www.delaus.ec.europa.eu/eu_and_australia/index.htm>, (accessed 24 June 2012).

These cover the following industry sectors:

- medical devices;
- pharmaceuticals Good Manufacturing Practice (GMP);
- telecommunications terminal equipment;
- electromagnetic compatibility (EMC);
- low voltage electrical equipment;
- machinery; and
- pressure equipment .

The EC/Australia MRA also covers:

- automotive products;

There is scope to extend the coverage of the MRA to new sectors over time (e.g. aircraft airworthiness).

Under the MRAs, regulatory agencies in each Party accept the results of conformity assessment procedures carried out by particular designated Conformity Assessment Bodies (CABs) in the other Party. The MRAs do NOT require harmonisation of each Parties' technical regulations, nor does it involve recognition of the standards that apply in each Party. In this way, each Party maintains its internal standards and regulatory regime against which compliance is assessed by designated CABs located in the other Party.

The MRAs also contains a series of Sectoral Annexes which define the product scope or coverage of the Agreement, list the CABs eligible to provide conformity assessment services to exporters, define more precisely the requirements for designation and set out any additional provisions relating to the operation of the MRA.

E) March 2003-08 Agenda for Cooperation, which was reviewed in 2009[773]

The 1997 Join Declaration achieved a dynamic work program and intensified exchanges between Australia and the European Union to make progress on a diverse range of common interests and formalised a commitment to enhance cooperation across a wide-ranging agenda. The Agenda remarked five main areas as high priorities:

1. Trade and economic matters

2. Strategic issues

3. Immigration and asylum

4. Environment policies

5. Initiating bilateral cooperation projects in education and science and technology

In 2009 the Agenda was completed and a cooperation/coordination route was developed on the base of the mentioned five objectives[774].

[773] Ibidem.
[774] Ibidem.

F) 2008 Agreement between the European Community and Australia on trade in wine[775]

This agreement was signed in Brussels on 1 December 2008 and was fully ratified by Australia the 27 of July of 2010 and replaced the one signed in 1994. In 2009, EU wine exports to Australia were worth € 68 million and Australian exports to the EU were worth € 643 million.

The new agreement entailed for the EU:

- The safeguard of the EU's wine labelling regime,

- The protection to EU geographical indications, including for wines intended for export to third countries

- The commitment of Australia to protect EU traditional expressions.

- It also provided for the phasing out of the use of a number of important EU names such as Champagne and Port on Australian wines within a year of the agreement coming into force.

G) Relations between the EU and Australia are now governed by the **2008 European Union - Australia Partnership Framework**[776], which was launched at the EU-Australia Ministerial meeting on 29 October 2008 in Paris. The Partnership Framework is a comprehensive restatement of shared values and close historical, political, economic and cultural ties.

It sets out a number of medium and longer term objectives and spells out an immediate action plan on how to best achieve them through concrete measures.

The aims are:

✓ to maximise the level of mutual cooperation to achieve common goals in:

- foreign policy,
- security threats especially from terrorism,
- international trade,
- regional cooperation in the Pacific.

✓ and to meet global challenges such as:

- climate change and protection of the environment generally,
- energy security,
- protection of fisheries and forests.

Framework for dialogue and consultations

According to the Partnership Agreement, the European Union and Australia hold annual bilateral Ministerial Troika consultations, annual Senior Officials meetings, alternating flexibly between Brussels and Canberra and regular Ministerial-level consultations, alternating between Brussels and Australia. The European Union and Australia also note the regular exchanges between the European Parliament and the Australian Parliament.

[775] Ibidem.
[776] Ibidem.

Other dialogues and exchanges between Australia and the European Union include:

- Experts Troika meetings on Asia (COASI Troika)
- Informal Security Talks
- Agricultural Trade and Marketing Experts Group (ATMEG)
- Trade Policy Dialogue
- Joint Science and Technology Cooperation Committee
- Senior Officials' Dialogue on Migration and Asylum
- High Level Dialogue on the Environment
- Dialogue on the Pacific with EU Heads of Delegation

In view of the regulatory framework, one can take stock of the following: that the first of the agreements finalised between the two in 1982 was of a sectorial nature, restricted to the area of nuclear energy. It specifically regulated the regimen of transfers of nuclear material from Australia to the European Atomic Energy Community.

Later agreements were also sectorial like the one signed in 1994 relating to Scientific and Technical Cooperation. Thus, well into the nineties, Australia and the European Union would not sign a general agreement. The 1997 Joint Declaration which was a preliminary framework for the relations between both, on the basis of close historical, political, economic and cultural ties and shared values. This document declared the need for consolidating and developing a long-lasting relationship which is mutually beneficial.

Starting with this declaration, the agreements between both intensified and went on to addressing trade matters. The 1999 Agreement on mutual recognition in relation to conformity assessment, certificates and markings between the European Community and Australia was the first fully operational Mutual Recognition Agreement (MRA) of its type in the world and its aim was to facilitate trade.

Relationships between both started to improve as the years went on and the areas of cooperation were broadened. Their interests started to come together and areas of friction began to disappear. Both Australia and the European Union defend their political systems, values and similar principles. Their relations are based on a large amount of common interests. This tendency is shown in 2003 when the Agenda for Cooperation was adopted to 2008 and revised in 2009.

In it, they noted five main areas as high priorities of cooperation:

1. Trade and economic matters;
2. Strategic issues;
3. Immigration and asylum;
4. Environment policies;
5. Initiating bilateral cooperation projects in education and science and technology;

These five priorities are the basis of the relationship of cooperation between Australia and the European Union. The later agreements did nothing more than ratify the earlier points in addition to establishing appropriate mechanisms for intensifying and improving the degree of cooperation. In 2008, the European Union - Australia Partnership Framework was adopted. Its aim was to maximise the level of mutual cooperation to achieve common goals.

They would also sign an agreement on trade in wine in 2008 that was of great importance for relations between both parties. It covered one of the trade items that had generated the most friction in their relationship under an agreement.

Today they have multiple mechanisms and forums for dialogue. The Partnership Agreement states that the European Union and Australia will hold annual bilateral Ministerial Troika consultations, annual Senior Officials meetings, alternating flexibly between Brussels and Canberra and regular Ministerial-level consultations, alternating between Brussels and Australia. The European Union and Australia also note the regular exchanges between the European Parliament and the Australian Parliament.

Australia is the receiver of the European Union financing instrument for cooperation for the period 2007-2013, this instrument is based on the Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories. It is aimed to promote enhanced cooperation between the European Union (EU) and industrialised and other high-income countries, which share similar political, economic and institutional structures and values to the EU. It focuses in particular on economic, financial and technical cooperation, and covers a widening array of subjects. Nevertheless, they could be further deepened in areas in which the EU and the industrialised and other high-income countries and territories have mutual interests[777].

The areas of cooperation and partnership are:

- ✓ Education, training and scientific research;
- ✓ Bilateral trade, investment flows and economic partnerships;
- ✓ The promotion of dialogues between political, economic and social actors of both parties;
- ✓ The promotion of people-to-people links;
- ✓ Research, science and technology;
- ✓ Energy;
- ✓ Transport;
- ✓ Environmental matters.

At the level of international relations, Australia should be an overriding objective for the European Union, understanding that there are still items to be resolved, in particular related to the field of agriculture. However, both are natural political, economic and social partners which share common interests. Politically, the EU and Australia have similar democratic parliamentary systems of government. They participate in multilateral fora such as the United Nations, where they usually share common ground on the political issues of the day, and the WTO and the OECD; as well as at a regional level in, for example, the ASEAN Ministerial Forum and the Pacific Island Forum. In the Asia Pacific region, Australia and the EU take a similar approach in most respects: global and regional security, constructive engagement with China, cooperative aid operations in the Pacific Islands, to mention a few.

[777] European Commission, "Financing instrument for cooperation with industrialised and other high-income countries and territories (2007-2013"), Summaries of EU Legislation, European Commission, from: <http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/industrialised_countries/r14107_en.htm>, (accessed 26 June 2012).

ECONOMIC APPROACH

Based on its wealth of natural resources, policies of redistribution and welfare and stable democratic society, Australia has an economically high degree of prosperity. It is an attractive country of the European Union, especially if the latter wants to achieve a greater role on the geopolitical plane. Australia could facilitate many regional cooperation agreements or with other states in the Asia-Pacific geographical area since they share political and economic systems and similar values. They must continue intensifying this relationship.

We next present a scale for measuring the importance of intensifying the relationships (mainly in the trade field) between the European Union and each of the 11 states that we present in this chapter. To create it, we have taken into account the classification used by the Directorate General of the European Commission,[778] where 212 countries appear and 50 major trading partners are highlighted. Of the 212 countries and taking the 50 first positions into account, we have distinguished five categories that go from greater to lesser degree of interest. In addition, as it relates to a bidirectional relationship, we have taken into account the place that the European Union occupies as a trading partner for each of the eleven states in this chapter to determine if there is a strong relationship or, rather little interest in intensifying or establishing relationships.

- ✓ Overriding Objective**: If it appears in the top ten of the EU classification of trading partners. (1-10 positions)**
- ✓ High Objective**: If it is among the higher ranking of EU classification of major trading partners. (10-50 positions)**
- ✓ Medium Objective**: If it is among the medium ranking of EU classification of major trading partners. (50- 100 positions)**
- ✓ Low Objective**: If it is among the low ranking of EU classification of major trading partners. (100- 160 positions)**
- ✓ Residual Objective**: If it is among the lowest ranking of EU classification of major trading partners. (160-212 positions)**

If we consider the figures in the documents shown, we can conclude that the EU-Australia relationship is **fairly symmetrical** in terms of relevance. The European Union is Australia's second trading partner after China (2009), a key export market and the European Union's 15th top trade partner (2012)[779]. Trade between the two economies has continued to grow steadily.

While for the European Union, Australia ranks 15th among its trading partners.[780] **Thus, we see that it is an overriding objective for Australia to intensify this relationship. It is a very high objective for the European Union since Australia is nearly among its top 10 trading partners**.

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
AUSTRALIA- EUROPEAN UNION	**Overriding Objective**	2nd
EUROPEAN UNION-AUSTRALIA	Very High Objective	15th

[778] European Commission, “Top Trading Partners”, EU Commission: Directorate General Trade, 12 January 2012, from:
<http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).
[779] Ibidem.
[780] Ibidem.

If we look at the list of free trade agreements concluded and free trade agreements in negotiation (that are at the end of this chapter) we see that Australia does not appear in any of the categories related to trade. This should be a subject to consider.

2. NEW ZEALAND

TERRITORIAL AND HISTORICAL APPROACH

According to 2011 oficial data[781], New Zealand has a territory of 268,680 sq km and a population of 4,027,947.

The Polynesian ancestors of the present Maori, skilled navigators of canoes fitted with sails and outriggers, arrived in New Zealand around the 10th century from Hawaiki (Eastern Polynesia). The Maori population may have been over 100,000 at the time the first Europeans arrived. The Dutchman Abel Tasman sighted New Zealand in 1642 in his search for the southern continent. He named the South Island Nieuw Zeeland after the Dutch province. James Cook sighted the North Island in 1769. He circumnavigated both islands and charted the shores. His encounters with Maori were usually peaceful.

On 14 January 1840 the Governor of New South Wales proclaimed British sovereignty over New Zealand and appointed a governor. Under the Treaty of Waitangi (6 February 1840) the Maori received the full rights and privileges of British subjects, and 46 Maori chiefs ceded sovereignty to Queen Victoria, in exchange for retaining ownership of their natural resources. Immigration from Britain increased in the mid-19th century, and by 1858 settlers outnumbered Maori[782].

In 1907, New Zealand became a Dominion. In response to calls from some Dominions for a re-evaluation in their status under the Crown after their sacrifice and performance in the First World War [783] the Balfour Declaration of 1926 was adopted, which provided that the United Kingdom and the Dominions were to be considered as:

> "Autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown."

The Royal and Parliamentary Titles Act, 1927, an Act of the Westminster Parliament, were the first indication of a shift in the law, before the Imperial Conference of 1930 established that the New Zealand's Cabinet could advise the sovereign directly on the choice of Governor-General, which ensured the independence of the office.[784] The Crown was further separated amongst its dominions by the Statute of Westminster 1931[785], though it was not adopted by New Zealand until 1947.

[781] New Zealand Government, "Statistics", New Zealand Government, from: <http://www.stats.govt.nz/Census/2006CensusHomePage/QuickStats/AboutAPlace/SnapShot.aspx?id=9999999&type=region>, (accessed 4 July 2012).
[782] GREEN R., *The Commonwealth Secretariat*, London, The Commonwealth Yearbook, 2005.
[783] BLACKSHIELD, T., WILLIAMS, G., *Australian Constitutional Law and Theory*, Canberra, Federation Press, 1998.
[784] SMITH, D., *Head of State,* London, Macleay Press, 2005, p.24
[785] Statute of Westminster 1931, MCINN, W.G., *A Constitutional History of Australia*, Oxford, Oxford University Press, 1979. p.152.

Finally, New Zealand became a founder member of the Commonwealth in 1931 when its independence was recognised under the Statute of Westminster.

Territorial Organisation: 16 regions and 1 territory; Auckland, Bay of Plenty, Canterbury, Chatham Islands, Gisborne, Hawke's Bay, Manawatu-Wanganui, Marlborough, Nelson, Northland, Otago, Southland, Taranaki, Tasman, Waikato, Wellington, West Coast.

New Zealand External Territories administered directly by New Zealand: Cook Islands and Niue have full self-government in free association with New Zealand. Tokelau and the Ross Dependency in the Antarctic are New Zealand External Territories administered directly by New Zealand.

THE EU, NEW ZEALAND AND THE COMMONWEALTH RELATIONSHIP

New Zealand and Australia have had a similar relationship with the European Union. New Zealand was reticent about the entry of the United Kingdom into the then European Communities. Economic relations between New Zealand and Britain were strong and remained so until the 1970s. The British market, which remained open until 1973, when the United Kingdom was absorbed into the EEC, was too small to satisfy New Zealand.

New Zealand left no doubt about its unease concerning the British desire to join the EEC. As the Macmillan government began a lengthy campaign to join the protectionist EEC, the British resorted to agricultural subsidies while the British food market was under threat.

> “The Government of New Zealand - whose exports were likely to be the worst affected - spoke of the "grave consequences" for New Zealand of British entry. Duncan Sandys, the Minister responsible for consultations in Wellington, was forced to promise "special arrangements" for New Zealand.
>
> Even so, New Zealand's representatives "made it clear that they could not at present see any effective way of protecting New Zealand's vital interests other than by maintenance of unrestricted duty-free entry". New Zealand at least expressed a willingness to understand Britain's position[786]”.

New Zealand’s economic and trade interests were clearly damaged – particularly with respect to the agricultural sector despite the United Kingdom’s attempt to negotiate this point. The Community’s criteria were not all satisfactory or at least, this is how it was seen by New Zealand.

> “Temperate agriculture was without doubt **the most difficult problem facing the negotiators**. Here the largest quantity of exports was involved, the most vulnerable economies (especially New Zealand's) were threatened, but also the most vital economic interests of "the Six" (especially France) were at stake.
>
> Agreement on many aspects of the problem had not been reached by the time of the breakdown of negotiations - partly because of the long delay in formulating the CAP - but the lines of negotiations were nevertheless clear. Again Britain requested continued duty-free access, or at least guaranteed quotas, but again the EEC

[786] London South Bank University, “The Commonwealth during the period of Britain’s first application to join the EEC”, The European Institute Research Papers, from: <http://bus.lsbu.ac.uk/resources/CIBS/european-institute-papers/papers1/295.PDF>, (accessed 8 July 2012).

> demanded a *décalage* in return for a commitment to seek worldwide price-stabilisation agreements.
>
> The Commission recognised the special problem of New Zealand butter (but only butter), but no agreement had been reached on how the problem might be ameliorated by the time of de Gaulle's veto in January 1963"[787].

In this sense,

> "it is clear that the Commonwealth countries could no longer rely upon Britain for large-scale and secure long-term markets, or that they were able to put quite the same degree of faith in Britain's leadership as (with rare but important exceptions, notably over Suez) had been the case before. In the "old" Dominions in particular, the sense of betrayal was almost palpable[788]".

In short, in addition to its economic impacts, the United Kingdom's entry left an impression of distrust and betrayal. New Zealand began to look for other economic partners and the most obvious candidate was Australia.

It is important to mention that the New Zealand conception is very different from the one traditionally defended by the European Union, especially in reference to the agriculture sector. New Zealand is reputed to have the most open agricultural markets in the world. After radical reforms enacted in 1984 by the Fourth Labour Government, all subsidies were stopped. As the country is a large agricultural exporter, continued subsidies by other countries are a long-standing bone of contention, with New Zealand being a founding member of the 19-member Cairns Group fighting to improve market access for exported agricultural goods.

In the past, New Zealand's relations with Europe were dominated by difficult annual negotiations over sheepmeat and dairy access. However, progress has gradually been made in the relation between New Zealand and the EU, especially since the 1990s, as was the case in Australia. This happened in 1999 when the EU-New Zealand relationship was given a formal framework. Likewise, the GATT Uruguay Round agreements were intended to put access on a more permanent basis. There is now scope to redefine the nature of New Zealand's engagement with the EU.[789]

The EU and New Zealand share many common views and values y la imagen actual ha mejorado, thus in a public survey, the majority of New Zealanders expressed that they perceived the EU as a global political power, having a high impact on New Zealand as a world trade power, as a market for NZ agricultural products and agricultural subsidies, while recognising the importance of its economic growth on their country as well as its support for reducing gas emissions. The European Commission (EC) Head of Delegation in Canberra was accredited to New Zealand since 1984.

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[787] For the negotiations, see CAMPS, M., *Britain and the European Community, 1955-63*, Oxford, Oxford University Press, 1964 and European Commission, "Report to the European Parliament on the State of the Negotiations with the United Kingdom", EEC Commission, 26 February 1963, pp. 30-67.

[788] London South Bank University, "The Commonwealth during the period of Britain's first application to join the EEC", The European Institute Research Papers, from: <http://bus.lsbu.ac.uk/resources/CIBS/european-institute-papers/papers1/295.PDF>, (accessed 8 July 2012).

[789] New Zealand Government, "New Zealand and Europe", New Zealand Government: New Zealand Ministry of Foreign Affairs and Trade, from: <http://www.mfat.govt.nz/Foreign-Relations/Europe/0-eu-overview.php>, (accessed 25 July 2012).

POLITICAL AND LEGAL APPROACH

Chronologically the bilateral relationship is set in the context of the main following agreements:[790]

A. 1980 Agreement in the form of an exchange of letters between the European Economic Community and New Zealand on trade in mutton, lamb and goat meat[791]: One of the first agreements between New Zealand and the European Community, which was signed the 17 of October of 1980, on a sectorial area, its main pursuit entails to fix annual quantities of export of mutton and lamb and goat meat from New Zealand to the Community.

B. 1984 Joint Discipline Arrangement between New Zealand and the Community concerning cheese[792]: It was signed the 3 October 1984 and amended the 27 of November of the same year, by Exchange of letters between the European Economic Community and the Government of New Zealand amending the Joint Discipline Arrangement between New Zealand and the Community concerning cheese. The agreement refers to concessions on certain cheese trade.

C. 1991 Arrangement between the Commission of the European Communities and the Government of New Zealand for co-operation in Science and Technology[793]: This Agreement was signed the 17th of May of 1991 and it is a sectorial agreement focused on cooperative activities for peaceful purposes, which are carried out in the areas of science and technology between the Parties or their executive agents. As article 5 states it does facilitate entry to and exit from EU and New Zealand territory of personnel, material and equipment of the Participants engaged in or used in Cooperative Activities.

D. 1996 Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products[794]; This a sectorial agreement signed the 17 of December of 1996 but entered into force the 1st of February of 2003. The objective of this Agreement is to facilitate trade in live animals and animal products between the Community and New Zealand by establishing a mechanism for the recognition of equivalence of sanitary measures maintained by the two Parties consistent with the protection of public and animal health, and to improve communication and cooperation on sanitary measures.

However, the Agreement is not applicable to sanitary measures related to food additives, sanitary stamps, processing aids, flavours, irradiation (ionization), contaminants, transport, chemicals originating from the migration of substances from packaging materials, labelling of foodstuffs, nutritional labelling, medicated feeds and premixes.

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[790] Delegation of the European Union to New Zealand, “Delegation of the European Union to New Zealand”, from: <http://www.delaus.ec.europa.eu/newzealand/EU_NZ_relations/EU_New_Zealand_Overview.htm>, (accessed 25 July 2012).
[791] European Union External Action Service, “Treaties Office Database”, European External Action Service, from: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=5761>, (accessed: 24 June 2012).
[792] Ibidem.
[793] Delegation of the European Union to New Zealand, “Delegation of the European Union to New Zealand”, from: <http://www.delaus.ec.europa.eu/newzealand/EU_NZ_relations/EU_New_Zealand_Overview.htm>, (accessed 25 July 2012).
[794] European Union External Action Service, “Treaties Office Database”, European External Action Service, from: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=5761>, (accessed: 24 June 2012).
For a complete list of all the Treaties signed between the EU and New Zealand, see: <http://ec.europa.eu/world/agreements/searchByCountryAndContinent.do?countryId=2121&countryName=New Zealand>, (accessed 3 September 2012).

E. 1998 Agreement on mutual recognition in relation to conformity assessment between the European Community and New Zealand: It was signed the 26 of June of 1998, the main pursuit of the Agreement was to recognise mutually the respective conformity assessment procedures required for market access to the territory of the Parties.

The Agreement consisted of the framework provisions applicable to all the sectors covered and of seven sectoral annexes on Good Manufacturing Practice for medicinal products, medical devices, low voltage equipment, electromagnetic compatibility, pressure equipment, telecommunications terminal equipment, and machinery. It facilitated trade in those industrial products between the EU and New Zealand. It covered exchanges estimated at more than € 500 million. A parallel agreement was also signed with Australia. These agreements were the first Mutual Recognition Agreements the EU has ever signed with a third country.

F. 1999 Joint Declaration on Relations between the European Union and New Zealand[795]: This document underlined the close ties between the EU and New Zealand, and reaffirm their intention to strengthen their partnership, in particular by working together to:

- Support democracy, the rule of law and respect for human rights and fundamental freedoms,
- Support the maintenance of international peace and security, including through peace support operations,
- Support the role of the United Nations and promote its effectiveness,
- Support international efforts in disarmament and arms control and in non-proliferation,
- Promote free market principles for trade in goods and services and for investment, reject protectionism and work to expand, strengthen and further open the multilateral trading system, particularly by way of a new comprehensive round of multilateral trade negotiations in the WTO,
- Cooperate where appropriate, on development issues relating to countries in the South Pacific,
- Promote sustainable development and the protection of the global environment,
- Foster mutual knowledge and understanding between their people and of their cultures.

To achieve their common goals, the European Union and New Zealand l inform and consult each other in the areas of:

- **An Economic Co-operation**: Both sides committed themselves to active co-operation towards the further liberalisation of international trade in goods and services and of investment, and underline, in this context, the importance of a new, comprehensive round of trade negotiations in the WTO. They reaffirmed the central role of the WTO as the principal mechanism for achieving a fair and equitable, open and rules-based trading system. They acknowledge the need for greater transparency within the WTO system in order to broaden support for the international trading system.

  They promoted contacts and cooperation on issues of mutual interest, including agriculture and fisheries, in line with the existing practice already established between

[795] Delegation of the European Union to New Zealand, "Delegation of the European Union to New Zealand", from: <http://www.delaus.ec.europa.eu/newzealand/EU_NZ_relations/EU_New_Zealand_Overview.htm>, (accessed 25 July 2012).

both sides. They also stressed their attachment to the protection of intellectual property, including geographical indications, in accordance with the provisions of the WTO TRIPS Agreement.

The European Union and New Zealand fostered a positive framework for bilateral trade in goods and services, and business and investment links between the two sides, and support initiatives by the private sector aimed at encouraging such trade links.

- **Political and Security Co-operation**: The European Union and New Zealand underlined the political and economic importance to both sides of the Asia-Pacific region of which New Zealand is an integral part, and commit themselves to consult closely with the aim of promoting peace, stability and prosperity in the area. In so doing, both sides recognised the high priority accorded to the achievement of sustainable development in their respective policies towards developing countries.

- **Other areas of co-operation**: Both sides also endeavoured to strengthen their mutual co-operation in various other areas and in particular will look to:

  - ✓ Co-operate in supporting and promoting the economic, social, political, and security roles of the United Nations, and in strengthening the effectiveness and efficiency of that organisation,
  - ✓ Facilitate further people-to-people and scientific links, and encourage cooperation and exchange in education;
  - ✓ Co-operate on environmental issues of common concern.

Both sides believe that their partnership will greatly benefit from the mutual knowledge and understanding acquired through the full use of all existing consultative fora, and in particular through:

- ✓ Regular political dialogue, including consultations at Ministerial level between the European Union and New Zealand,

- ✓ Consultation as appropriate between officials of both sides to cover relevant aspects of the relationship, including briefings, as necessary, to New Zealand representatives on Common Foreign and Security Policy (CFSP) meetings, and by New Zealand to the Presidency and the European Commission on New Zealand's foreign policy, including in relation to developments in the Asia Pacific region,
- ✓ They finally committed to set up any other mechanism for consultations deemed suitable by both sides in the future that will enhance the relationship

G. <u>The 2004 "Action Plan: Priorities for Future Cooperation"</u>: this was adopted at the EU-New Zealand Ministerial Consultation in March 2004 and comes up for review in 2007. The Action Plan is a more practical translation into cooperation activities of the general objectives listed in the Joint Declaration.

H. 2007 **Joint Declaration on relations and cooperation between the European Union and New Zealand** reviewed in 2009, to include Progress Made So Far[796]:

The Joint Declaration on Relations and Cooperation between the European Union and New Zealand, which was adopted on 21 September 2007, is the basis of the bilateral relationship.

The agreement highlights both parties' commitment to strengthen further their relationship across a broad range of fields.

The European Union (EU) and New Zealand have a number of common goals. Both support:

- Democracy
- The rule of law
- Human rights
- Multilateral organisations, such as the United Nations (UN) and the World Trade Organisation (WTO).

They also have shared interests in tackling key global challenges, such as:

- Climate change
- Sustainable development
- Preserving the environment

They have both committed themselves to working closely together with the aim of promoting **peace, stability and prosperity in the Asia-Pacific region**. In particular, they have a shared interest in maintaining strong relationships with the countries of the Pacific.

The 2007 Joint Declaration on Relations and Cooperation is the overarching political agreement between the EU and New Zealand. It governs and directs activity between the two partners. It begins by saying what the EU and New Zealand have in common and – because of this commonality – the two agree to work together on specific areas.

The present Joint Declaration is the most broad and deep agreement between the EU and New Zealand yet. In breadth, it stretches across 11 themes. Within them, it lists actions to implement over an estimated five years.

I. 2009 the Joint Declaration was reviewed to include Progress made so far[797]:

Until now, overall bilateral relations between EU and NZ are based on joint political declarations: the 1999 "Joint Declaration on Relations between the European Union and New Zealand", followed by the 2004 "Action Plan: Priorities for Future Cooperation", and the 21 September 2007 "EU-New Zealand Joint Declaration on Relations and Cooperation".

Key achievements in the bilateral relationship 2007-2009

-Meetings are held twice a year at ministerial level to follow up and implement the Joint Declaration and to further cooperation between the EU and New Zealand. These **Ministerial**

[796] Delegation of the European Union to New Zealand, "2009 Joint Declaration", European Union, source: <http://www.delaus.ec.europa.eu/newzealand/JointDeclaration2009/EUNZJointDeclaration2009progress.pdf>, (accessed 7 september 2012).
[797] Ibidem.

meetings are attended by the New Zealand Foreign Minister and a troika from the EU – representatives from the EU Presidency, the European Commission and the Council Secretariat.

The first EU-New Zealand Ministerial meeting of the current New Zealand Government was held in Brussels in May 2009.

In principle, Members of both the **European Parliament and New Zealand Parliament** visit each other on alternate years – in 2007 New Zealand MPs went to Brussels; in 2008 MEPs came to New Zealand. Both Participants expect these exchanges to continue on a regular basis.

Opportunities will be sought for further dialogue through bilateral visits at Ministerial and Commissioner level and in the margins of international meetings. This will be supplemented with regular information exchange through diplomatic missions and in other fora.

Annual EU-New Zealand **Senior Officials Meetings** alternate between Brussels and Wellington. Brussels hosted the meeting in 2008. In 2009, discussions were held in New Zealand between European Commission External Relations officials and senior members of the New Zealand Ministry of Foreign Affairs and Trade (MFAT).

The **Delegation of the European Commission to New Zealand** regularly works with the MFAT and other New Zealand Ministries to advance Joint Declaration implementation. Similarly, the New Zealand Mission accredited to the European Communities in Brussels has daily contact with its European counterparts.

- New Zealand and the European Union share common goals of defending human rights, pursuing democracy and good international citizenship. This was put into practice when NZ organised the **Asia-Pacific Regional Media Programme,** which was held in Jakarta, 11-13 November 2008, co-financed by Norway and the European Union. The programme focused on the role of journalism between different cultures, faiths and civilizations.

- As the second largest aid donor in the Pacific, the EU plays a significant role in the region. A **trilateral EU-NZ-Australia meeting** was held in October 2008 to coordinate their combined efforts in the Pacific. The 2009 trilateral will be in NZ. Together, we aim to promote stability and practical, meaningful development in the region.

- Both the EU and NZ are believers in the importance and value of free trade. We are always on the look-out for opportunities to increase our two-way trade. Consequently, **annual trade talks** have been launched and these will be held for the first time in NZ this year.

- On 16 July 2008, the **Science and Technology Cooperation Agreement** was signed, broadening New Zealand's collaboration with the EU's science community. It allows NZ researchers to be eligible for EU programmes and funding.

- The NZ Ministry of Research, Science and Technology and the European Commission have joined forces to establish **FRENZ** (Facilitating Research co-operation between Europe and New Zealand. On 1-2 April 2009, the 1st Science and Technology Joint Committee will be held in Brussels.

- Erasmus Mundus is a scholarship programme open to NZ students of exceptional quality to attend Masters Courses at two or more European universities. In the 2008/09 academic year, 9 NZers were awarded Erasmus Mundus scholarships and are now studying throughout Europe .

- The accession of NZ to the **Lisbon Convention** in February 2008 means that NZ qualifications are now recognised throughout Europe - expanding the employment and study opportunities for New Zealanders in Europe.

- In conjunction with the NZ Ministry of Education, the NZ Delegation of the European Union is creating **modules on the EU for the NZ school curriculum**, which should be available for schools to use in time for the 2010 school year.

- On 29 July 2008, the Institute of Policy Studies Victoria, University of Wellington, in collaboration with the New Zealand European Union Centres Network, hosted the **Post-2012 Burden Sharing Symposium**. The event was attended by senior diplomats, academics, students, public officials, business people and members of the general public. It was so successful we intend to repeat it this year.

- Negotiations between the European Commission and New Zealand a comprehensive **air transport agreement** in Brussels, November 2008. The agreement aims for a reciprocal opening of market access to ensure fair competition as well as high standards of safety, security and environmental protection.

- The **European Union Visitors Programme** is an opportunity for NZ's promising young leaders to visit Europe to gain a first-hand appreciation of the EU's goals, policies and people. Recent recipients include Labour MP Charles Chauvel and NBR journalist Mark Peart.

- The **European Union Centres Network** aims to improve the impact, role and understanding of the European Union within NZ universities. Our key activity this year will be the 20th anniversary of the fall of the Berlin Wall, which coincides with the "Big Bang" - fives years of an enlarged EU.

In view of the legal framework, one can see, as it occurs with Australia, that the first of the two agreements concluded between both occurs in the 1980s and was of a sectorial type limited to the area of mutton, lamb and goat meat. Specifically, it fixed the annual quantities of export of mutton and lamb and goat meat from New Zealand to the Community.

Other accords of a sectorial nature followed the first. In 1984 an agreement was signed related to the cheese trade. It refers to concessions on trade in certain cheese and in 1991 an agreement was signed that broadened the area of trade relations to cooperation in Science and Technology. In 1996, one was signed of vital importance on sanitary measures applicable to trade in live animals and animal products, el objetivo_establishing a mechanism for the recognition of equivalence of sanitary measures maintained by the two Parties consistent with the protection of public and animal health, and to improve communication and cooperation on sanitary measures.

In May 1999, the first Joint Declaration on Relations between the European Union and New Zealand was signed. This document underlined the close ties between the EU and New Zealand, and expressed the determination to their further strengthening.

This Declaration was reviewed in 2007, it is the overarching political agreement between the EU and New Zealand. It governs and directs activity between the two partners. It begins by saying what the EU and New Zealand have in common and – because of this commonality – the two agree to work together on **specific areas**.

1. Global and regional security, counter-terrorism and human rights
2. Movement of people
3. Development cooperation
4. Trade and economic cooperation
5. Science, technology and innovation
6. Education and professional exchanges
7. Environment and climate change
8. Fisheries
9. Transport
10. People-to-people links and outreach activities

The Joint Declaration also stated a consultative framework in which such cooperation could take place:

- Regular political dialogue, including consultations at ministerial level between the EU and New Zealand;

- Consultations as appropriate between officials of both sides to cover relevant aspects of the relationship.

In 2009, the Joint Declaration was reviewed to include Progress made so far. Futhermore, as was the case in Australia, New Zealand is an addressee of the 2007-2013 agreement. Nevertheless New Zealand, as opposed to Australia, has not signed a Partnership Agreement with the EU.

For the same reasons as Australia, from the international relations level, New Zealand should be a key objective of the European Union, with the understanding that subjects still remain to be resolved, primarily in the agricultural arena. Both are natural political, economic and social

partners which share common interests. Politically, the EU and Australia have similar democratic parliamentary systems of government and share many cultural and historic links. They participate in multilateral fora such as the United Nations, where they usually share common ground on the political issues of the day, and the WTO and the OECD; as well as at a regional level in, for example, the ASEAN Ministerial Forum and the Pacific Island Forum. In the Asia Pacific region, New Zealand and the EU take a similar approach in most respects.

ECONOMIC APPROACH:

The geographical and isolationist nature of New Zealand are not inhibiting it to be the internationally well-known and respected player. New Zealand is very active and cooperates mainly in the Pacific region.

Economically, New Zealand has a high degree of prosperity, based on its wealth of natural resources, policies of redistribution and welfare, and stable democratic society. New Zealand like Australia is a receiver of the European Union's financial instruments for industrialised countries for 2007-2013. It is an attractive country for the European Union, especially if the latter wants to be a bigger player on the geopolitical front. New Zealand can facilitate many

regional cooperation agreements with other states in the Asia-Pacific region – an area that has become a priority for the European Union. It has become a very active partner of the region in its development and cooperation thus providing a complex picture of the changing role of the European Union as an international actor. There is no doubt that both must continue intensifying this relationship.

Finally, from a trade point of view, if we consider the numbers shown in the document referenced and if we use a scale to measure the importance of intensifying relations (mainly on the trade front) between the European Union and New Zealand, we can conclude that EU-New Zealand relationship **is slightly asymmetric in terms of relevance**.

The EU is New Zealand's third largest export market, after Australia and Japan, and also its second largest supplier. Overall, the EU is New Zealand's second largest merchandise trading partner[798]. While the United Kingdom remains New Zealand's first export destination in the European Union. New Zealand ranks 38th in terms of trade partners,[799] while Australia is 15th (2012).[800] Trade between the two economies continues. So, according to our classification, we see that for New Zealand to intensify this relationship, it is an **overriding objective;** for the European Union, it is a **medium-high objective** since there are other trading partners above New Zealand with greater priority.

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
NEW ZEALAND- EUROPEAN UNION	**Overriding objective**	2nd
EUROPEAN UNION-NEW ZEALAND	High Objective	38th

If we look at the list of free trade agreements concluded and free trade agreements in negotiation, we see that New Zealand does not figure in either category. Considering the relevance in trade terms, it should be subject to consideration.

[798] Delegation of the EU to New Zealand, "An Overview of European Union - New Zealand Relations", Delegation of the EU to New Zealand, from: <http://eeas.europa.eu/delegations/new_zealand/eu_new_zealand/political_economics_relations/index_en.htm>, (accessed 12 September 2012).

[799] European Commission, "EU Bilateral Trade and with the world Report", European Commission: Directorate General Trade, 23 May 2013, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113391.pdf>, (accessed 1 July 2013).

[800] Ibidem.

INTRODUCTION: INDIAN SUBCONTINENT: The partition: India, Pakistan, Bangladesh

Source: British Broadcasting Corporation (BBC), "After partition: India, Pakistan, Bangladesh", BBC News, 8 August 2007.

1. Dominion of **Pakistan** created on 14 August 1947. Became world's first Islamic Republic in 1956. New city of Islamabad replaced Karachi as capital in the mid 1960s.

2. British **India** was made up of provinces, princely states and state agencies. An independent Union of India was created on 15 August 1947 and renamed the Republic of India in 1950.

3. Punjab was split in two. Majority Muslim western part became Pakistan's Punjab province; majority Sikh and Hindu eastern part became India's Punjab state.

4. Bengal divided into Indian state of West Bengal and East Pakistan, which became East Bengal in 1956 and Bangladesh achieved independence after a civil war in 1971.

ECONOMY AND WELFARE

India, Pakistan and Bangladesh have come a long way since the British left them. Of the three nations, India has seen by far the most dramatic growth. In terms of economic resources, India did much better than Pakistan out of partition. It inherited 90% of the subcontinent's industry and the thriving cities of Delhi, Bombay (now Mumbai) and Calcutta.

It is now one of the world's fastest developing economies with average growth rates of 8% over the past three years. It is also emerging as a serious global player in information technology, telecommunications and pharmaceuticals.

By contrast, Pakistan's economy which was based on agriculture and controlled by feudal elites, was left with 17.5% of the British colonial government's financial reserves after partition. Nevertheless, it has seen sustained growth since the early 1950s despite internal strife, conflict with India, US sanctions, global recession and, more recently, the 2005 earthquake.

The economy really took off in 2000 after reforms that saw public sector enterprises privatised, relaxation of regulations on external trade and reform of the banking sector. Thanks to economic growth and foreign investment, all three states have seen expansion and improvement of health and education services. Life expectancy has increased, infant and maternal death rates have dropped, and literacy rates risen.

But poverty is still widespread in all three nations, which feature in the top 10 most populous in the world. Almost half the population in Bangladesh lives on less than $1 a day and Pakistan's social indicators still lag behind countries with comparable per capita incomes. A substantial number of people living in India's villages remain illiterate and impoverished, raising concerns about the inclusivity of the economic boom.

Powerful regional and caste-based parties have empowered many poor people whose progress was hampered by the ancient Hindu caste system, but that system still impedes widespread social progress[801].

3. INDIA:

TERRITOARIAL AND HISTORICAL APPROACH

According to 2011 oficial data, India has a territory of 3.29 million sq. km and a population of 1.17 billion. India was the first Republic becoming a membre State of the Commonwealth[802].

With the decline of the Moghul Empire into separate feudal and often feuding states, new invaders, Portuguese, Dutch, French and British, entered the Indian Ocean. In 1690 the British East India Company set itself up at Calcutta to trade in clothes, tea and spices. The company had its own private army, with which it ousted the French from Madras in 1748. French plans for control of the subcontinent were finally ended by decisive British victories in 1756–63. One by one, the company then conquered the Indian states until it had control of virtually the whole subcontinent by 1820.

Those states which remained unconquered entered into alliance with Britain. Sporadic resistance to the rule of the East India Company culminated in a major uprising in 1857, known to the British as the Indian Mutiny.

India's importance to Britain was as more than a source of raw materials and a market for British manufactured goods. India underpinned Britain's imperial influence and strength, the 'Jewel in the Crown' of the British Empire.

However, the independence movement not only brought an end to British rule, but also set the pattern for resistance to colonialism everywhere. The Indian National Congress was set up in 1885; Mohandas (Mahatma) Gandhi became its leader after 1918 and set it on its course of non-violent non-co-operation with the foreign rulers, Gandhi's methods of mass mobilisation greatly.

[801] British Broadcasting Corporation (BBC), "After partition: India, Pakistan, Bangladesh", BBC News, 8 August 2007, from: <http://news.bbc.co.uk/2/hi/in_depth/629/629/6922293.stm>, (accessed: 17 September 2012).
[802] Government of India, India- Fact Sheets, Government of India, from: <http://www.hcindia-au.org/pdf/India%20Fact%20Sheet%202010-2011.pdf>, (accessed 7 October 2012).

Very limited self-government was granted to India in 1919. This was updated in 1935 with a new act which organised the British Indian Empire into a partially self-governing federation, with the plan to achieve full Dominion Status for India in the near future. Although responsible self-government was promised to India's early as 1919, it was only partially achieved by the time of the Second World War. India remained a Dominion under the India Act of 1935 until independence in 1947[803].

As we already explained, the Second World War and its aftermath changed the face the modern world forever. It also changed the nature of the British Commonwealth, marking its transition to a multiracial association of sovereign and equal states. That process began with India and Pakistan's' independence in 1947. Over the next five decades a number of milestones followed, reshaping the Commonwealth into its present form.

Foremost among these milestones was the London Declaration on 1949. With India's desire to become a republic yet remain in the Commonwealth, the principle of Commonwealth membership had to be rethought. Would it remain based on a 'common allegiance to the Crown' as stated in the Balfour Report? A conference of Commonwealth Prime Ministers in 1949 revised these criteria and decided to welcome India as the Commonwealth's first republican member. They all agree, however, to recognise King George VI as the 'symbol of their free association and thus Head of the Commonwealth'. At the same time, the word 'British' was dropped from the association's title to reflect the Commonwealth's new reality[804].

Territorial Organisation: India is made up by 29 states (including the Delhi National Capital Territory), six union territories, and the Andaman and Nicobar Islands in the Bay of Bengal and the Lakshadweep Islands in the Arabian Sea.

THE EU, INDIA AND THE COMMONWEALTH RELATIONSHIP:

India's relationship with the European Union is different from the relationship that it has with Australia and New Zealand. India started with a similar position as the aforementioned countries, that is, it was reticent about the entry of the United Kingdom into the then European Communities. Afterwards, the relationship would start evolving differently.

> "When Prime Minister Macmillan consult with Commonwealth governments before formally announcing Britain's application at the end of July 1961. Miriam Camps has suggested that Macmillan hoped thereby to obtain some expression of approval for his government's proposed course of action.[805] If so, he was to be disappointed.
>
> The Indian Government spoke of "serious damage" to Indian exports (as, *mutatis mutandis*, did the Government of Pakistan), and warned that British membership "might weaken existing Commonwealth links[806]".

Once the negotiations on the United Kingdom's access to the European Communities began, the United Kingdom tried to protect their trade interests on the whole with the Commonwealth and with the member states. Nevertheless, it was not able to protect them as

[803] The Royal Commonwealth Society, "History of the Commonwealth", The Royal Commonwealth Society, from: <http://www.rcs.ca/commonwealth/history.html>, (accessed 5 November 2012).
[804] Ibidem.
[805] CAMPS, M., *Britain and the European Community, 1955-63,* Oxford, Oxford University Press, 1964, p.326.
[806] London South Bank University, "The Commonwealth during the period of Britain's first application to join the EEC", The European Institute Research Papers, from: <http://bus.lsbu.ac.uk/resources/CIBS/european-institute-papers/papers1/295.PDF>, (accessed 8 July 2012).

to the degree they need and because of this, would be accused of a lack of interest. It is normal, therefore, that their reaction was that of turning away from it by looking for new formulas of support and involving themselves in other trade networks.

It should be emphasised that the United Kingdom's position was not easy. The negotiating parties were not on equal footing. The United Kingdom found itself in a weak position, a strengthened De Gaulle would twice veto their entry claiming that the United Kingdom's demands were excessive.

As to India, its interests would be damaged with regard to the United Kingdom's entry into the European Communities, especially in relation to the textile sector. The Communitarian protectionist policy shocked India's interests. This aspect was captured at the time of the access negotiations.

> "For the purposes of negotiation, Commonwealth exports were divided into five broad categories: raw materials, high-wage-cost manufactures, low-wage-cost manufactures, temperate agriculture, and tropical agriculture. As negotiations proceeded, these broad categories were further broken down, on a country-by country and product-by-product basis.
>
> Once Commonwealth "association" and "Morocco protocols" had been ruled out, no attempt was made to negotiate a "package" for the Commonwealth as a whole, or for individual Commonwealth countries (except where the offer of "associated status" was made).
>
> Raw materials posed few problems, as most were subject to low- or zero-rated common tariffs. High-wage-cost manufactures posed obvious problems of competition. Britain's request for continued duty-free entry was rejected. Apart from a few items of little importance, on which it was agreed to reduce the common tariff to zero, all such products were, under the terms of an agreement reached by May 1962, to be subjected to a *décalage* - i.e., a graduated imposition of the common external tariff between the date of British entry and 1 January 1970.
>
> Low-wage-cost manufactures posed even greater problems. On the one hand, the threat to European industries was obvious. **On the other, the EEC's protectionism (which resulted in consistently favourable balances of trade with the Indian**
>
> **subcontinent and elsewhere) clearly worked against the interests of developing countries**. Here, again, the British team was unable to gain substantial concessions.
>
> Tariffs on handloom products and a few other items were to be reduced to zero, but for the most part all that was offered was a *décalage*, together with an undertaking to negotiate general trade agreements of an unspecified nature. A British request to delay implementation of any tariffs until such agreements were reached "was not favourably received by the Six".
>
> Moreover, **cotton textiles and jute products - mainstays of the Indian and Pakistani export sectors - were to be subjected to the full tariff by the beginning of 1967**; and no agreement on Hong Kong's exports was reached, despite a British offer to apply tariffs on the same timetable as applied to India and Pakistan.

> Britain's request for a zero tariff on tea was accepted by "the Six", but her requests for other changes to the tariffs on tropical agricultural products were rejected, on the grounds that they "were in fact directed at a complete transformation of the common tariff relating to tropical products". In the case of the Caribbean and African countries, associated status was the main concession on offer from the EEC. The alternative was a *décalage* and a vague commitment to future trade agreements[807]".

As with Australia and New Zealand, the relations between India and the European Union have gone through different stages that have progressed upward due largely to India's economic orientation based more on free trade and private initiatives.

India- EU relations go back to the early 1960s. India was among the first countries to establish diplomatic relations with the (then) EEC. Nevertheless, the most crucial moment of the 1990s arrived when both intensified their relations and decided to broaden their cooperation to other fields. Nevertheless India always has showed itself contrary to the EU protectionist policies, especially regarding textile industry and agriculture issues. In keeping with this same line, Idesbald Goddeeris notes that,

> "The EU-India relationship intensified in the last decade of the 1990s, following the collapse of the Eastern Bloc and India's new economic policy, which oriented more on free trade and private initiatives. During this period, the EU lacked a clear foreign policy, but deepened its economic co-operation and started dialogue with Asian countries, especially with China. This stimulated India to spread its attention – so far largely focused on the U.S. – and to include the EU in its sphere of interest.
>
> In the first decade of the 21st century, this growing cooperation was institutionalized. In 2000, the first annual EU-India summit was held. In 2004, both partners signed a Strategic Partnership Agreement. In 2005, they agreed on a Joint Action Plan, which was revised in 2008. Meanwhile, in 2007, they had started negotiations on a free trade agreement (FTA), which is expected to be completed in 2011. Simultaneously, collaboration has expanded to other fields, such as security.
>
> This is not to say that India and the EU have turned into close partners. The EU trade with China is the six fold of the one with India, the latter only being the 9th EU export partner. The EU does not play an important role in Asian security and the U.S. remains India‟s first partner. The FTA is likely to be shallow and meets with much concern in India, particularly in its two economic key sectors of the service sector (which provides 60% of the GDP) and agriculture (which employs 60% of the population). India and the EU could be rivals in the context of energy (e.g. the TAPI [Trans-Afghanistan Pipeline] vs. Nabucco Pipeline or Turkey-Austria gas pipeline). There is also disagreement in the WTO.
>
> Its Doha Development Round since 2001 has not yet led to major results, because of the differences between the developed nations (including the EU) and the major developing countries, in which India takes a leading role. **India opposes the European agrarian subsidies and is frustrated about the fact that the EU supports the poorest developing countries more than the less developing ones** (i.e. the rising economies).

[807] London South Bank University, "The Commonwealth during the period of Britain's first application to join the EEC", The European Institute Research Papers, from: <http://bus.lsbu.ac.uk/resources/CIBS/european-institute-papers/papers1/295.PDF>, (accessed 8 July 2012).

> Finally, there is also discord after five EU member states, including France and Germany, opposed to India's bid for a permanent seat in the UN Security Council (together with Germany, Japan, and Brazil: the so-called G4). The lack of a univocal, active and clear EU policy towards India is an obvious element impeding the further intensification of its relationship with India. Additionally, one sees the need for more collaboration and exchange, not only in academia, but also in media and business".

India-EU relations have developed substantially; the milestone in their relationship was the adoption of the 1993 Declaration. Since then, an extensive bilateral political dialogue has evolved, which includes regular annual summits, Troika Ministerial and Senior Official level meetings covering a wide range of issues. In the economic sphere, ties have expanded and we have worked closely together to strengthen the multilateral trading system and to pursue a constructive dialogue on trade and investment and economic cooperation.

As the Joint Declaration states[808], India and the EU, as the largest democracies in the world, share common values and beliefs that make them natural partners as well as factors of stability in the present world order. They share a common commitment to democracy, pluralism, human rights and the rule of law, to an independent judiciary and media. India and the EU also have much to contribute towards fostering a rule-based international order - be it through the United Nations (UN) or through the World Trade Organisation (WTO). They hold a common belief in the fundamental importance of multilateralism in accordance with the UN Charter and in the essential role of the UN for maintaining international peace and security, promoting the economic and social advancement of all peoples and meeting global threats and challenges.

POLITICAL AND LEGAL APPROACH:

Chronologically the bilateral relationship is set in the context of **the main** following agreements[809]

A. 1975 Agreement between the European Economic Community and the Republic of India on cane sugar[810], entered into force the 15th July 1975, this is a sectorial and basic agreement relating to cane sugar which is adapted every year in respect of the quantity of sugar which the Community undertakes to import and the quantity which India undertakes to deliver to it in turn (by period of delivery of 12 months from 1 July to 30 June). Concluded for an unlimited period (Art. 10) with arrangements agreed annually. The delivery period is 12 months from 1 July to 30 June inclusive (Art. 4). Quantities and prices are negotiated separately. (Parallel arrangements to those established for certain ACP countries).

The aim of this agreement was to purchase and import, at guaranteed prices, for an indefinite period a specific quantity of cane sugar, raw or white, which originates in India and which India undertakes to deliver to the European Community.

From 01/07/1981, the quantity of preferential sugar was reduced to zero by the Commission pursuant to the provisions of Article 7(2) of the Agreement, but an Agreement in the form of

[808] Delegation of the European Union to India, "Delegation of the European Union to India", from: <http://eeas.europa.eu/delegations/india/index_en.htm>, (accessed 10 November 2012).
[809] European External Service, "India", European External Action Service, from: <http://eeas.europa.eu/india/index_en.htm>, (accessed 10 November 2012).
[810] European Union External Action Service, "Treaties Office Database", European External Action Service, from: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=5761>, (accessed: 24 June 2012).

an exchange of letters signed on 27/04/1984 re-established 'an agreed quantity of preferential sugar' for India.

The last Agreement in the form of an Exchange of Letters between the European Community and the Republic of India on the guaranteed prices for cane sugar for the 2005/2006 delivery period was signed on 27/10/2006.

B. The 1993 Cooperation Agreement between the European Community and the Republic of India on partnership and development – and the 1994 Declaration of the Community concerning tariff adjustments – These Declarations of the Community and India are the current legislative framework for cooperation and opened the door to a broad political dialogue, which evolves through annual summits, regular ministerial and expert level meetings, they entered into force the First of August of 1994[811].Concluded for an initial period of 5 years the co-operation agreement is automatically renewable unless notice of termination is given (Article 29).

The Agreement is a wide-ranging 3rd generation agreement, well beyond trade and economic co-operation. It provides for increased cooperation, notably in trade and commercial cooperation, but with no area specifically ruled out.

The list of areas for cooperation is very exhaustive (Article 4). Cooperation also extends to industry, services (Article 5), the private sector (Article 6), energy and communications. Article 9 concerns standardisation and the removal of technical barriers to trade, while intellectual property and investment are to be given suitable protection. Other areas of cooperation include: agriculture and fisheries, tourism, science, culture, etc. Development cooperation, though not quantified (Article 21), remains important, with stress on South-South and regional cooperation.

Of particular significance are the future developments clauses, and the human rights and drug abuse provisions, among others.

The objectives of the Agreement are:

- To enhance and develop, through dialogue and partnership, the various aspects of cooperation between the Contracting Parties in order to achieve a closer and upgraded relationship. Focusing in particular on:
- Further development and diversification of trade and investment in their mutual interest, taking into account their respective economic situations;
- Facilitation of better mutual understanding and strengthening of ties between the two regions in respect of technical, economic and cultural matters;
- Building up of India's economic capability to interact more effectively with the Community;
- Acceleration of the pace of India's economic development, supporting India's efforts in building up its economic capabilities, by way of provision of resources and technical assistance by the Community within the framework of its cooperation policies and regulations, in particular to improve the living conditions of the poorer sections of the population;
- Development in their mutual interest of existing and new forms of economic cooperation directed at promoting and facilitating exchanges and connections between their business communities, taking into account the implementation

[811]Ibidem.

of Indian economic reforms and opportunities for the creation of a suitable environment for investment;

- Support of environmental protection and sustainable management of natural resources.

C.1996- Memorandum of Understanding between the European Community and the Republic of India on arrangements in the area of market access for textile products[812], entered into force the 8th of March of 1996, this is a sectorial Agreement signed between the EEC and India in order to set the agreed arrangements in the area of market access for textile products for both Parties and to hold consultations periodically in order to ensure proper implementation of this Memorandum of Understanding.

D. 2001 Agreement for scientific and technological cooperation between the European Community and the Government of the Republic of India, entered into force the 14th of October of 2002 Cooperation under this Agreement covers all activities of research, technological development and demonstration. It emphasises on the appropriate protection of intellectual property rights, in the context of active cooperation and information exchange in a number of scientific and technological areas under the Cooperation Agreement between the Community and India on Partnership and Development signed on 20/12/1993. The aim of the agreement is to encourage and facilitate cooperative research and development activities in science and technology fields of common interest between the European Community and India.

E. In 2004, (Council of the EU on 11th October, 2004) India became one of the EU's "Strategic Partners"[813] "India and the EU representing the largest democracies in the world reiterate that their partnership is based on the sound foundation of shared values and beliefs. Our common commitment to democracy, pluralism and rule of law and to multilateralism in international relations, is a factor for global stability and peace. We recognise that **our partnership has evolved over the years from economic and development cooperation**, to acquire higher political and strategic dimensions, and that this should be further strengthened through more intensive dialogue".

F. 2005, the Joint Action Plan which was revised in 2008[814] The EU-India Joint Action Plan (JAP) has provided an agreed measure of progress, a mechanism for coordination and a spur to stronger cooperation.

The period since its adoption was marked by worldwide growth of interdependence. Climate change, terrorism and instability remaining as much of a threat as in 2005 and new challenges were arisen. The unprecedented pressure on energy and natural resources, including foodstuffs, poses new difficulties and calls for immediate action, as well as long-term structural measures. In light of these challenges, and on the basis of the shared values expressed in the 2005 JAP, the EU and India built on the achievements of the past three years and ensured further progress in the coming period.

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[812] European External Service, "India", European External Action Service, from: <http://eeas.europa.eu/india/index_en.htm>, (accessed 10 November 2012).

[813] The Council of the European Union, "Fifth India-EU Summit", Joint Press Statement, 8 November 2004, 14431/04 (Presse 315).

[814] European External Action Service, "EU-INDIA SUMMIT: Global partners for global challenges: The EU-India Joint Action Plan", Marseille, 29 September 2008, from: <http://eeas.europa.eu/india/sum09_08/joint_action_plan_2008_en.pdf>, (accessed 6 December 2012).

The issues to be revised were:

- **Political dialogue and cooperation have been strengthened:** Better political cooperation between the EU and India has been a notable achievement. Existing channels for dialogue have been consolidated since 2005, with a regular calendar of Summits, ministerial meetings, and expert level meetings on subjects such as human rights and consular issues. In addition, new channels have been established, such as the annual security dialogue. New formats for dialogue have also been created. **Trade, investment and economic policy dialogue have expanded:** In the last five years, trade has more than doubled, and bilateral investment has increased ten-fold. The parties launched negotiations for a bilateral trade and investment agreement in 2007. In specific policy dialogues on trade and investment, more progress has to be made.

  New dialogues have been created on macroeconomic policy and on financial services, which underline the importance of financial and monetary stability, and of inclusive growth, in particular in the context of price rises associated with food, basic metals and energy.

- **Scientific and technical co-operation has developed:** an EU-India Energy Panel has been established. The International Thermonuclear Experimental Reactor (ITER) Agreement, to which both India and the EU are parties, has come into force. Science and technology activities have intensified and exchanges have been elevated to ministerial level, with increased co-operation across the board, shared partnerships with co-investment in research and technology development, and the renewal of the EU-India Science and Technology Agreement.

- **Cultural and people-to-people links have deepened:** Specific funding has been made available to increase the participation of Indian students in European graduate programmes. The Community Culture Programme has launched a special action for EU-India cultural co-operation for the period 2007-2009. Work continues on promoting civil society exchanges and people-topeople interaction in diverse fields. There is a need for more progress in the area of culture and in the shared ambition of establishing chairs of study in both partners' academic institutions. Further effort is needed to facilitate the movement of persons, based on a comprehensive approach to migration issues.

The EU and India **identified the following new activities to complement the 2005 India-EU Joint Action Plan**, with the objective of promoting international peace and security and working together towards achieving economic progress, prosperity and sustainable development:

1. **PROMOTING PEACE AND COMPREHENSIVE SECURITY**
2. **PROMOTING SUSTAINABLE DEVELOPMENT**
3. **PROMOTING RESEARCH AND TECHNOLOGY**
4. **PROMOTING PEOPLE-TO-PEOLE AND CULTURAL EXCHANGES**

G. 2006 Agreement in the form of an Exchange of Letters between the European Community and the Republic of India on the guaranteed prices for cane sugar for the 2005/2006 delivery period, entered into force the 27th of October of 2006. The agreement on sugar between the European Community and the Republic of India provide for a Community undertaking to purchase and import at guaranteed prices cane sugar which India cannot market in the Community at prices equivalent to or higher than the guaranteed prices. The aim of this

agreement is to fix the guaranteed prices for cane sugar for the delivery periods 1 July 2005 to 30 June 2006.

For the 2005/2006 delivery period, the Commission has negotiated guaranteed prices with the ACP States and the Republic of India pursuant to Articles 5(4) of Protocol 3 on ACP sugar and the agreement with India on cane sugar as well as in conformity with the guidelines for negotiations given by the Council on 22 April 2002.

Similar agreements on the guaranteed prices for cane sugar for the 2005/06 delivery period in the form of an exchange of letters were signed between the European Community, of the one part, and Barbados, Belize, the Republic of the Congo, Fiji, the Cooperative Republic of Guyana, the Republic of Côte d'Ivoire, Jamaica, the Republic of Kenya, the Republic of Madagascar, the Republic of Malawi, the Republic of Mauritius, the Republic of Uganda, the Republic of Surinam, Saint Christopher and Nevis, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Trinidad and Tobago, the Republic of Zambia and the Republic of Zimbabwe and, of the other part.

H. 2007 Agreement renewing the Agreement for scientific and technological cooperation between the European Community and the Government of the Republic of India, entered into force 30th of November 2007. This Agreement renewed the Agreement on cooperation in science and technology between the European Community and the Government of the Republic of India, signed in New Delhi 23/11/2001 and entered into force on 14/10/2002.

Article 11 b) of the 2001 Agreement provides that it is concluded for an initial period of 5 years which can be renewed, subject to the mutual agreement of the Parties. At the EC-India S&T Steering Committee both Parties expressed their wish to renew the agreement. It was suggested that, as the material content of the current agreement is identical to the material content of the preceding agreement, it was suggested to apply a simple, one-step procedure (a single procedure and a single act concerning both signature and conclusion).

The Agreement is concluded for an initial period of five years. It may be renewed by mutual agreement between the Parties after evaluation during the last year of each successive period. The cooperation under this Agreement may cover all activities of research, technological development and demonstration. It emphasises on the appropriate protection of intellectual property rights.

This Agreement's aim is to expand the cooperation in scientific and technological research with a view to strengthening the conduct of cooperative activities in areas of common interest and to encouraging the application of the results of such cooperation to their economic and social benefit.

I. The Country Strategy Paper (CSP) for India 2007-2013 (€470 million in total – a yearly average of €67 million) concentrates EU funds on health, education and the implementation of the Joint Action Plan, in 2010 was revised Mid-Term Review.

India has witnessed rapid economic growth in the past decade, and it has now become one of the emerging economies in Asia. As India continues on this path, as most observers expect it to, the **need for development assistance will gradually decrease**, and future EC Country Strategy Papers (CSP) should increasingly focus on other areas of co-operation. This **CSP (2007-2013)** should therefore be regarded as **transitional**, showing a progressive shift from development assistance towards support to pro-poor sector reform policies and other areas of mutual interest, including economic co-operation.

EC cooperation for 2007-13 will address these challenges through a **two-pronged** approach:

• **Assist India in meeting the MDGs by providing budget support to the social sector** (health/education), encompassing best practice models in good governance, decentralized decision-making and development, including innovative methods for improved service delivery to address poverty, gender issues, institutional reforms and public sector management.

• **Implement the EU-India Partnership through an ambitious Action Plan** with a view to supporting India's pro-poor sector reform policies, promote dialogue in areas of mutual interest and enhance economic co-operation.

Under this Action Plan, developed between the EU and India and agreed at the 6th EU-India Summit on 7 September 2005, specific dialogues and actions are envisaged for a wide range of areas where the EU and India have jointly identified a scope for enhanced co-operation leading to better governance and policy-making. The Action Plan foresees initiating **economic sectoral dialogues** in a variety of sectors. It also foresees the strengthening of activities in **civil society & cross cultural cooperation**, as well as **academic and education exchanges**.

This CSP, therefore, will focus on these two priorities, namely:

1. Support for the social sectors (health and education), and

2. Support to the economic, academic, civil society and cultural activities foreseen in the Action Plan.

J. 2008 Agreement between the European Community and the Government of the Republic of India on certain aspects of air services[815], entered into force the 28 of September 2008, this Agreement aims to replace certain provisions in existing bilateral agreements between EU Member States and India with a Community agreement recognising that consistency between European Community law and provisions of bilateral air service agreements between Member States of the European Community and India will provide a sound legal basis for air services between the European Community and India and preserve the continuity of such air services.

K. 2009- Agreement for cooperation between the European Atomic Energy Community and the Government of the Republic of India in the field of fusion energy research[816], entered into force the 6th of November of 2009, The objective of this Agreement is to intensify cooperation between the Parties in the areas covered by their respective fusion programmes, on the basis of mutual benefit and overall reciprocity, in order to develop the scientific understanding and technological capability underlying a fusion energy system.

L. 2011- Memorandum of Understanding on the Multi-Annual Indicative Programme (MIP) 2011-2013 was signed between the EU and India in February 2011. A review confirmed the need to further support social sectors like health and education, in particular secondary education and vocational training. For 2011-2013, the EU intends to fund fellowships for Indian

[815] European Union External Action Service, "Treaties Office Database", European External Action Service, from: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=5761>, (accessed: 24 June 2012).
[816] Ibidem.

students and professors (Erasmus Mundus), as well as projects in the fields of energy, environment and trade related technical assistance.

M. Current efforts are centred on:

- Developing cooperation in the security field (in light of the EU-India Declaration on International Terrorism)

- Ongoing negotiations for a Free Trade Agreement; and

- Implementation of the joint work programme on climate change adopted at the Summit in 2008.

Looking at the regulatory information, one can see that India first concluded sectorial type agreements in the 1970s, which restricted trade on cane sugar. It was specifically adapted every year as to the quantity of sugar for the Community to import and the quantity which India could deliver (a 12-month delivery period from 1 July to 30 June). This would be revised and concluded in 2005. More of these types of agreements would be signed although they would have to wait until the middle of the 1990s to produce many of them. Meanwhile, Australia and New Zealand concluded these types of agreements in the 1980s.

From this first agreement, we see a qualitative jump at the signing of the 1993 Cooperation Agreement between the European Community and the Republic of India on partnership and development – and the 1994 Declaration of the Community concerning tariff adjustments.
They are two relevant agreements of a general scope that will establish the current legislative framework for cooperation, so as a result of these, an extensive bilateral political dialogue has evolved, which includes regular annual summits, Troika Ministerial and Senior Official level meetings covering a wide range of issues. In the economic sphere, ties have expanded and we have worked closely together to strengthen the multilateral trading system and to pursue a constructive dialogue on trade and investment and economic cooperation.

A list of sectorial agreements preceded these general agreements. One of the most important is the one signed in 1996 concerning textile products, which is one of the most contested areas between the parties. The objective of this agreement was to set the agreed arrangements in the area of market access for textile products for both Parties. Other accords make reference to the areas of cooperation in the field of science and technology in 2001 which was renewed in 2007; Joint Vision Statement for promoting cooperation in the field of information and communications technology in 2001; customs cooperation agreement in 2004; Memorandum of Understanding on Cooperation on Employment and Social Affairs in November 2006; Horizontal Civil Aviation Agreement in 2008; Joint Declaration in field of Education in 2008; the 2008 Joint Work Programme on Energy, Clean Development; Joint Declaration on Multilingualism in March 2009 and Agreement in the field of nuclear fusion energy research in November 2009; Joint Declaration on Culture in December 2010 and Climate Change at the next India-EU Summit in 2011. The Joint Statement also called for an early conclusion of the India-EU Agreement for Research and Development Cooperation in the Peaceful Uses of Nuclear Energy; a swift finalization of the agreement on satellite navigation initialed in 2005; and an early implementation of the civil aviation agreement.

In 2004, India became one of the EU's "Strategic Partners", the Council of the EU on 11th October, 2004 decided to endorse the proposal to upgrade the India-EU relationship to the level of a 'Strategic Partnership'. This Partnership Agreement has been interpreted as a

qualitative transformation in the way of engaging as equal partners and working together in partnership with the world at large. As a result of this Agreement, they both,

- Intensified their dialogue,
  - ✓ by actively strengthening existing mechanisms and making them more efficient as well as,
  - ✓ initiating dialogues in new areas being considered for cooperation.

- They also set up mechanisms in order to,
  - ✓ effectively implement the decisions taken, with a view to
  - ✓ ensuring a more sustained and cohesive approach to issues affecting India and the EU over an increasingly wide range of sectors.

Another important milestone in their relations was the adoption in 2005 of the Joint Action Plan which was revised in 2008, provided for Strengthening Dialogue and Consultation mechanisms; Deepening political dialogue and cooperation; Bringing together People and Cultures; Enhancing Economic Policy Dialogue and Cooperation; and Developing Trade and Investment.

The areas of mutual interest with a view to increasing cooperation can be summarized as follows:

1. **POLITICAL AND DIALOGUE COOPERATION**

- PLURALISM AND DIVERSITY
- DIALOGUE AND REGIONAL COOPERATION
- DEMOCRACY AND HUMAN RIGHTS
- EFFECTIVE MULTILATERALISM
- PEACE AND INTERNATIONAL SECURITY
- DISARMAMENT AND NOT PROLIFERATION OF WEAPONS MASSIVE DESTRUCTION
- DIALOGUE ON REGIONAL COOPERATION

2**. CULTURE AND SOCIAL COOPERATION**

- MIGRATION AND CONSULAR ISSUES
- PARLIAMENTARY EXCHANGES
- EDUCATION & ACADEMIC EXCHANGES
- CIVIL SOCIETY EXCHANGES
- CULTURAL COOPERATION
- INCREASING MUTUAL VISIBILITY

3. **ECONOMIC POLICY DIALOGUE AND COOPERATION**

- INDUSTRIAL POLICY
- SCIENCE AND TECHNOLOGY
- FINANCE AND MONETARY AFFAIRS
- ENERGY
- INFORMATION AND COMMUNICATION TECHNOLOGIES
- TRANSPORT
- SPACE AND TECHNOLOGIES
- PHARMACEUTICALS AND BIOTECHNOLOGY
- AGRICULTURE

- CUSTOMS
- EMPLOYMENT AND SOCIAL POLICY
- AGRICULTURE

4. **ENVIRONMENT**

- CLEAN DEVELOPMENT AND CLIMATE CHANGE

5. **DEVELOPING TRADE AND INVESTMENT**

- DEVELOPMENT COOPERATION
- INTELLECTUAL PROPERTY RIGHTS
- TECHNICAL BARRIERS TO TRADE (TBT)/SANITARY AND PHYTOSANITARY (SPS) ISSUES
- SERVICES
- PUBLIC PROCUREMENT

The relations between the two have been intensifying, especially in the last few years and there are numerous high-level encounters and meetings, such as:

- India and the EU also interact regularly at **the Foreign Ministers level**. The 21st India-EU Ministerial Meeting took place in New Delhi on 22 June 2010. External Affairs Minister Shri S.M. Krishna led the Indian delegation. The EU side was led EU High Representative Ms. Catherine Ashton. India-EU Relations, regional issues both around Europe and India and global issues including climate change, terrorism, global financial crisis and energy security were discussed at the Ministerial Meeting.

- There is a regular mechanism of **Senior Officials Meeting** (SOM) between India and the EU. Nineteen SOMs have been held till date. The last meeting took place on 21 October, 2010 in Brussels.

- **Parliamentary Interaction:** The European Parliament (EP) has established a India Delegation in the European Parliament which has 20 members and 20 substitute in the delegation. Mr. Graham Watson, British MEP is the current Chairperson.

ECONOMIC APPROACH:

Finally, from a trade viewpoint, if we consider the data shown in the document referenced and according to our classification for measuring the importance of intensifying relations (mainly on the trade front) between the European Union and India, we can conclude that this relationship is the most simetrical in terms of trade relevance of the eleven nations analysed.

The European Union, as a bloc of 28 countries, is India's largest trading partner and for the European Union, India is one of its top ten partners in trade in goods. Specifically, it is 9th in the ranking of major trade partners in (2012),[817] a position much high than New Zealand.

[817] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from:
<http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).

Thus, we see that it is an **overriding objective** for India to deepen this relationship. It is also an **overriding objective** for the European Union because India ranks among its top ten major trade partners.

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
INDIA- EUROPEAN UNION	**Overriding objective**	1st
EUROPEAN UNION-INDIA	**Overriding objective**	9th

If we look at the list of free trade agreements concluded and free trade agreements in negotiation we see that it is in the negotiation phase and, in short, it will be concluded. Both the European Union and India know that it is of vital importance to continue deepening their relationships beyond the trade front.

Free Trade Agreement under negotiations

The parameters for an ambitious FTA were set out in the report of the EU-India High Level Trade Group in October 2006, which was tasked with assessing the viability of an FTA between the EU and India. Other studies reinforced the economic potential of an FTA between the EU and India.

Negotiations for such FTA were launched in June 2007 and, so far, twelve negotiating rounds have been held. The last EU-India Summit took place on February 2012 in New Delhi, han surgido algunas divergencias, "these include European labour standards and GATS Mode 4 liberalisation; Indian generic medicine production and EU interests in patent protection; EU agricultural subsidies and their impact on the Indian dairy sector; the human rights and democracy dimension of the EU's foreign policy; and transparency issues of the negotiation process". All this has resulted in negotiations lasting longer than planned.

4. PAKISTAN

TERRRITORIAL AND HISTORICAL APPROACH

According to 2011 oficial data, Pakistan has a territory of 796,095 sq km and a population of 190,291,129 inhabitants[818].

Pakistan's history is also inextricably linked to India's history so that much of the information shown in the previous section is applicable to the Pakistani case. In 1947, the jewel of the British Empire, India, was granted independence, divided along religious lines and two nations were born - India and Pakistan. After independence, India and Pakistan had to devise new ways of running their countries and creating nation states. Pakistan has been led largely by military rulers over the last 60 years.

In 1949, the British Commonwealth was replaced by the Commonwealth of Nations with the adoption of the London Declaration in which members were no longer required to have the British Monarch as sovereign, but could have their own head of state and were required to

[818] USA Central Intelligence Agency (CIA), "Pakistan", the CIA World Fact Book, from: <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>, (accessed 8 December 2012).

only recognise the British Monarch as Head of the Commonwealth. On 26 January 1950, India became the first country to qualify under this new criterion after becoming a republic. Pakistan was the second republican member in 1956. While Pakistan was created as a Muslim state after Jinnah's insistence that Muslims of the former colony needed a separate country of their own, Hindu-majority India was, and formally remains, secular, and also the world's largest democracy.

In 1956, Pakistan turn into a federal republic and became the secon Republic to be included in the Cmmonwealth as a member state[819]. In 1972 Pakistan withdrew from the Commonwealth but rejoined in 1989.

Territorial organisation: Pakistan is divided into 4 provinces, Sindh, Balochistan, Punjab and Khyber Pakhtunkhwa (formerly known as the North West Frontier Province). Additionally, Pakistan also has 3territories, the Federal Capital (known as the Islamabad Capital Territory), the Federally Administrated Tribal Areas (FATA) and the region ofGilgit-Baltistan[820]. The disputed territory of Azad Jammu and Kashmir legally has its own government and constitution, although it is sometimes referred to in international bodies as Pakistan Administered Kashmir[821].

THE EU, PAKISTAN AND THE COMMONWEALTH RELATIONSHIP

At first, the Pakistani relationship with the European Union was more or less similar to that of India's. It demonstrated its opposition to the United Kingdom's entry into the then European Communities.

> "When Prime Minister Macmillan consult with Commonwealth governments before formally announcing Britain's application at the end of July 1961. Miriam Camps has suggested that Macmillan hoped thereby to obtain some expression of approval for his government's proposed course of action.[822] If so, he was to be disappointed.
>
> The Indian Government spoke of "serious damage" to Indian exports (as, *mutatis mutandis*, did the Government of Pakistan), and warned that British membership "might weaken existing Commonwealth links[823]".

As I have mentioned in the previous section, once the negotiations concerning the United Kingdom's entry into the European Communities began, the United Kingdom tried to protect the trade interests of the Commonwealth as a whole and of its member states. Nevertheless, it could not protect them as they needed and because of this, they would be accused of a lack of interest.

> "The British team was unable to gain substantial concessions. Tariffs on handloom products and a few other items were to be reduced to zero, but for the most part all that was offered was a *décalage*, together with an undertaking to negotiate general

[819] Ibidem.

[820] In August 2009, the government of Pakistan had approved a Self-Governance Reforms Package for the Northern Areas, aimed at giving it full internal autonomy, but without the status of a province, and changed its name to Gilgit-Baltistan.

[821] Barcelona Centre for International Studies (CIDOB), "Political System and State Structure of Pakistan", CIDOB International Yearbook 2012, 2012, p. 6.

[822] CAMPS, M., *Britain and the European Community, 1955-63*, Oxford, Oxford University Press, 1964, p.340.

[823] London South Bank University, "The Commonwealth during the period of Britain's first application to join the EEC", The European Institute Research Papers, from: <http://bus.lsbu.ac.uk/resources/CIBS/european-institute-papers/papers1/295.PDF>, (accessed 8 July 2012).

The main objective of the European Union is try to get closer to this nation in order to strengthen their relations as shown in the EU-Pakistan Joint Declaration, of 8 February 2007:

> "Both the EU and Pakistan face enormous challenges in the coming years, and fully recognise the importance of working together.
>
> The relationship between the EU and Pakistan is based upon a commitment to democracy, peace and stability, development, the enhancement of trade links, and a respect for human rights".

In the last few years the European Union has shown signs of a greater rapprochement with Pakistan by showing itself very involved in contribution of humanitarian aid, in development cooperation and the fight against poverty in Pakistan. Nevertheless, there is still a certain climate of mutual disappointment since they represent different conceptions and interests, which become clear in the different meetings held by their respective representatives.

> "In a bid to set relations on a new trajectory, senior officials in Brussels are also hoping to organize an early meeting between EU High Representative Catherine Ashton and Hina Rabbani Khar, Pakistan's new foreign minister.
>
> The EU has donated millions of euros in humanitarian aid to Pakistan's post-flood rebuilding effort. Funding, including grants from the European Investment Bank, will contribute a total of around €485 million to Pakistan between 2009 and 2013, and humanitarian assistance, including contributions from member states, is valued at €423 million. And, for the last few months, EU officials have made sincere efforts to secure World Trade Organization approval for unilateral tariff concessions to Pakistan's textile exports" (…)
>
> "The departure from the political scene of former President Pervez Musharraf in 2008 and the election of a democratic government in the country have put EU-Pakistan relations on a stronger footing. As the relationship has matured, however, so have expectations, and the EU language regarding Pakistan has become tougher over the years. The EU seeks to combine support for Pakistan's civilian leaders with demands for better governance, fiscal reform, and tougher counter-terrorism measures. Pakistan, meanwhile, has used its high-level meetings with the EU to press for better market access. Each side has been disappointed with the other's capacity to deliver.[824]"

Trade relations between both parties are not simple. Each party accuses the other of having an overly protectionist trade market and the European Union reproaches their failure to comply with basic labour standards that all nations should incorporate and insure for their citizens. It also demands that they implement effective anti-dumping measures. For the moment, the negotiations for a free trade area are moving slowly and always conditioned on demands for better governance, fiscal reform, and, especially the adoption of tougher counter-terrorism measures.

> "Trade relations are uneasy: a spate of EU anti-dumping investigations, and the removal of Pakistan from the EU's special duty-free scheme for developing countries

[824] ISLAM, S., "Moving EU-Pakistan Relations Beyond Words", The German Marshall Fund of the United States, Asia Program, 2011, pp.1-4.

(GSP+) for not having signed certain labour rights conventions and failing to meet the regime's technical standards, coupled with Brussels' reluctance to start negotiations on a free-trade agreement with Islamabad, have strained the relationship.

An EU proposal to grant unilateral tariff-free concessions to Pakistani exports following the 2010 floods is still stuck in the World Trade Organization, facing opposition from India, Thailand, and Bangladesh[825]".

POLITICAL AND LEGAL APPROACH

EU- Pakistan relationship:

Diplomatic relations between Pakistan and the Community were established in 1962. The EC-Pakistan Commercial Cooperation Agreement dates from 1976, followed in 1986 by a Commercial and Cooperation Agreement valid for five years, with annual extensions by tacit agreement ever since. Commercial, Economic and Development Cooperation have known a dynamic evolution under these Agreements. Since the Lisbon EU Summit in 1992, the instrument of Political Dialogue has been instituted between Pakistan and European Union.

The European Commission, which is the executive body of the European Union, is represented by Delegations in 128 countries around the world. A Commission office was opened in Islamabad in 1985. This office was upgraded to a Delegation with full diplomatic status in 1988[826].

Chronologically the bilateral relationship is set in the context of the main following agreements[827]:

A. The 1976 EC- Pakistan Commercial Cooperation Agreement, followed in 1986 by Agreement for commercial, economic and development cooperation between the European Economic Community and the Islamic Republic of Pakistan - Declarations by the parties

Under EC-Pakistan development co-operation, priority is given to poverty alleviation and social sector development, in particular primary education. Since 1976, more than €300 million have been committed. The role of economic co-operation has been reinforced. The aim of this Agreement was to the promotion of international economic relations founded on freedom, equality, justice and progress.

B. 1996 Memorandum of Understanding (MoU) between the European Community and the Islamic Republic of Pakistan on arrangements in the area of market access for textile products Textiles and clothing is an important sector for EU-Pakistan trade relations. The Agreement's objective was to fix the agreed arrangements in the area of market access for textile products.

According to this MoU Pakistan will remove all quantitative restrictions on the textile products given in Annex II. However, should a critical situation arise in the textiles industry of Pakistan or in relation to the balance of payments situation of Pakistan, the Government of Pakistan retains the right under GATT 1994 and the WTO to reintroduce, after necessary consultations with the European Commission, quantitative restriction.

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[825] Ibidem.

[826] Delegation of the EU to Pakistan, "Delegation of the EU to Pakistan", from: <http://www.delpak.ec.europa.eu/eu_and_country/eupak.htm>, (accessed 14 December 2012).

[827] Ibidem.

The Government of Pakistan and the European Commission agreed to consult with each other periodically to ensure the proper implementation of the Memorandum of Understanding and to explore further possibilities for mutual expansion of trade in textiles and clothing. A further memorandum of understanding was signed in 2001 between the EC and Pakistan whereby the EC agreed to increase by 15% the quota for textiles and clothing.

C. 2004 Cooperation agreement between the European Community and the Islamic Republic of Pakistan, relating to the partnership and to development

The Parties agreed to cooperate in order to prevent the diversion of drug precursor chemicals. They also agree on the necessity of making every effort to prevent money laundering. In particular consider special measures against the illicit cultivation and production of, and trade in drugs, narcotics and psychotropic substances as well as prevention and reduction of drug abuse.

The aim was to enhance and develop, through dialogue and partnership, the various aspects of cooperation between the Pakistan and the European Community in the areas which fall within the bounds of the Parties respective competences.

D. 2004 Agreement in the form of an Exchange of Letters between the European Community and Pakistan pursuant to Article XXVIII of the GATT 1994 relating to the modification of concessions with respect to rice provided for in EC Schedule CXL annexed to the GATT 1994: Under Article XXVIII of the GATT 1994, with a view to modify certain concessions for husked rice.

E. 2009 Agreement between the European Community and the Islamic Republic of Pakistan on certain aspects of air services This agreement aimed to replace certain provisions in existing bilateral agreements between EU Member States and Pakistan with a Community agreement recognising that consistency between European Community law and provisions of bilateral air service agreements between Member States of the European Community and Pakistan will provide a sound legal basis for air services between the European Community and Pakistan and preserve the continuity of such air services.

F. 2009 Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation The objective of the Agreement is to strengthen the cooperation of the Parties to combat illegal immigration effectively.

The Agreement is divided into 7 sections with 21 Articles altogether. It also contains 6 Annexes, which form an integral part of it and 10 joint declarations.

- The readmission obligations set out in the Agreement (Articles 2 and 3) are drawn up in a fully reciprocal way, comprising own nationals as well as third country nationals and stateless persons including for Pakistan who have acquired no other nationality.

- The obligation to readmit own nationals includes also former own nationals who have renounced, or who have been deprived of, their nationality without acquiring the nationality of another State.

- The obligation to readmit third country nationals and stateless persons (Article 3) is linked to the following prerequisites: (a) the person concerned holds or at the time of entry held, a valid visa or residence permit issued by the Requested State, or (b) the person concerned illegally

and directly entered the territory of the Requesting State after having stayed on or transited through the territory of the Requested State. Exempted from these obligations are persons in airside transit and all persons to whom the Requesting State has issued a visa or residence authorisation before or after entry to its territory.

- Section II of the Agreement (Articles 4 to 10 in conjunction with Annexes 1 to 5) contains the necessary technical provisions regarding the readmission procedure (the form and content of the readmission application, means of evidence, time limits, transfer modalities and modes of transportation). Some procedural flexibility is provided by the fact that no readmission will be needed in cases where the person to be readmitted is in possession of a valid national passport and, if he or she is a third country national, also holds a valid visa or residence authorisation of the State which has to readmit him or her (Article 4(2)). The time limit for replies for all readmission applications is 30 calendar days with the right to an extension with up to 60 calendar days upon request and in duly motivated cases.

G. Pakistan Strategy Paper 2007-2013 Poverty reduction and eradication as well as linking trade with development through furthering Pakistan's integration in the world economy are key objectives of the 2002-2006 EC Country Strategy Paper for Pakistan. EC and the Government of Pakistan have agreed on two priority areas for co-operation during the reference period, which together would account for approximately 88% of available resources from the multi-annual Asia budget allocation. These two priority areas are:

1. Human development in the education sector with focus on poverty reduction, since education plays a strategic role in poverty alleviation and economic development (80%). Sector programmes in Sindh and North West Frontier Province (which would also place great emphasis on improving good governance and accountability in the provision of educational services) are cornerstones for EC interventions in this area.

2. Trade development and promotion of business and institutional links (8%). The key objective here is to enhance co-operation in the economic field, which should contribute to the creation of income and employment as well as poverty alleviation.

In response to events in 2001 Commission services were asked to provide an aid package which could both have a quick economic impact and meet overall EC development policies. With this objective in mind, an additional € 50 M were earmarked for 2002 from the Asia budget. The funds have been provided under a Financial Services Sector Reform Programme aiming to assist the reform and expansion of financial services in Pakistan. Further measures included accelerated disbursement of € 31 million under the ongoing Social Action Programme (SAP) and commitment of a € 22.9 million project aimed at strengthening livestock services.

Planning for the CSP 2007-2013 has been initiated.

With about 160 million inhabitants, Pakistan is the second largest Islamic nation after Indonesia. The country has considerable potential to develop into a stable, moderate and democratic state, but has not yet fully realised this potential. Although some progress on **democratisation** has been made by installing an elected parliament in October 2002, army influence is still strong and strengthening democratic institutions and processes remains an important task. Other political challenges include eliminating religious extremism and sectarian violence, addressing regional imbalances and improving the human rights situation. Continuation of the positive trend in relations with India and Afghanistan would greatly contribute to enhanced regional stability.

Since 1999 Pakistan has been successfully implementing a **macroeconomic reform programme**, resulting in some of the best economic indicators in its history. GDP growth registered 8.4% in 2004-05. This was facilitated by good export performance, high remittances and external financial support. However, the reforms have not yet had a major impact on reducing **poverty**, with one third of Pakistan's population still classified as poor.

Pakistan is facing major **environmental problems**, including growing water shortages due to demographic pressure, deforestation and degradation of rangelands. There are fears that Pakistan could enter a downward spiral of environmental degradation and poverty. Poor **governance** remains a key issue and has had a negative impact on social service delivery. While the devolution process has strengthened local political institutions, more needs to be done to address management and capacity issues at local level.

The Islamic Republic of Pakistan and the European Union are committed to strengthening their relationship under the new **3rd Generation Cooperation Agreement**, which entered into force in 2004. In line with Pakistan's policy priorities, the key objective for 2007-2013 will be poverty reduction. The **first focal area** for assistance will be **rural development and natural resources management in North-West Frontier Province and Baluchistan** with a view to reducing regional disparities and promoting stability in Pakistan's sensitive provinces bordering Afghanistan. The **second focal area** will be **education and human resources development** which is a critical ingredient for developing a well-trained work force and creating a moderate and stable Pakistan.

Activities carried out in the field of higher education will be financed within the context of the regional programming for Asia. Other areas of assistance are trade development, democratisation and human rights and anti-money laundering.

Under the Development Cooperation Instrument (DCI), an indicative allocation of € 398 million has been earmarked for Pakistan for the period 2007-2013. These resources may be supplemented by projects and programmes financed under the regional programmes for Asia and under various thematic programmes.

To maximise the impact of EC assistance, key cross-cutting issues, in particular the environment, conflict prevention, gender, HIV/AIDS, human rights and governance are mainstreamed in this CSP.

H. PAKISTAN'S POLICY AGENDA

1- Poverty alleviation and macro-reforms: The government's strategy is articulated in the **Poverty Reduction Strategy Paper (PRSP)** finalised in 2004. This outlines a comprehensive policy framework for continued growth and development in Pakistan. The PRSP is built around four pillars[828]:

(i) achieving broad-based **economic growth** focusing on the **rural economy**,
(ii) improving **governance** and consolidating devolution,
(iii) investing in **human capital** and delivery of basic social services, and

[828] European External Action Service, "Pakistan-European Community Country Strategy Paper for 2007-2013", European External Action Service, from:
<http://eeas.europa.eu/pakistan/csp/07_13_en.pdf>, (accessed 14 December 2012).

(iv) **targeting the poor** and vulnerable. The strategy also focuses upon attainment of Millennium Development Goals (MDGs) for sustainable development and poverty reduction and aims at forging an alliance between civil society and the private sector.

2- Economy and trade: sets the objective of ensuring equitable development of regions and social cohesion. This will entail achieving not only growth, but also **employment-oriented pro-poor economic growth** and **social protection**. Measures taken by the government over recent years include public works programs, support to the provision of micro-finance services and reforms of the social safety net. Further extension of social protection and pension and social security schemes to workers in the private sector and the informal economy will be needed, however, to improve pro-poor growth and reduce poverty. The MTDF also recognises that growth cannot be sustained by agriculture, textile-dominated manufacturing or low-productivity services, and calls for emphasis on building a knowledge-based economy with high-productivity sectors driving growth. Pakistan's export development strategy is based on the need to increase both the volume and value of exports, through product diversification and adding to the value chain by capacity building capacity and enhancing exporters' capability. The tariff remains Pakistan's main **trade policy** instrument; its relative importance has increased as a result of the recent lifting of non-tariff barriers on several items**.** The scope for improving efficiency through further substantial cuts in tariffs may, however, be limited in the near future[829].

3- Social reforms: The national **Education Sector Reform** (ESR) and the **Education For All** action plans form the centrepiece of the education strategy in the Poverty Reduction Strategy Paper (PRSP) and include reforming and mainstreaming religious schools (madrassas). While the strategy on education is well-articulated and clearly recognises problem issues, there is a need to turn policies into increased investment. The budget allocation for education remains below 2 % of GDP, as against the minimum of 4.5 % recommended by UNESCO. Provincial programmes account for over 90% of the country's education expenditure and merit more attention than they have been given under the strategic framework. "**Health for all**" is the government document containing guidance to help develop strategies for more efficient, equitable and sustainable policies. While the budget allocation for the health sector has increased, it is still only 0.7% of GDP, the lowest in South Asia[830].

4 - Environmental policy: At the same time, the environmental challenges faced by Pakistan are being amplified by factors such as a rapid population increase and economic growth.**Environmental legislation** in Pakistan is fairly well developed. However, implementation on the ground remains extremely weak as the institutional set-up is inefficient and essential human, administrative, technical and financial resources are not available. These imbalances are addressed in the new draft National Environmental Policy (NEP) and the related Medium-Term Development Framework (MTDF) for 2005-10. Major issues to be addressed within the development framework are: water management, silting of reservoirs, municipal and industrial waste treatment, and improved access to sanitation.

In view of the document referenced, one can see that, like India, the first of the agreements to be reached with Pakistan in the 1970s was of a general nature. The EC- Pakistan Commercial Cooperation Agreement of 1976 was followed in 1986 by a Commercial and Cooperation Agreement that addressed distinct areas: trade, economic and development cooperation.

[829] European External Action Service, "Pakistan-European Community Country Strategy Paper for 2007-2013", European External Action Service, from:
<http://eeas.europa.eu/pakistan/csp/07_13_en.pdf>, (accessed 14 December 2012).
[830] Ibidem.

Within the framework of the development cooperation, priority was given to poverty alleviation and social sector development, in particular primary education. The European Union has been pouring in humanitarian aid with the objective of bringing freedom, equality, justice and progress to the region. This first agreement already shows signs of what were and continues being the European Union's objectives and concerns with regards to Pakistan[831].

Unlike previous cases, this general agreement will lead to a series of sectorial agreements. The 1996 textile agreement was focused on the area of market access for textile products and has been of vital importance for trade relations between both parties. From the beginning, the "tense" relationship between Pakistan and India on the one hand, and the European Union on the other, has been marked by a lack of an agreement regarding textiles. We also cannot overlook that textiles and clothing dominate Pakistan's exports and still account for more than 70% of Pakistan's exports to the European Union.

In 2004, a sectorial agreement was signed in order to modify certain concessions for husked rice. In the same year, within the framework of the IMF and the World Bank, Pakistan adopted one of the most important agreements in terms of relations between the two actors, the **Poverty Reduction Strategy Paper (PRSP),** the **Poverty Reduction Strategy Paper (PRSP), which** replaces the World Bank's Policy Framework Paper, aims to present a coherent strategy that helps poor countries to experience faster sustainable growth and achieve a substantial reduction in poverty.

Several agreements were signed in 2009 limited to certain areas such as the agreement on certain aspects of air services and, in order to fulfil the commitment to combat illegal immigration effectively, the agreement on readmission of persons residing without authorisation, one of biggest obstacles to relations between the two parties.

Relations have been intensifying recently with very important agreements having been reached. The 2002-2006 EC Country Strategy Paper for Pakistan was adopted and in 2004 they signed the Cooperation agreement between the European Community and the Islamic Republic of Pakistan, relating to the partnership and to development, whose main aim was to enhance and develop, through dialogue and partnership, the various aspects of cooperation between Pakistan and the European Community in the areas which fall within the bounds of the parties respective responsibilities. These accords were revised and supplemented by thePakistan Strategy Paper 2007-2013, and now make up the current framework.

This agreement focuses on two fundamental priorities: This agreement focuses on two fundamental priorities:

1. Human development in the education sector with focus on poverty reduction.
2. Trade development and promotion of business and institutional links.

Finally, the legal framework of the relationship between the two appears completed with Pakistan's Policy Agenda. It establishes a series of objectives that the parties are committed to work towards. The most relevant ones are:

- Poverty alleviation and macro-reforms.

[831] European External Action Service, "Pakistan-European Community Country Strategy Paper for 2007-2013", European External Action Service, from:
<http://eeas.europa.eu/pakistan/csp/07_13_en.pdf>, (accessed 14 December 2012).

- Economy and trade, including employment-oriented pro-poor economic growth and social protection.
- Social reforms, including Education Sector Reform (ESR), Education For All and Health for All.
- Environmental policy.

The areas of mutual interest with a view to increasing cooperation can be summarized as follows[832]:

1- <u>Humanitarian aid and Development Co-operation</u>
- ✓ Poverty alleviation.
- ✓ Sustainable Economic-growth (pro-poor economic growth).

2- <u>Political Reforms</u>
- ✓ Improvement of democracy, good governance and human rights.
- ✓ Improvement of Global and regional security.
- ✓ Implementation of effective counter-terrorism measures.

3- <u>Economy and trade reforms</u>
- ✓ Employment-oriented.
- ✓ Social protection.

4- <u>Social reforms</u>
- ✓ Education Sector Reform.
- ✓ Education For All Programme.
- ✓ Health for All Programme.
- ✓ Gender.

5- <u>Environmental policy reforms</u>

<u>ECONOMIC APPROACH</u>

Finally, from a trade perspective, if we consider the data shown in the documentation and according to our classification for measuring the importance of intensifying relations (mainly on the trade front) between the European Union and Pakistan we can conclude that the relationship is asymmetrical in terms of relevance. Unlike India, which holds a privileged position, Pakistan is ranked 50th.

The EU is Pakistan's most important trading partner. In order to further promote the development of two-way trade between the parties, the EU and Pakistan agreed in May 2007 to set up a Sub-Group on Trade under the auspices of the EU-Pakistan Joint Commission. Besides discussing trade policy developments more broadly, the Sub-Group is also aiming to tackle individual market access issues which hamper trade between the two parties. Nevertheless, Pakistan ocupa el lugar 50 in the ranking of major trade partners, en (2012).

[832] For further information on the Summary of EU-Pakistan Co-operation, Delegation of the EU to Pakistan, “Summary of EU-Pakistan Co-operation”, European Union, from: <http://www.delpak.ec.europa.eu/WHATSNEW/Portfolio/Portfolio_November_2011.pdf>, (accessed 20 December 2012).

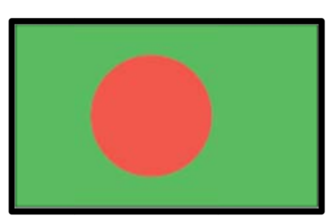
We see that it is an **overriding objective** for Pakistan to intensify this relationship whereas it is a **high-medium objective** for the European Union since it ranks in the fifty to sixty position group of trading partners.

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
PAKISTAN- EUROPEAN UNION	**Overriding objective**	1st
EUROPEAN UNION-PAKISTAN	High-Medium Objective	50th

If we look at the list of free trade agreements concluded and free trade agreements in negotiation, we see that it does not figure in either category. There are great obstacles to overcome like the fight against terrorism. If we consider the relevance in trade terms, it should be an objective to consider.

5. BANGLADESH

TERRITORIAL AND HISTORICAL APPROACH



According to oficial data, Bangladesh has a territory of 143,998 sq km and has a population of 161,083,804 inhabitants (July 2012 est.)[833].

The history of Bangladesh is inextricably tied to India and Pakistan, so as I have previously explained, when India was granted independence in 1947, it was divided along religious lines and two nations were born - India and Pakistan. What is now called **Bangladesh** is **part** of the historic region of Bengal, so the State was not formed until 1971, when the East Pakistan Province declared their independence on March 26. Bangladesh fell under military rule a few years after independence, democracy being restored in 1990, but the political scene there is unpredictable. Bangladesh joined the Commonwealth in 1972, this was possible as a result of the Declaration of London of 1949 which recognised that members were no longer required to have the British Monarch as sovereign, but could have their own head of state and were required to only recognise the British Monarch as Head of the Commonwealth.

It is important to emphasise that political relations between Pakistan and Bangladesh, which are not simple, have gone through different stages since Bangladesh fought to achieve independence from Pakistan. However as both countries share historical and religious linkages they are struggling for normalising bilateral ties. The same is happening with regard to their economic relations. There is clearly a component of competitiveness, particularly in the textile industry, "clothing, seafood and fish products, jute and jute goods, and leather goods".

Both have incorporated protectionist measures in their respective markets and this is a source of conflict. The last of them, as the **Bangladesh** Garment Manufacturers and Exporters Association published, is focused on the concession of the European Union 'GSP Plus' Status to Pakistan:

[833] Indexmundi, "Bangladesh Demographics Profile", Indexmundi, from: <http://www.indexmundi.com/bangladesh/demographics_profile.html>, (accessed 20 December 2012).

> "To protect the domestic industry, garment producers from Bangladesh have decided to strongly protest against Pakistan's request for earning a 'GSP Plus' status that would enable it to ship all its products duty-free to the EU member nations from 2014.
>
> The GSP Plus status is conferred upon least developed countries (LDCs), which allows them to duty-free export their products to the EU nations".

The Pakistani Minister of Defence insured the following:

> "Bangladesh has blocked the way that pave Pakistan to get trade concession offered by the European Union as former voted against the country in World Trade Organisation (WTO), meanwhile, India voted in support for Pakistan. Sources said that European Union wanted Pakistan's entry in WTO[834]".

Territorial Organisation: Bangladesh is divided into 7 divisions; Barisal, Chittagong, Dhaka, Khulna, Rajshahi, Rangpur, Sylhet.

THE EU, BANGLADESH AND THE COMMONWEALTH RELATIONSHIP

Current relations between the European Union and Bangladesh have evolved in way that is similar to Pakistan's and quite differently from India's. In fact, the type of agreements and areas of cooperation are much alike. Pakistan and Bangladesh share similar obstacles in their relations with the European Union. The main obstacle centres on the fight against poverty and terrorism in order to maintain security and stability in this zone. Bangladesh must show greater involvement in areas like democracy, good governance and respect for the rule of law. To this end, the EU- Bangladesh Strategy Paper 2007-2013 highlights:

> [In Bangladesh] "Poverty affects almost 50% of the population and 30 million people can be considered ultra-poor. Extreme poverty is predominantly female and malnutrition is also highest almost women and girls".
>
> "Tensions in the political system have been aggravated by a series of bombings over the last three years, which included bombings of high level opposition leaders, mass bombings on August 17th 2005 and a series of suicide attacks on state institutions. These incidents have thrown the potential impact of growing Islamic extremism in Bangladesh and *the need for measures to tackle both its immediate and underlying causes into sharp relief*. The Government has shown its commitment to fighting terrorism by tracing down the master minds of these terror attacks in early 2006[835]".

As to the reaction and impact of the United Kingdom's entry into the European Communities, we refer to the explanation in the section of Pakistan because this nation joined the Commonwealth when the United Kingdom was in the middle of the negotiation process for joining the Communities; until 1971, Bangladesh was part of Pakistan.

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[834] Pakistan Defence and Strategic Affairs, "Bangladesh votes against Pakistan in WTO", 2011, Pakistan Defence and Strategic Affairs, from: <http://www.defence.pk/forums/economy-development/139454-bangladesh-votes-against-pakistan-wto.html>, (accessed 3 January 2013).

[835] European External Action Service, "Bangladesh -European Community Country Strategy Paper for the period 2007-2013", uropean External Action Service, from: <http://eeas.europa.eu/bangladesh/csp/csp_07_13_en.pdf>, (accessed 3 January 2013).

POLITICAL AND LEGAL APPROACH:

Chronologically the bilateral relationship is set in the context of the following agreements[836]:

1973 The European Community (EC) established diplomatic relations with Bangladesh, and Food Aid to Bangladesh started.

A. 1976 The first formal agreement between the European Commission and the Bangladesh Government, the "Commercial Co-operation Agreement" was signed. Food aid was the predominant field of assistance from EC to Bangladesh in the initial years. Bangladesh was one of the least developed of the developing countries, the trust of the agreement is on the strengthening of the economic and commercial relations. The Commercial Cooperation Agreement also established a Joint Commission to exchange views on a broad range of issues covered by the Agreement as well as ensuring the proper functioning of any sectoral Agreements to be signed between the parties. The Commercial Cooperation agreement has been in force till 2001.

1977 The first session of the Joint Commission took place. The two major areas of activities were trade promotion and economic cooperation.

B. 1980 The EC-Bangladesh Agreement on Trade and Jute Products was concluded. The European Community agreed to remove all quantitative restrictions on jute imports from Bangladesh from 1 January 1984.

In 1982 the European Commission established its Dhaka Office under the South Asia Representative office in Delhi.

Trade in Textiles Products has been the subject of an Agreement between the European Community and the People's Republic of Bangladesh, in force since 1 January 1987, amended by Exchanges of Letters in 1992. The Agreement regulates the distribution of export licenses from Bangladesh. It must however be noted that Bangladesh has today no quota restrictions on its exports to the EU.

C. 1988 The EC and the government of Bangladesh signed a Science and Technology Cooperation agreement. The cooperation aimed at strengthening the research capabilities of Bangladesh, with a focus on agriculture and water resources management.

1989 The European Commission upgraded its representation in Bangladesh, establishing a full fledged delegation office in Dhaka.

D. 1993 The first EC-Bangladesh Country Strategy Paper was published. Initially covering the period of 1993-1996 but later extended to 1998, this paper focused EC's development strategy on poverty alleviation and food security in Bangladesh. NGO cooperation received increased emphasis during this period.

1998 Particularly severe flooding resulted in some 30 million people being made homeless to mitigate the consequences, additional food aid worth €58 million was granted to Bangladesh.

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[836] Delegation of the European Union to Bangladesh, "Delegation of the European Union to Bangladesh", from: <http://eeas.europa.eu/delegations/bangladesh/index_en.htm>, (accessed 3 January 2013).

E. 1999 The second EC-Bangladesh Country Strategy Paper was published. It covered the period of 1998-2001, with the emphasis remaining on direct poverty reduction.

F. 2001 The EC-Bangladesh Cooperation Agreement: The Cooperation Agreement between the European Community and the People's Republic of Bangladesh on Partnership and Development was signed on 22 May 2000 and entered into force on 1 March 2001.

Article I of this agreement contains the so-called **Human Rights Clause** that the EC includes since the early 1990's in its bilateral trade and co-operation agreements with third countries. A Council decision of May 1995 spells out the basic modalities of this clause, with the aim of ensuring consistency in the text used and its application. Respect for human rights and democratic principles underpins the domestic and international policies of the parties and is an essential part of the Agreement. Besides this key element, the objectives of the Cooperation are laid down as follows:

- To support sustainable economic and social development of Bangladesh and particularly of the poorest sections of its population, with special emphasis on women, taking into account it's Least Developed Country status;
- To secure the conditions for and to promote the increase and development of two-way trade between the Parties in accordance with the Agreement establishing the World Trade Organization (WTO) and to assist Bangladesh in diversifying its productive potential;
- To promote investment and economic, technical and cultural links in their mutual interest;
- To pursue equilibrium between policies of substantial economic growth, social development and conservation of natural environment.

The Cooperation Agreement also sets up a Joint Commission which is meeting every alternate year in Dhaka or in Brussels. The role of the Joint Commission is to ensure the proper functioning and implementation of the Agreement, set priorities in relations to the aims of the Agreement and recommendations for promoting its objectives. The Joint Commission held its first session in Dhaka on 20 November 2001. It established four subgroups dedicated to economic development, trade cooperation, social development and governance and human rights. All subgroups held their session between 2002 and 2003, paving the way for the second session of the Joint Commission due to gather in Brussels in November 2003.

In 2006 a large EU Election Observation Mission was fielded for the 9th parliamentary elections but subsequently suspended amidst concerns over the fairness of preparations for the polls. The elections were postponed.

2007 Over 3 400 people perished when Cyclone Sidr swept though the country in November. The European Commission allocated an initial €8.5 million (followed up with a further €12 million in 2008) to provide vital supplies of water, food, shelter and household items such as soap, cooking utensils, blankets and jerry-cans.

2008 Photo voter registration of over 80 million voters in Bangladesh completed successfully. The European Commission was the largest provider of financial assistance to this project. Based on the policies of the European Commission and the Government of Bangladesh priority areas for interventions have been identified in the Country Strategy Paper (2007-2013). Based on this analysis and the National Indicative Programme (2007-2010) projects and programmes are currently implemented.

In view of the document referenced, one can see that the relations initiated with the then European Communities and Bangladesh are extremely similar to Pakistan's. The EC-Bangladesh Commercial Cooperation Agreement was identical to Pakistan's and signed at the same time in 1976, this Agreement was amended and complemented later, and was followed by the EC-Bangladesh Cooperation Agreement in 2001**,** this agreement contains the so-called Human Rights Clause, that the EC includes since the early 1990's in its bilateral trade and co-operation agreements with third countries. The objectives of the Cooperation are laid down as follows:

- To support sustainable economic and social development of Bangladesh and particularly of the poorest sections of its population, with special emphasis on women, taking into account it's Least Developed Country status;
- To secure the conditions for and to promote the increase and development of two-way trade between the Parties in accordance with the Agreement establishing the World Trade Organization (WTO) and to assist Bangladesh in diversifying its productive potential;
- To promote investment and economic, technical and cultural links in their mutual interest;
- To pursue equilibrium between policies of substantial economic growth, social development and conservation of natural environment.

The Cooperation Agreement also sets up a Joint Commission which is meeting every alternate year in Dhaka or in Brussels. The role of the Joint Commission is to ensure the proper functioning and implementation of the Agreement.

As in the case of Pakistan, these general accords would lead to a series of sectorial agreements. One of the most important for both in trade relations was the 1980 the EC-Bangladesh Agreement on Trade and Jute Products. It should be recalled that the textile agreement with Pakistan was adopted in 1996. The Bangladesh one was focused on the area of market access for textile products and it was agreed to remove all quantitative restrictions on jute imports from Bangladesh from 1 January 1984. Another agreement of an specific scope is the 1988 The Science and Technology Cooperation agreement. This was aimed to strengthen the research capabilities of Bangladesh, with a focus on agriculture and water resources management.

As in Pakistan, one of the key objectives in relations between the European Union and Bangladesh is the fight against poverty. To this end Bangladesh adopted, within the framework of the IMF and World Bank, the Poverty Reduction Strategy Paper (PRSP), which replaces the World Bank's Policy Framework Paper, this paper aims to present a coherent strategy that helps poor countries to experience faster sustainable growth and achieve a substantial reduction in poverty.

The first strategy paper was adopted in the 1990s. The first EC-Bangladesh Country Strategy Paper was published in 1993, which initially covered the period from 1993-1996. It was later extended to 1998 and centred on the following main areas:

- ✓ Poverty alleviation
- ✓ Food security in Bangladesh

In 1999 the second paper of this type was adopted and covered the period from 1998-2001, with the emphasis remaining on direct poverty reduction. The strategy paper for 2007-2013 is currently in effect and establishes as objectives, priorities of cooperation in the following areas:

First priority area: **Social sectors**

- Education.
- Health.
- Population.
- Nutrition.

Second priority area: **Good Governance and Human Rights**

- Continued commitment to support the Chittagong Hill Tracts peace treaty.
- Protection of Rohingya refugees in south-eastern Bangladesh.
- Commitment to combat trafficking.

Third priority area: **Economic and Trade Related Technical Assistance**

- Development of technical and vocational education.
- Investment in export diversification.
- Environment and disaster management, including support to improvement of meteorological forecasting technology.
- Development of water resources and sanitation.
- Food security.

Finally, one of the basic agreements in the Bangladesh and European Union relationship is the 2001 Cooperation Agreement,[837] which contains the following four objectives:

a. Support for the sustainable economic and social development of the country and particularly in the poorest sections of its population, with special emphasis on women.

b. Strengthening the two-way trade between EU and Bangladesh and assists Bangladesh diversifying its productive potential.

c. Promotion of investment, economic, technical and cultural links.

d. The pursuit of equilibrium between policies for sustainable economic growth, social development, and protection and conservation of the environment.

[837] European External Action Service, “Bangladesh -European Community Country Strategy Paper for the period 2007-2013”, uropean External Action Service, from:
<http://eeas.europa.eu/bangladesh/csp/csp_07_13_en.pdf>, (accessed 3 January 2013).

With some adjustments, the Pakistan's areas of mutual interest for increasing cooperation can be transposed to the Bangladesh case and can be summarized as follows:

1- Humanitarian aid and Development Co-operation
- ✓ Poverty alleviation.
- ✓ Sustainable Economic-growth (pro-poor economic growth).
- ✓ Nutrition.

2- Political Reforms
- ✓ Improvement of democracy, good governance and Human rights.
- ✓ Improvement of Global and regional security.
- ✓ Implementation of effective counter-terrorism measures.

3- Economy and trade reforms
- ✓ Employment-oriented.
- ✓ Social protection.
- ✓ Agriculture.
- ✓ Food Security.

4- Social reforms
- ✓ Education Sector Reform.
- ✓ Sustainable Growth.
- ✓ Enhancement of Gender Policies.
- ✓ Health for All Programme.

5- Environmental policy reforms

ECONOMIC APPROACH

Finally, from a trade perspective:

> "Although in recent years exports in key areas such as garments, knitwear, shrimp, leather and household textiles goods have performed well, they have not kept up with the economy's demand for imports of essential commodities such as fuel and food grains, resulting in a growing trade deficit and pressure on the foreign exchange reserve. There have also been some difficulties in meeting quality and standards required for access to the EU market, especially in the frozen food sector.
>
> As a Least Developed Country (LDC), Bangladesh enjoys quota- and duty-free access to the EU under the 1986 Textile Agreement and General System of Preferences (GSP) respectively. The "Everything But Arms" initiative of 2001 assured the continuation of GSP for an indefinite period for all LDCs. However, Bangladesh's trade capacity presently relies on a very limited number of export products. There is, therefore, a need for a profound diversification of the country's export range".

If we consider the data in the documentation presented and if we use a scale to measure the importance of intensifying relations (mainly on the trade front) between the European Union and Bangladesh, we can conclude that the relationship is **unequal in terms of relevance** as it occurred in prior cases. For Bangladesh, the European Union is the biggest export destination of Bangladeshi products. For the European Union on the other hand, Bangladesh ranks 45th in

terms of trading partners in 2012,[838] a position similar to Pakistan, which occupies number 50, but in contrast to India's privileged position.

According to our classification, we see that for Bangladesh to intensify this relationship, it would represent an **overriding objective**, while for the European Union it ranks as a **high objective** since it is part of its top 50 trade partners.

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
BANGLADESH- EUROPEAN UNION	**Overriding objective**	1st
EUROPEAN UNION-BANGLADESH	High Objective	45th

If we look at the list of free trade agreements concluded and free trade agreements in negotiation, we see that it does not figure in either category. Big obstacles remain to be overcome like the war on poverty and terrorism. If we consider the relevance in trade terms it should be an objective to consider.

6. MALAYSIA

TERRITORIAL AND HISTORICAL APPROACH:

According to oficial data, Malaysia has a territory of 329,847 sq km and has a population of 28,3 milion people.[839]

As we have already explained, on 31st August 1957 the Federation of Malaya became an independent nation and joined the Commonwealth. Different historical events have caused the evolution of Commonwealth membership criteria. The most remarkable ones are: the Independence of India and its accommodation as a republic within the Commonwealth, in 1949. In 1957 a non-white state, Ghana, became a member of the Commonwealth. **Another precedent was set when Malaya, in 1957, became the first independent constitutional monarchy within the**

Commonwealth. An important shift was made with the admittance of Small States, Cyprus was the first one in 1961, and Nauru's accession as the first microstate in 1968. Finally, the most recent change is the idea of admitting members that were never British dependants, such as, Mozambique and Rwanda. As McIntyre points out there has always been resistance to new members, but eventual acceptance.

TERRITORIAL ORGANISATION: Malaysia's 13 states are: Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Perak, Perlis, Pulau Pinang, Sabah, Sarawak, Selangor and Terengganu. There are three Federal Territories: Labuan, Putrajaya and Wilayah Persekutuan – the capital, Kuala Lumpur, is located in Wilayah Persekutuan. Nine of the 13 states have

[838] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from:
<http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).
[839] USA Central Intelligence Agency (CIA), "Malaysia", The CIA World Fact Book, from:
<https://www.cia.gov/library/publications/the-world-factbook/geos/my.html>, (accessed 7 January 2013).

hereditary rulers (eight Sultans and one Rajah) who share the position of King on a five-year rotating basis[840].

THE EU, MALAYSIA, AND THE COMMONWEALTH RELATIONSHIP

Malaysia's initial experience with the European Communities differed from that of India and Pakistan. It is important to recall that both were opposed to the United Kingdom's entry into the then European Communities. Malaysia opted for a more neutral position since its admittance resulted in a minor impact on its economy.

> "Only the Government of the Malayan Federation, whose major exports were unlikely to be affected by EEC tariffs, appeared relatively unconcerned"[841].

EC cooperation with Malaysia has not been noteworthy until very recently, partly because Malaysia has not actively sought EC cooperation. With the opening of an EC Delegation to Malaysia in 2003, relations have been enhanced[842].

Current relations between the European Union and Malaysia have been inextricably linked to those of ASEAN. In fact, the legal basis for EU-Malaysia co-operation is the 1980 EC-ASEAN agreement. It is a general agreement that regulates trade relations between the European and ASEAN, including Malaysia. In 1985 the protocol on the extension of the above mentioned cooperation Agreement was signed, which, among other things, was aimed at extending the cooperation agreement between the EEC and Malaysia.

POLITICAL AND LEGAL APPROACH

The Delegation of the European Union (EU) in Jakarta is responsible for fostering EU relations with Brunei Darussalam. The process of negotiating a new comprehensive EU-Brunei Darussalam Partnership and Co-operation Agreement (PCA) began in 2009.

Chronologically the bilateral relationship is set in the context of the following agreements[843]:

A. Protocol on the extension of the Cooperation Agreement between the European Economic Community and Indonesia, Malaysia, the Philippines, Singapore and Thailand, member countries of the Association of the South-East Asian Nations, to Brunei-Darussalam: The Protocol which entered into force the First of June 1985, aimed to extend the Cooperation Agreement between the European Economic Community and Indonesia, Malaysia, the Philippines, Singapore and Thailand to Brunei Darussalam.

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[840] Government of Australia, "Malaysia country brief", Government of Australia: Department of Foreign Affairs and Trade from:
<http://www.dfat.gov.au/geo/malaysia/malaysia_brief.html>, (accessed 10 January 2013).

[841] London South Bank University, "The Commonwealth during the period of Britain's first application to join the EEC", The European Institute Research Papers, from: <http://bus.lsbu.ac.uk/resources/CIBS/european-institute-papers/papers1/295.PDF>, (accessed 8 July 2012).

[842] European External Action Service, "MALAYSIA – EUROPEAN COMMUNITY STRATEGY PAPER FOR THE PERIOD 2007- 2013", European External Action Service, from:
<http://eeas.europa.eu/delegations/malaysia/documents/eu_malaysia/malaysia_eu_community_st_07_13_en.pdf>, (accessed 10 January 2013).

[843] European External Action Service, "Delegation of the EU to Malaysia", European External Action Service, from:
<http://eeas.europa.eu/delegations/malaysia/index_en.htm>, (accessed 10 January 2013).

B. Agreement in the form of an exchange of letters between the European Union and Brunei on the participation of Brunei in the European Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM): Entered into force the 16th of March 2006, the aim of this agreement was to set the conditions of the participation of Brunei in the European Monitoring Mission in Aceh (Indonesia).

The Agreement was adopted by The European Union, together with contributing countries from ASEAN, as well as with Norway and Switzerland, deployed a monitoring mission in Aceh (Indonesia). This mission was designed to monitor the implementation of various aspects of the peace agreement set out in the Memorandum of Understanding (MoU) signed by the Government of Indonesia and the Free Aceh Movement (GAM) on 15 August 2005. The AMM became operational on 15 September 2005, date on which the decommissioning of GAM armaments and the relocation of non-organic military and policy forces began.

The AMM was successfully concluded on 15 December 2006 following local elections in Aceh held on 11 December 2006. The EU has supported the efforts to find a sustainable solution to the conflict in Aceh, primarily through the Aceh Monitoring Mission (AMM) and the EU Election Observation Mission.

We can confirm that until 2005, there were no significant bilateral agreements between the parties. On the other hand, there are a large number of multilateral or interregional agreements between the European Community and the bloc of states making up ASEAN, including Malaysia. A participation agreement was signed with Malaysia in 2005 in the European Monitoring Mission in Aceh (Indonesia) in order to offer a solution to the conflict in Aceh, primarily through the Aceh Monitoring Mission (AMM) and the EU Election Observation Mission.

In 2006, an agreement would be signed by which the existing concessions were extended on customs matters between the European Community and Malaysia, to the ten new members who gained admission in 2004. A year later, a specific area agreement, similar to ones we have analysed for other states, was signed concerning air services.

We can see that trade relations maintained by the EU with Malaysia are to date channelled through ASEAN so areas of cooperation will be the same as those that exist for the other nations making up the regional bloc. If we examine the EU-Malaysia Strategy Paper 2007-2013 we can see that there is the intension to intensify bilateral relations between both parties, especially in terms of trade. This trend remained in October 2010 when Prime Minister Najib and the European Union leaders launched two major EU-Malaysia bilateral initiatives, namely the negotiations for the Free Trade Agreement (FTA) and for the Partnership and Cooperation Agreement (PCA).

The last Common Strategy Paper (CSP) for 2002-6 allocated a modest €5.6 million to EC-Malaysia cooperation, focusing on two priority or focal areas:

- Trade and investment facilitation,
- Higher education, activities carried out in the field of higher education were financed within the context of the regional programming for Asia.

So far, cooperation was successful in areas of strategic importance and mutual interest:

- Economic relations,
- Scientific and technology cooperation,
- Education, addressing in particular the human capital and technological requirements of development.
- Human rights, especially gender equality and protection of the vulnerable.

An important issue is that **cooperation was not extended** to areas such as:

- The fight against international organised crime and terrorism,
- Good governance, justice and home affairs.

We should note that the EU is concerned about some aspects of Malaysia's human and political rights, in particular certain legal practices like the death penalty and corporal punishment, the modalities of detention under the Internal Security Act, and restrictions to the right to freedom of information, expression and association, all these aspects must be resolved if they want to deepen in their relationship[844].

Taking into account the current Common Strategy Paper 2007-2013[845], which has proposed a shift to a more policy-dialogue oriented cooperation with a focus on trade and investment**,** the areas of mutual interest with a view to increase cooperation in Malaysia can be summarized as follows:

- Trade and investment relations,
- Human capital via higher education and research,
- Human rights,
- Governance,
- Sustainable forestry and biodiversity management and related trade.

ECONOMIC APPROACH

Finally, from a trade perspective:

> "Malaysia's course of history has been dictated by its strategic position at one of the world's major crossroads. The highly successful industrialisation drive (since the mid-1980's) has turned the country into one of the world's most important trading nations. The national poverty rate has fallen from 49.3% in 1970 to 5.7% in 2004. Malaysia's economic performance and fundamentals are strong; its social development is exemplary among developing countries"[846].

[844] European External Action Service, "MALAYSIA – EUROPEAN COMMUNITY STRATEGY PAPER FOR THE PERIOD 2007- 2013", European External Action Service, from: <http://eeas.europa.eu/delegations/malaysia/documents/eu_malaysia/malaysia_eu_community_st_07_13_en.pdf>, (accessed 10 January 2013).
[845] Ibidem.
[846] European External Action Service, "MALAYSIA – EUROPEAN COMMUNITY STRATEGY PAPER FOR THE PERIOD 2007- 2013", European External Action Service, from: <http://eeas.europa.eu/delegations/malaysia/documents/eu_malaysia/malaysia_eu_community_st_07_13_en.pdf>, (accessed 10 January 2013).

If we consider the data in the documentation presented and if we use a scale to measure the importance of intensifying relations (mainly on the trade front) between the European Union and Malaysia we can conclude that the relationship is **fairly even in terms of trade relevance**[847] .

The EU was Malaysia's fourth trading partner and accounted for 11.9% of Malaysia's total external trade in 2010. Malaysia was the EU's second trading partner inside ASEAN, behind Singapore, with bilateral trade in goods reaching 31.9 billion euro in 2010. Malaysia has not been a major trading partner in services so far, but opportunities have already been increasing due to its liberalization policies and should further advance with an FTA. In 2012, Malaysia was the EU's 24th largest trading partner (in goods). Negotiating better access for EU exporters to the dynamic ASEAN market was identified as a priority under the 2006 Global Europe trade strategy[848].

Taking into account the data examined and the agreement with our classification for intensifying this trade relationship, it is an **overriding objective** for Malaysia, and for the European Union is a High Objective.

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
MALAYSIA- EUROPEAN UNION	**Overriding objective**	4th
EUROPEAN UNION-MALAYSIA	High Objective	24th

If we look at the list of free trade agreements concluded and free trade agreements in negotiation we see that in 2010, negotiations with Singapore and Malaysia were launched. Moreover, ASEAN official negotiations between the two regions were launched in 2007 with full implementation of an FTA expected by 2015[849].

7. SINGAPORE

TERRITORIAL AND HISTORICAL APPROACH

According to oficial data, Singapore has a territory of 697sq km and has a population of 5,353,494 people[850].

In September 1963 Singapore was incorporated into the Federation of Malaysia. But in August 1965 Singapore left the Federation, by mutual agreement, after months of dispute between it and the federal government, over a variety of issues, including ethnic affairs. On 9 August 1965, Singapore became a separate independent state and on 16 October 1965 joined the Commonwealth.

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[847] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).

[848] European External Action Service, "Delegation of the EU to Malaysia-Trade", European External Action Service, from: <http://eeas.europa.eu/delegations/malaysia/eu_malaysia/trade_relation/index_en.htm>, (accessed 14 January 2013).

[849] ADAMRAH, M., "ASEAN-EU FTA talks frozen", The Djakarta Post, 7 May 2009.

[850] USA Central Intelligence Agency (CIA), "Singapore", the CIA World Fact Book, from: <http://cia-world-fact-book.findthedata.org/l/979/Singapore>, (accessed 14 January 2013).

Prior to the separation of Singapore from Malaysia on 9 August 1965, Singapore had been part of the Commonwealth through Malaysia, which was a Commonwealth member state. Singapore applied to stay in the Commonwealth as an independent member after its separation from Malaysia. To secure its admission as an independent member, Singapore had to gain the approval of all existing member states.[851]

The British government was also supportive of Singapore joining the Commonwealth[852]. While Singapore awaited its Commonwealth admission, then Minister of State for Commonwealth Relations Cledwyn Hughes sent out a message on 13 September 1965. He requested that Singapore be treated "as far as possible in the same way she [that] was treated before secession from Malaysia[853]."

Pakistan, however, opposed Singapore's admission into the Commonwealth after the outbreak of the India-Pakistani conflict over Kashmir, in which both Malaysia and Singapore took a pro-India stance[854]. On 5 October 1965, then Commonwealth Secretary-General Arnold Smith urged the Pakistani government not to object to Singapore's admission[855]. On 11 October 1965, Pakistan agreed but would abstain from voting[856]. Pakistan's decision not to veto Singapore's membership enabled Singapore to be admitted into the Commonwealth.

THE EU, SINGAPORE AND THE COMMONWEALTH RELATIONSHIP

For Singapore, the United Kingdom's attempt to join the European Communities did not present a big problem since at the time Singapore was part of Malaysia and was right in the middle of the process of self-determination. We have already explained that Malaysia did not pose many objections to this joining since their major exports were unlikely to be affected by EEC tariffs.

Despite the small geographic size of the State, **Singapore economy** is one of most prosperous in the world, with a strong international trade link. Singapore is one of the most open, and thus competitive, markets in the world. **The 2011 World Bank Ease of Doing Business Index ranks Singapore as the best country in the world to do business – ahead of Hong Kong and New Zealand.** Singapore is also ranked third in the World Economic Forum's Global Competitiveness Report behind Switzerland and Sweden[857].

POLITICAL AND LEGAL APPROACH

The EU Delegation to Singapore was opened in December 2002 and since then bilateral relations have steadily progressed with increased co-operation in a number of key areas (transport, R&D, Info Society).

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[851] THIO, L.A., TAN, K. Y.L., *Evolution of a Revolution: Forty Years of the Singapore Constitution*, London, Routledge, 2009, p.53.
[852] KUAN, L., "From third world to first: the Singapore story, 1965-2000: Memoirs of Lee Kuan Yew", Times Editions, Singapore Press Holdings, 2000, p.26.
[853] THIO, L.A., TAN, K. Y.L., *Evolution of a Revolution: Forty Years of the Singapore Constitution*, op.cit., p.55.
[854] KUAN, L., "From third world to first: the Singapore story, 1965-2000: Memoirs of Lee Kuan Yew", op.cit., P.26.
[855] Ibidem.
[856] Ibidem.
[857] Economy Watch, "Singapore Economy", Economy Watch, from: <http://www.economywatch.com/world_economy/singapore/?page=full>, (accessed 3 February 2013).

Chronologically the bilateral relationship is set in the context of the following agreements: [858]

A. 1985 Protocol on the extension of the Cooperation Agreement between the European Economic Community and Indonesia, Malaysia, the Philippines, Singapore and Thailand, member countries of the Association of the South-East Asian Nations, to Brunei-Darussalam This Agreement between the Community and ASEAN governs economic and trade cooperation relations and development between the EU and Philippines, Thailand and Singapore.

It was aimed to extend the Cooperation Agreement between the European Economic Community and Indonesia, Malaysia, the Philippines, Singapore and Thailand to Brunei Darussalam. Nevertheless, The European Community did not extended the ASEAN Agreement to Myanmar (Burma, the tenth member of the Association) owing to the country's critical human rights situation.

B. Agreement in the form of an exchange of letters between the European Union and Singapore on the participation of Singapore in the European Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM): The European Union, together with contributing countries from ASEAN, as well as with Norway and Switzerland, deployed a monitoring mission in Aceh (Indonesia). This mission was designed to monitor the implementation of various aspects of the peace agreement set out in the Memorandum of Understanding (MoU) signed by the Government of Indonesia and the Free Aceh Movement (GAM) on 15 August 2005. The AMM became operational on 15 September 2005, date on which the decommissioning of GAM armaments and the relocation of non-organic military and policy forces began. The AMM was successfully concluded on 15 December 2006 following local elections in Aceh held on 11 December 2006. The EU has supported the efforts to find a sustainable solution to the conflict in Aceh, primarily through the Aceh Monitoring Mission (AMM) and the EU Election Observation Mission.

C. 2006 Singapore benefits from the Industrialised Countries Instrument[859] which will enable the development of a wider range of co-operation activities within three main priority areas:

- Public diplomacy and outreach;
- Economic partnership and Business cooperation and
- People-to-people links.

It is in the Community's interest to further deepen its relations with industrialised countries and territories with which it often shares similar political, economic and institutional structures and values and which are important bilateral political and trading partners as well as players in multilateral fora and in global governance. This will be an important factor in strengthening the European Union's role and place in the world, consolidating multilateral institutions and in contributing to balance and in developing the world economy and the international system.

[858] Delegation of the European Union to Singapore, "Delegation of the European Union to Singapore", from: <http://eeas.europa.eu/delegations/singapore/press_corner/all_news/news/2010/20101206_01_en.htm>, (accessed 7 February 2013).

[859] European Union, "Corrigendum to Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories", 30 December 2006, Official Journal L 405.

The European Union and industrialised and other high-income countries and territories have agreed to strengthen their relationship and to cooperate across the areas in which they have shared interests through a variety of bilateral instruments such as agreements, declarations, action plans and other similar documents.

The primary objective of cooperation with the countries and territories referred to in paragraph 1 shall be to provide a specific response to the need to strengthen links and to engage further with them on a bilateral, regional or multilateral basis in order to create a more favourable environment for the development of the relations of the Community with these countries and territories and promote dialogue while fostering Community's interests.

Areas of cooperation:

1) the promotion of cooperation, partnerships and joint undertakings between economic, academic and scientific actors in the Community and partner countries;

2) the stimulation of bilateral trade, investment flows and economic partnerships;

3) the promotion of dialogues between political, economic and social actors and other non - governmental organisations in relevant sectors in the Community and partner countries;

4) the promotion of people-to-people links, education and training programmes and intellectual exchanges and the enhancement of mutual understanding between cultures and civilisations;

5) the promotion of cooperative projects in areas such as research, science and technology, energy, transport and environmental matters – including climate change, customs and financial issues and any other matter of mutual interest between the Community and the partner countries;

6) the enhancement of awareness about and understanding of the European Union and of its visibility in partner countries;

7) support for specific initiatives, including research work, studies, pilot schemes or joint projects destined to respond in an effective and flexible manner to cooperation objectives arising from developments in the Community's bilateral relationship with the partner countries or aiming to provide impetus to the further deepening and broadening of bilateral relationships

→ An EU Centre was established in April 2008 aiming at raising greater awareness and knowledge in Singapore of the EU as a key international player.

D. 2006 Agreement between the European Community and the Government of the Republic of Singapore on certain aspects of air services complemented by the 2008 Protocol amending the Agreement between the European Community and the Government of the Republic of Singapore on certain aspects of air services: This agreement aims to bring into full conformity with the European Community law the provisions of the bilateral air service agreements between Member States of the European Community and Singapore which are contrary to it, in order to establish a sound legal basis for air services between the European Community and Singapore and to reserve the continuity of such air services.

Article 2 of the Agreement replaces the traditional designation clauses with a Community designation clause, permitting all Community carriers to benefit from the right to establishment.

Article 3 deals with rights with regards to regulatory control and article 4 with tariffs for carriage within the European Community.

We can see that the instruments that guide the relations between the European Union and Singapore are practically identical to those that articulate relations with Malaysia. As we indicated in the case of Malaysia, Singapore relations with the European Union are inextricably linked to those of ASEAN. In fact, the legal basis for EU-Singapore cooperation is the 1980 EC-ASEAN agreement – a general agreement that regulates trade between the European Community and ASEAN, including Singapore. The protocol on the extension of the previously mentioned Cooperation Agreement was signed in 1985 and aimed, among other things, to extend the Cooperation Agreement between the EEC and Singapore.

We can confirm that until 2005, there were no significant bilateral agreements between the parties. On the other hand, there are a large number of multilateral or interregional agreements between the European Community and the bloc of states making up ASEAN, including Singapore. A participation agreement was signed with Singapore in 2005 in the European Monitoring Mission in Aceh (Indonesia) in order to offer a solution to the conflict in Aceh, primarily through the Aceh Monitoring Mission (AMM) and the EU Election Observation Mission.

We can see that trade relations maintained by the EU with Singapore are to date channelled through ASEAN so areas of cooperation will be the same as those that exist for the other nations making up the regional bloc. It is important to highlight that Singapore is an overriding objective for the European Union, particularly in trade matters and benefits since 2006 from the Industrialised Countries Instrument[860] which enables the development of a wider range of cooperation activities within main priority areas, including the following actions:

<u>Areas of cooperation</u>:

- Public diplomacy and outreach;

  - ✓ The promotion of dialogues between political, economic and social actors and other non - governmental organisations in relevant sectors in the Community and partner countries;

  - ✓ The enhancement of awareness about and understanding of the European Union and of its visibility in partner countries;

  - ✓ Support for specific initiatives, including research work, studies, pilot schemes or joint projects destined to respond in an effective and flexible manner to cooperation objectives arising from developments in the Community's bilateral relationship with the partner countries or aiming to provide impetus to the further deepening and broadening of bilateral relationships

[860] European Union, "Corrigendum to Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories", 30 December 2006, Official Journal L 405.

- Economic partnership and Business cooperation

  - ✓ The promotion of cooperation, partnerships and joint undertakings between economic, academic and scientific actors in the Community and partner countries;

  - ✓ The stimulation of bilateral trade, investment flows and economic partnerships;

- People-to-people links

  - ✓ The promotion of people-to-people links, education and training programmes and intellectual exchanges and the enhancement of mutual understanding between cultures and civilisations;

- Research, Science and Technology

  - ✓ The promotion of cooperative projects in areas such as research, science and technology, energy, transport and environmental matters – including climate change, customs and financial issues and any other matter of mutual interest between the Community and the partner countries;

A sectorial agreement was also signed the same year relative to an air service, the Agreement between the European Community and the Government of the Republic of Singapore on certain aspects of air services and complemented by the 2008 Protocol amending the Agreement between the European Community and the Government of the Republic of Singapore on certain aspects of air services, a very similar agreement to those signed with India, the Maldives and Malaysia. Afterwards it would undergo changes and the protocol would be signed amending the agreement between the European Community and the Government of the Republic of Singapore on certain aspects of air services.

A more delicate question is that of the protection of human rights, these, as we know, lie at the heart of European Union policy and its external relations. Despite not finding an official declaration where the European Union demanded improvements in human rights protections from Singapore, there are indeed general formulae where the European Union declares its opposition to the death penalty and consistently advocates its universal abolition and we know that Singapore still uses this kind of punishment. We also see the European Union directly supporting the ASEAN initiative of creating the Working Group for an ASEAN Human Rights Mechanism.

It should be remembered that the European Union has consistently sought to support and protect the world of human rights throughout the world. The EU has had guidelines on human rights defenders since 2004. Since the guidelines were established the EU has sought to translate them into actions, for example by elaborating local strategies for the implementation of the guidelines in countries outside of the EU.

In terms of financial support, the EU has allocated €16 million in support to human rights defenders under the European Instrument for Democracy and Human Rights (EIDHR) for the period 2007-2013. Following a first call for proposals, 11 specialised civil society organisations have been selected to implement activities through co-funded projects[861].

ECONOMIC APPROACH

Finally, from a trade perspective, the European Union and Singapore share many common interests and from year to year, their economic and commercial relationship continues to go from strength to strength. Singapore is also a key partner of the EU in the dynamic and fast-growing ASEAN region[862].

If we consider the figures shown in the supporting documents and according to our scale for measuring the importance of intensifying the relations (mainly on the trade front) between the European Union and Singapore, we can conclude that the relationship **is one of the more even in terms of trade relevance**.

During recent years, the EU has become one of Singapore's most important merchandise trading partners. 2010 brought a strong increase in trade between the EU and Singapore resulting in a complete recovery of trade flows compared to the pre-crisis period. The EU is Singapore's second largest trading partner behind Malaysia, but ahead of China, the USA and all the other ASEAN countries. In 2012[863], Singapore was the 14th EU's Major Trading partner, while Malaysia was in 24th place in the EU major trading partners ranking.

Taking the data and our classification into account, it is an **overriding objective** for Singapore to intensify this trade relationship and for the European Union it is also a **very high, almost overriding objective**.

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
SINGAPORE- EUROPEAN UNION	**Overriding objective**	2nd
EUROPEAN UNION-SINGAPORE	Very High Objective	14th

If we look at the list of free trade agreements concluded and free trade agreements in negotiation, we see that in 2010, negotiations with Singapore and Malaysia were launched. This is further proof of the importance of this relationship between the two economies. Along with ASEAN, official negotiations between the two regions were launched in May, 2007 with full implementation of an FTA expected by 2015[864].

[861] Delegation of the European Union to Singapore, "Delegation of the European Union to Singapore", from: <http://eeas.europa.eu/delegations/singapore/press_corner/all_news/news/2010/20101206_01_en.htm>, (accessed 7 February 2013).
[862] Delegation of the European Union to Singapore, "Delegation of the European Union to Singapore", from: <http://eeas.europa.eu/delegations/singapore/press_corner/all_news/news/2010/20101206_01_en.htm>, (accessed 7 February 2013).
[863] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from:
<http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).
[864] ADAMRAH, M., "ASEAN-EU FTA talks frozen", The Djakarta Post, 7 May 2009.
[864] USA Central Intelligence Agency (CIA), "Singapore", the CIA World Fact Book, from: <http://cia-world-fact-book.findthedata.org/l/979/Singapore>, (accessed 14 January 2013).

8. BRUNEI:

TERRITORIAL AND HISTORICAL APPROACH

According to oficial data, Brunei has a territory of 5.765 sq km and has a population of almost half milion people[865].

In 1971, under an agreement with the UK, Brunei ceased to be a British protected state. The constitution was amended to give the Sultan full control over all internal matters, the UK retaining responsibility for defence and foreign affairs. Brunei became a fully independent sovereign state on 1 January 1984, the same year joined the Commonwealth. Brunei is a Commonwealth country which has its own monarch as Head of State. Nowadays, the country is a sultanate with the Sultan as Head of State.

TERRITORIAL ORGANISATION: Brunei is divided into two parts and consists today of four main administrative districts. Three in the Western Part (Brunei/Muara, Belait, Tutong) and one in the eastern part (the district of Temburong)[866].

THE EU, BRUNEI AND THE COMMONWEALTH RELATIONSHIP

> "Brunei was the only Malay state in 1963 to choose to remain a British dependency rather than join the Malaysian Federation[867]"

As we have indicated, Brunei is a relatively recent sovereign state, having been a British protectorate until 1984, and the United Kingdom continued to exercise certain sovereign responsibilities such as the country's foreign relations. The history of Brunei is also tied to Malaysia and Indonesia. In fact, the European Union delegation in Brunei is the delegation to Indonesia, Brunei Darussalam and ASEAN. These aspects are important when analysing the relations that Brunei historically maintained with the then European Communities.

Thus the United Kingdom's impact of joining the European Communities were not notable at the beginning since until almost the middle of the 1980s, Brunei was not a fully sovereign nation but a British protectorate and as such continued to depend on the United Kingdom in the area of foreign affairs.

> "Protectorates and protected states were foreign territories to which British protection was extended in some form. Protected states were places in which:
>
> - there was a properly organised internal government; and
> - Britain controlled only the state's external affairs.
>
> Protectorates were protected territories in which:
>
> - there was no properly organised internal government; and

[865] NOVOTNY, D., PORTELA, C., *EU-ASEAN Relations in the 21st Century: Strategic Partnership in the Making*, London, Palgrave Macmillan, 2012, p.47.
[866] HALLER-TROST, R., "The Brunei-Malaysia Dispute Over Territorial and Maritime Claims in International Law", International Boundaries Research Unit, *University of Durham Review*, Vol.1, 1994, Num. 3, p. 39.
[867] British Broadcasting Corporation (BBC), "Brunei Profile", BBC News, from: <http://www.bbc.co.uk/news/world-asia-pacific-12990058>, (accessed 14 January 2013).

- Britain not only controlled external matters, such as the protectorate's defence and foreign relations but also established an internal Britain's involvement in protectorates was similar to its involvement in colonies but they did not have the formal status of colonies"[868].

Just like the case of Singapore, despite the small geographic size of the State, **Brunei economy** is one of most prosperous in the world.

> [Brunei is] "the fifth richest country in the World, Brunei is a small but potentially attractive market. Standing behind Qatar, Luxembourg, Singapore and Norway.[869]"
>
> "FORBES has ranked Brunei Darussalam as the fifth richest country out of 182 nations due to its extensive petroleum and natural gas fields giving the Sultanate just over US$48,000 per capita.
>
> In its online report, Forbes explained that to rank the world's wealthiest countries, it looked at GDP (gross domestic product) per capita adjusted for purchasing power. It used data compiled from the International Monetary Fund (IMF) from 2010, which was the most recent available set of figures"[870].

POLITICAL AND LEGAL APPROACH

The Delegation of the European Union (EU) in Jakarta is responsible for fostering EU relations with Brunei Darussalam. The process of negotiating a new comprehensive EU-Brunei Darussalam Partnership and Co-operation Agreement (PCA) began in 2009.

Chronologically the bilateral relationship is set in the context of the following agreements[871]:

A. Protocol on the extension of the Cooperation Agreement between the European Economic Community and Indonesia, Malaysia, the Philippines, Singapore and Thailand, member countries of the Association of the South-East Asian Nations, to Brunei-Darussalam: The Protocol which entered into force the First of June 1985, aimed to extend the Cooperation Agreement between the European Economic Community and Indonesia, Malaysia, the Philippines, Singapore and Thailand to Brunei Darussalam.

B. Agreement in the form of an exchange of letters between the European Union and Brunei on the participation of Brunei in the European Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM): Entered into force the 16th of March 2006, the aim of this agreement was to set the conditions of the participation of Brunei in the European Monitoring Mission in Aceh (Indonesia).

The Agreement was adopted by The European Union, together with contributing countries from ASEAN, as well as with Norway and Switzerland, deployed a monitoring mission in Aceh (Indonesia). This mission was designed to monitor the implementation of various aspects of

[868] UK Border Agency, "Who is a British overseas territories citizen?", UK Government- Home Office: UK Border Agency, from: <http://www.ukba.homeoffice.gov.uk/britishcitizenship/othernationality/britishoverseasterritories/>, (accessed 15 May 2013).
[869] ADAMRAH, M., "ASEAN-EU FTA talks frozen", The Djakarta Post, 7 May 2009.
[870] Ibidem.
[871] European External Action Service, "Delegation of the EU to Brunei", European External Action Service, from: <http://eeas.europa.eu/delegations/indonesia/index_en.htm>, (accessed 15 February 2013).

the peace agreement set out in the Memorandum of Understanding (MoU) signed by the Government of Indonesia and the Free Aceh Movement (GAM) on 15 August 2005. The AMM became operational on 15 September 2005, date on which the decommissioning of GAM armaments and the relocation of non-organic military and policy forces began. The AMM was successfully concluded on 15 December 2006 following local elections in Aceh held on 11 December 2006. The EU has supported the efforts to find a sustainable solution to the conflict in Aceh, primarily through the Aceh Monitoring Mission (AMM) and the EU Election Observation Mission.

We can see that the instruments that guide relations between the European Union and Brunei are practically identical to those that articulate the relations with Malaysia and Singapore. As we indicated in the case of Malaysia and Singapore, cooperation between the European Commission (EC) and Brunei largely takes place within the framework of ASEAN. In fact, the legal basis for EU-Brunei cooperation is the 1980 EC-ASEAN agreement, which is an agreement of general scope that regulates trade relations between the European Community and ASEAN, including Brunei (Singapore in the original). In 1985, the protocol on the extension of the previously mentioned cooperation agreement was signed, which was aimed, among other things, at extending the cooperation agreement between the EEC and Brunei. By virtue of its advanced level of economic development, the country does not benefit from bilateral EC development cooperation.

We can confirm that up to 2009, there were no significant bilateral agreements between the two parties. On the other hand, there are many multilateral and interregional agreements between the European Community and the bloc of nations making up ASEAN, including Brunei. Primarily through the Aceh Monitoring Mission (AMM) and the EU Election Observer Mission, a sectorial agreement relative to the participation of Brunei in the European Monitoring Mission in Aceh (Indonesia) was signed in order to offer a solution to the conflict in Aceh, located on the northern tip of the island of Sumatra, primarily through the Aceh Monitoring Mission (AMM) and the EU Election Observation Mission.

We can see that the trade relations that the European Union maintains with Brunei are up to this date channelled through ASEAN, so that the areas of cooperation will be the same as those for the rest of the nations that make up the regional bloc. It should be noted that from 2006 Brunei benefited from **the Industrialised Countries Instrument Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories,[872] such as occurred with:**

Australia, Bahrain, Brunei, Canada, Chinese Taipei, Hong Kong, Japan, the Republic of Korea, Kuwait, Macao, New Zealand, Oman, Qatar, Saudi Arabia, Singapore, the United Arab Emirates and the United States. The list of these countries, which is set out in the Annex to the Regulation, may be amended, in particular on the basis of the changes made by the OECD Development Assistance Committee to its own list.

This instrument covers industrialised and other high-income countries and territories which share similar political, economic and institutional structures and values to the EU. The relations between these countries and the EU are already important. In addition, these countries are often key players in multilateral bodies. The mentioned instrument enables the development

[872] European Union, "Corrigendum to Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories", 30 December 2006, Official Journal L 405.

of a wider range of co-operation activities within main priority areas, including the following actions:

Areas of cooperation:

- Public diplomacy and outreach;
    - ✓ The promotion of dialogues between political, economic and social actors and other non - governmental organisations in relevant sectors in the Community and partner countries;
    - ✓ The enhancement of awareness about and understanding of the European Union and of its visibility in partner countries;
    - ✓ Support for specific initiatives, including research work, studies, pilot schemes or joint projects destined to respond in an effective and flexible manner to cooperation objectives arising from developments in the Community's bilateral relationship with the partner countries or aiming to provide impetus to the further deepening and broadening of bilateral relationships
- Economic partnership and Business cooperation
    - ✓ The promotion of cooperation, partnerships and joint undertakings between economic, academic and scientific actors in the Community and partner countries;
    - ✓ The stimulation of bilateral trade, investment flows and economic partnerships;
- People-to-people links
    - ✓ The promotion of people-to-people links, education and training programmes and intellectual exchanges and the enhancement of mutual understanding between cultures and civilisations;
- Research, Science and Technology
    - ✓ The promotion of cooperative projects in areas such as research, science and technology, energy, transport and environmental matters – including climate change, customs and financial issues and any other matter of mutual interest between the Community and the partner countries;

Unlike Singapore, Brunei has not signed any sectorial agreement in the area of air services. The Delegation of the European Union (EU) in Jakarta is currently working towards fostering European Union relations with Brunei Darussalam. The process of negotiating a new comprehensive EU-Brunei Darussalam Partnership and Cooperation Agreement (PCA) began in 2009.

ECONOMIC APPROACH

From the perspective of trade, unlike Singapore, bilateral trade relations could be intensified with Brunei. In 2010 EU-Singapore trade in goods grew by more than 20%.[873]

If we consider the data shown in the documentation presented and in accordance with our scale for measuring the importance of intensifying relations (mainly on the trade front) between the European Union and Brunei, we can conclude that the relationship **is totally asymmetrical in terms of trade relevance**.

In 2010 the European Union was Brunei's eighth largest trading partner. Ahead of them is Japan in first place, Singapore in third place and Indonesia in sixth.[874]

Despite the richness of this nation and the similarities that we have highlighted between Singapore, Malaysia and Brunei, we can see a big difference in terms of trade relevance. Brunei holds 136th place in the EU's ranking of trading partners in 2011,[875] whereas Malaysia is in 24th and Singapore in 14th for 2012.

In the trade sphere, if we only look at the data, it is an **overriding objective** for Brunei to intensify trade relations with the European Union. By contrast, it is of not much interest to the European Union, with a **low objective** rating.

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
BRUNEI- EUROPEAN UNION	**Overriding objective**	8th
EUROPEAN UNION-BRUNEI	Low	136th

If we look at the list of free trade agreements concluded and free trade agreements in negotiation, we see that Brunei is in neither of these categories.

9. SRI LANKA

TERRITORIAL AND HISTORICAL APPROACH

According to oficial data, Sri Lanka has a territory of 65,610 sq km and has a population of 21,481,334 (July 2012 est.)[876].

In the 16th century the Kotte Kingdom sought protection from new arrivals, the Portuguese, these soon subdued the north and so acquired most of the coastal belt of the country, leaving the central region to the Kingdom of Kandy. From the mid-1630s, the King of Kandy helped the Dutch to dispossess the Portuguese.

[873] European External Action Group, "Delegation of the EU to Brunei: Trade", European External Action Group, from: <http://eeas.europa.eu/delegations/indonesia/eu_brunei/trade/index_en.htm>, (accessed 20 February 2013).
[874] European Commission, "EU Bilateral Trade and with the world Report", European Commission: Directorate General Trade, 23 May 2013, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113391.pdf>, (accessed 1 July 2013).
[875] Ibidem.
[876] Indexmundi, "Sri Lanka Demographics Profile 2013", Indexmundi, from: <http://www.indexmundi.com/sri_lanka/demographics_profile.html>, (accessed 4 March 2013).

British interests developed in the late 18th century when a British army invaded and forced the Dutch to accept its protection. In 1802 the Dutch colony became a British possession. The Kingdom of Kandy was invaded in 1815 and its monarchy was abolished. Thus the whole island came under British rule.

After gaining independence Ceylon changed its name to Sri Lanka when it became a republic in 1972. As we have already explained, full self-government was achieved in 1946, under a new constitution, it became fully independent and joined the Commonwealth in 1948[877].

Territorial organisation: The country comprises nine provinces (from south to north): Southern, Sabaragamuwa, Western, Uva, Eastern, Central, North-Western, North-Central and Northern.

THE EU, SRI-LANKA, AND THE COMMONWEALTH RELATIONSHIP

I have not found many indicators to show that Sri Lanka opposed or complained about the United Kingdom's entry into the European Communities, as did India, Pakistan, New Zealand and Australia. In fact, relations between the European Union and Sri Lanka date back only to 1975, shortly after the United Kingdom would join the European Communities. We cannot overlook that Sri Lanka is a big producer and exporter of textile products and tea and so, in a way, the entry of the United Kingdom into the European Communities must have caused some kind of negative impact on the Sri Lankan economy.

> **"Cotton textiles and jute products - mainstays of the Indian and Pakistani export sectors - were to be subjected to the full tariff by the beginning of 1967.**"
>
> By contrast, "Britain's request for a zero tariff on tea was accepted by "the Six", but her requests for other changes to the tariffs on tropical agricultural products were rejected[878]."

It would be in 1975 when the European Commission concluded a Commercial Cooperation Agreement with the Government of Sri Lanka, whose general pursuits were to enhance and develop, through dialogue and partnership, the various aspects of co-operation between the European Union and Sri Lanka. Nevertheless, until 1995 the European Union did not establish a Delegation Office. In that year, the Delegation was opened in Colombo and was also accredited to the Maldives.

[877] "The Portuguese, the island's first European colonial rulers, called it Ceilao. Ceylon is a transliteration of Ceilao made by the British when they took over control of the island in 1815. The government did not announce a date for the name change. The name Ceylon is likely to remain in common use in the tea industry, where it is recognized in the international market for its quality".
Read more: Daily Mail, "Sri Lanka to scrub British colonial name Ceylon from every state institution", Daily Mail, 2011, from: <http://www.dailymail.co.uk/news/article-1343648/Sri-Lanka-scrub-British-colonial-Ceylon-state-institution.html#ixzz1rGVEigF9>, (accessed 4 March 2013).
[878] London South Bank University, "The Commonwealth during the period of Britain's first application to join the EEC", The European Institute Research Papers, from: <http://bus.lsbu.ac.uk/resources/CIBS/european-institute-papers/papers1/295.PDF>, (accessed 8 July 2012).

POLITICAL AND LEGAL APPROACH:

Chronologically the bilateral relationship is set in the context of the following agreements[879]:

A. Sri-Lanka trade cooperation Agreement of 22 July 1975 was replaced by 1994 Cooperation Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on partnership and development.

Comprehensive cooperation agreement covering commercial, economic and development cooperation and political dialogue. Contains an MFN clause.

As a third generation agreement, it is based on observance of democratic principles, the rule of law and human rights, while the future developments clause opens the way to any further form of cooperation of mutual interest.

Its main aim is to develop, through dialogue and partnership, different aspects of cooperation between the two sides, on the basis of trade growth and diversification, the broadening of economic cooperation, mutual exchange in the technical, economic and cultural spheres, and support for Sri Lanka's efforts towards sustainable development and environmental protection.

There is strong encouragement of investment and also for the private sector, science and technology, agriculture and fisheries, tourism and culture. The parties undertake to tackle poverty and drug abuse. Regional cooperation is also mentioned.

B. 2001 Memorandum of Understanding between the European Community and the Democratic Socialist Republic of Sri Lanka on arrangements in the area of market access for textile and clothing products initialled in Brussels on 5 December 2000 The parties agreed to bind Sri Lanka tariffs on textiles and clothing at certain rates and to suspend the European Community's application of the quantitative restrictions in respect of imports of textile and clothing products from Sri Lanka. So, the main pursuit was to set the agreed arrangements in the area of market access for textile and clothing products for both Parties.

C. 2004 Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation The main objective of this Agreement was to establish, on the basis of reciprocity, rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of Sri Lanka or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation.

D. 2007-2013 Sri-Lanka Strategy Paper[880]: The European Union (EU) has a long and substantial relationship with Sri Lanka, including sizeable development co-operation, extensive trade relations and an important political role.

[879] EU External Action Service, “Delegation of the European Union to Sri Lanka and the Maldives”, EU External Action Service, from:
<http://eeas.europa.eu/delegations/sri_lanka/index_en.htm>, (accessed 3 March 2013).
[880]Further information: Agence d’Aide à la Coopération Technique Et au Développement, <www.acted.org>.

With a view to the regulatory framework, today relations between the European Union and Sri Lanka are governed by a more comprehensive Co-operation Agreement on Partnership and Development which came into force in April 1995. As a third generation agreement, it is based on observance of:

- Democratic principles,
- The rule of law and,
- Human rights.

While the future developments clause opens the way to any further form of cooperation of mutual interest. This agreement covers a number of key areas of cooperation:

- Diversification of trade and investment;
- Networking between EU and Sri Lankan business communities;
- Strengthening technical, economic and cultural linkages, providing technical; assistance to Sri Lanka to interact more effectively with the European Union;
- Supporting Sri Lanka's efforts in improving the living conditions of the poorer sections of the population;
- Environmental protection and sustainable management of natural resources[881].

They followed up the 1995 agreement with a series of sectorial accords at the beginning of this century. In 2001 an agreement was signed in the area of market access for textile and clothing products. The parties agreed to limit Sri Lanka tariffs on textiles and clothing at certain rates and to suspend the European Community's application of the quantitative restrictions in respect to imports of textile and clothing products from Sri Lanka. In 2005, an agreement was signed related to immigration, specifically, on the readmission of persons residing without authorisation. The main objection of this agreement was to establish, on the basis of reciprocity, rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of Sri Lanka or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation.

On the other hand, on the political front, if we look at the Sri Lanka Strategy Paper (CSP)[882] we can concluded that is focused on two main challenges that this State needs to face in order to achieve a sustainable development:

1. The need to resolve the political and conflict situation, through a peacefully negotiated political settlement, which respects the legitimate demands of the minorities communities in Sri Lanka.
2. Poverty reduction and sustainable growth: need to adopt reforms in order to achieve the Millenium's Development Goal.

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[881] EU External Action Service, "Delegation of the European Union to Sri Lanka and the Maldives", EU External Action Service, from:
<http://eeas.europa.eu/delegations/sri_lanka/index_en.htm>, (accessed 3 March 2013).
[882] European Commission, "SRI LANKA Strategy Paper 2007 – 2013", European Commission, from:
<http://eeas.europa.eu/sri_lanka/csp/07_13_en.pdf>, (accessed 5 March 2013).

This CSP is focused in four main areas or pillars:

Pillar 1: Agricultural Livelihoods and Economic Development: Over 70% of the rural population in Sri Lanka depends on agriculture for their livelihoods.

a. Increasing agricultural productivity of smallholder farmers through the adoption of effective, locally appropriate and environmentally sustainable agricultural technologies.
b. Improving market linkages resulting in higher and more regular incomes for farmers.
c. Small and medium enterprise (SME) development.
d. Facilitating access to micro-credit

Pillar 2: Local Governance: decentralized development management and the promotion of good local governance produces producing a favorable environment to effectively address the various manifestations of rural poverty.

Pillar 3: Environment and Natural Resource Management: Sri Lanka is endowed with many natural resources whose management is critical to the rural poor's ability to improve livelihoods and to exit from poverty.

Pillar 4: Cross-Cutting and Other Aspects: provide timely and reliable humanitarian assistance to victims of natural and/or human-made disasters in Sri Lanka. Other activities include:

- Water, sanitation and hygiene promotion;
- Improving short-term access to food and non-food relief items (free distributions);
- Rapid shelter provision;
- Protecting and restoring livelihood assets (provision of tools, seeds, fishing gear, etc.);
- Building of community infrastructure and assets through cash-based programmes.
- Woman Empowerment and Gender Equality

Within the CSP framework, the EU will provide assistance of up to 112 Million EURO for the 2007-2013 period, the priority sectors will be:

- Conflict prevention, supporting the peace process
- Poverty reduction, especially in the North and East parts of the Island

Moreover a smaller allocation of support will be aimed to two non focal areas:

- Trade, through instruments such as GSP+
- Good Governance, through electoral reform, human rights monitoring and conflict resolution

ECONOMIC APPROACH

Finally, from the trade perspective, Sri Lanka enjoyed the GSP+ benefit from 15 July 2005 to 15 August 2010. This country was a major beneficiary of the trading opportunities offered by GSP+. The decision to withdraw GSP+ from Sri Lanka was based on the findings of an exhaustive Commission, which identified shortcomings in respect of Sri Lanka's implementation of three UN human rights conventions – the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT) and the Convention on the

Rights of the Child (CRC). Sri Lanka is considering to reapply to GSP+, now continues to have a preferential access (even though at a reduced rate compared to earlier) to the EU market for its key export[883].

In 2009 the EU was Sri Lanka's number one trading partner. Sri Lanka's trade with the EU is noteworthy not only because of its scale, but also because Sri Lanka's exports to the EU continue to grow while its exports to other key markets, such as the USA has seen a gradual decline. While Sri Lanka ocupa el lugar 68 en el ranking de EU major trading partners, para el año 2011[884].

Despite the interest shown by both parties for intensifying trade relations, there is a big obstacle that Sri Lanka must overcome if it wants to normalise relations with the European Union in a broad sense and to obtain greater trade advantages. This relates to questions concerning democracy and human rights. We have already seen that it was the failure to comply with human rights that resulted in the decision to withdraw GSP+ from Sri Lanka.

If we consider the data in the documentation presented and according to our scale for measuring the importance of intensifying relations (mainly on the trade front) between the European Union and Sri Lanka, we can conclude that the relationship is **asymmetrical in terms of trade relevance.**

In the trade area, if we only look at the data, it is an **overriding objective** for Sri Lanka to intensify its trade relationship with the European Union, whereas for the European Union it is a **medium objective**.

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
SRI LANKA- EUROPEAN UNION	**Overriding objective**	1st
EUROPEAN UNION-SRI LANKA	Medium	68th

If we look at the list of free trade agreements and free trade agreements in negotiation, we see that Sri Lanka is not in either of these categories.

10. THE MALDIVES:

TERRITORIAL AND HISTORIC APPROACH

Maldives is an archipelago of 1200 islands, has a territory of 289 sq. km and a population of 394,451 (July 2012 est.)[885]

Although the Maldives voluntarily accepted a period of British protection, the country has been an independent state throughout its known history, except for a very brief period (15 years) of Portuguese

[883] Delegation of the EU to Sri Lanka, "GSP status", Delegation of the EU to Sri Lanka, from: <http://eeas.europa.eu/delegations/sri_lanka/eu_sri_lanka/trade_relation/gsp_status/index_en.htm>, (accessed 18 March 2013).

[884] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).

[885] USA Central Intelligence Agency (CIA), "The Maldives", The CIA World Fact Book, from: <https://www.cia.gov/library/publications/the-world-factbook/geos/mv.html>, (accessed 18 March 2013).

occupation in the 16th century and an even briefer three months and 20 days of Mopla (south Indian) rule in the mid-18th century.

The period of the British protectorate began in 1887. The Sultan remained head of state. There was no British governor or representative and Britain did not interfere in the country's internal affairs, confining its interest to foreign affairs and defence.

Shortly after the end of the Second World War in 1945, the British began granting independence to some of the countries which had been their protectorates, possibly as a reward for their support during the war. Sri Lanka gained their independence in 1948 but the Maldives still remained a protectorate. What Maldives gained instead was 'internal' freedom where the British agreed not to interfere with the internal affairs of Maldives and in return they ensured the security of the country. However in the issue of foreign relations, the British had to be consulted. In July 26, 1965 Maldives gained independence after being a British protectorate for more than 77 years. It was only in 1982 that the Maldives applied for and was granted membership of the Commonwealth[886].

The country briefly became a republic in 1953–54, but was again a sultanate at the time it terminated the arrangement with the UK in 1965. Following a public referendum in April 1968, the sultanate was abolished and the Maldives was again declared a republic. Ibrahim Nasir, who had been prime minister since 1954, then became president.

Territorial organisation: Maldives is an archipelago in the Indian Ocean, comprising 1,190 coral islands (200 inhabited), on a double chain of 26 coral atolls; none of the islands rise higher than 2m above sea level. The islands are divided into 20 administrative units, called atolls (although they do not necessarily correspond to geographical atolls). Each is known by a letter in the Maldivian alphabet in addition to its geographical name.

As we have seen in the Brunei case, The Maldives were a protectorate and protected states were foreign territories to which British protection was extended in some form. Protected states were places in which:

- there was a properly organised internal government; and
- Britain controlled only the state's external affairs.

Protectorates were protected territories in which:

- there was no properly organised internal government; and
- Britain not only controlled external matters, such as the protectorate's defence and foreign relations but also established an internal

Britain's involvement in protectorates was similar to its involvement in colonies but they did not have the formal status of colonies[887].

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[886] Ministry of Home Affairs of the Maldives, "Ministry of Home Affairs of the Maldives", from: <http://en.homeaffairs.gov.mv/?page_id=99>, (accessed 18 March 2013).

[887] UK Border Agency, "Who is a British overseas territories citizen?", UK Government- Home Office: UK Border Agency, from: <http://www.ukba.homeoffice.gov.uk/britishcitizenship/othernationality/britishoverseasterritories/>, (accessed 15 May 2013).

THE EU, THE MALDIVES AND THE COMMONWEALTH RELATIONSHIP

These aspects are important when analysing the relations that the Maldives have historically maintained with the then European Communities. The impact of the United Kingdom's joining the European Communities was not notable at the beginning because the Maldives were not a completely sovereign nation until the middle of the 1960s, but rather a British protectorate and as such continued to depend on the United Kingdom in the area of Foreign Affairs.

Unlike the case of Brunei, the Maldives are handicapped by its small size. As to its economy, by far the most significant export is fish products (mainly canned fish and frozen skipjack tuna), followed by clothing[888]. The EU Commission notes it is also largely dependent on tourism.[889] With regards to the textile industry and as we indicated with the case of Sri Lanka, despite not having found enough indications that it was opposed to or expressed its concerns, as did India, Pakistan, New Zealand and Australia, the Maldives are big producers and exporter of textile products so that in a way, the United Kingdom's entry into the European Communities should have caused some type of negative impact on the Maldives economy.

The history of the Maldives is tied to that of the United Kingdom. In fact, the European Union delegation in the Maldives is the delegation to Sri Lanka and the Maldives.

> "Sri Lanka is our closest neighbour with centuries old relations. There is a considerable number of Sri Lankans in the Maldives and similarly there are Maldivians in Sri Lanka[890]".
>
> "Maldives, have traditionally been reliant on Sri Lanka. Sri Lanka remains very important; moreover the government has also endeavoured to improve political and economic relations with India.
>
> The trade and commerce between Sri Lanka and Maldives have been carried out since time immoral. Hence almost about 90% of the country's trade was with Sri Lanka in particular the export of Maldives Fish and import of rice. Maldives exports then including only dried fish and sweet haluwa (Bondi), brought by Maldives traders to the port of Galle. Sri Lanka provides economic and technical assistance to the Maldives. Sri Lanka is today the fourth largest exporter to the Maldives besides, Singapore, India and the UAE. Sri Lankan work force today stands approximately 10,000 in the Government and private sector of Maldives. Maldives is also the 3rd largest trading partner of Sri Lanka among SAARC countries[891]".

[888] The Commonwealth, "The Maldives Factsheet, Economy", The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/templates/system/TextVersion.asp?q=cache:1nawzZmOCmcJ:www.thecommonwealth.org/YearbookInternal/138764/economy/+The+Gambia&access=p&NodeID=20643&output=xml_no_dtd&ie=UTF-8&client=default_frontend&site=default_collection&oe=UTF-8&proxystylesheet=default_frontend>, (accessed 25 March 2013).

[889] European Commission, "The Maldives - European Community, Country Strategy Paper 2007-2013", European Commission, from: <http://eeas.europa.eu/delegations/sri_lanka/documents/eu_maldive/031sp2007_2013_en.pdf>, (accessed 25 March 2013).

[890] KRISHNASWAMY, P.; "Maldives ready with roadmap towards a full-fledged democracy", Sunday Observer, Sri Lanka's Newspaper, 26 February 2012.

[891] High Commission of Sri Lanka, "Trade", High Commission of Sri Lanka, from: <http://www.slhcmaldives.com/trade.php>, (accessed 3 March 2013).

POLITICAL AND LEGAL APPROACH:

Chronollogicaly the bilateral relationship is set in the context of the following agreements [892]:

Agreement between the European Community and the Republic of Maldives on certain aspects of air services, entered into force 15 April 2008, this agreement aims to To bring into full conformity with the European Community law the provisions of the bilateral air service agreements between Member States of the European Community and the Republic of Maldives which are contrary to it, in order to establish a sound legal basis for air services between the European Community and the Republic of Maldives and to reserve the continuity of such air services.

The European Union and the Maldives have maintained cooperation over the past few decades. Diplomatic relations were established in 1983, with the Commission Head of Delegation in Colombo being accredited as non-resident Ambassador to the Maldives. Currently, the EU seeks to maintain its close collaboration with the Maldives mainly through sustained aid implementation and deepening political co-operation[893].

Today relations between the European Union and Maldives are focused on Development co-operation. The European Union has been providing development assistance to the Maldives since 1981, especially during the tsunami of 2004, the EU has undertaken reconstruction and rehabilitation projects focused on three key areas:

(i) Repair of damaged houses
(ii) Immediate regeneration of livelihoods in affected areas, and
(iii) Support for the longer-term regional development strategy[894].

We can see that outside of the humanitarian framework and unlike that which occurred in Sri Lanka, relations between the two are not very intense. There is no type of bilateral trade cooperation agreement or any other type of general agreement. Relations are not extensive even on general terms. The only existing agreement is on the matter of air services signed in 2006 in line with those signed by Malaysia and Singapore. The rest of the agreements are multilateral, mainly through the United Nations.

On the other hand, on the political front, if we look at the Maldives Strategy Paper (CSP)[895], we can concluded that is focused on two main challenges that this State needs to face in order to achieve a sustainable development:

1. Poverty Reduction
2. Regionsal Sustainable development, economically and environmentally sustainable islands in order to protect their population against natural disasters and have job improved opportunities.

[892] EU External Action Service, “Delegation of the European Union to Sri Lanka and the Maldives”, EU External Action Service, from:
<http://eeas.europa.eu/delegations/sri_lanka/index_en.htm>, (accessed 3 March 2013).
[893] Ibidem.
[894] Ibidem.
[895] European Commission, “The Maldives - European Community, Country Strategy Paper 2007-2013”, European Commission, from:
<http://eeas.europa.eu/delegations/sri_lanka/documents/eu_maldive/031sp2007_2013_en.pdf>, (accessed 25 March 2013).

The CSP points out that in terms of Millenium Development Goals, the Maldives is one of the most advanced countries in Asia and certainly the most advanced in South Asia. Nevertheless, a large part of the population is living in poverty, mainly as a result of regional disparities in living conditions.

Politically, the Maldives is undergoing fundamental constitutional changes. The proposed reforms highlighted the need to transform the country into a multi-party democracy. There is popular support but frustration at the slow pace of implementation.

Currently the Maldives faces many challenges, notably its fight for survival due to submersion caused by the phenomenon of global warming. But other severe threats to its people have also emerged, such as the alarming levels of drug use and other health hazards becoming apparent in the recent past.

The EU, en this CSP para el período 2007-2013 proporcionará una ayuda de 10 Million EURO, the priority sectors will be:

- Sustainable Development;
- Poverty reduction;
- Environmental Policy: Climate Change;

Moreover, non focal areas will be:

- Economic Development;
- Good Governance, human rights and democratization. The EU will continue to help the Maldives to build a full democracy.

ECONOMIC APPROACH

Finally, from a trade perspective, it is clear that in order to intensify trade relations between the two, there are many big obstacles that the Maldives would have to overcome if it wants to take advantage of greater trade advantages. It is primarily concerns matters related to reducing poverty and sustainable development as well as the need to finalise the process of democracy, which is developing slowly, although it seems clear that the country is making efforts that will lead to significant progress.

If we consider the data and documentation presented and according to our scale for measuring the importance of intensifying relations (mainly on the trade front) between the European Union and the Maldives, we can conclude that the relation, as is the case with Brunei, **is the most asymmetrical of the eleven nations in terms of trade relevance.** It does not seem that the Maldives is an overriding objective for the European Union. The Maldives rank 163 in 2011[896], whereas for the Maldives it is a priority since the European Union is the Maldives' largest export partner and the third largest import partner in 2009. The European Union was preceded by Singapore, United Arab Emirates and India.[897]

[896] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from:
<http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).
[897] European Union, "The European Union in Sri Lanka and the Maldives", European Union Publications, 2012.

In terms of trade, if we only look at the data, it is an **overriding priority** for the (original says Sri Lanka, but should it be the Maldives) to intensify trade relations with the European Union. On the other hand, for the European Union is represents a **very low objective**.

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
THE MALDIVES- EUROPEAN UNION	**Overriding priority**	1st
EUROPEAN UNION-THE MALDIVES	Very Low	163th

If we look at the list of free trade agreements concluded and free trade agreements in negotiation, we see that the Maldives is not in either of the two categories.

11. CANADA

TERRITORIAL AND HISTORICAL APPROACH

Accoring to 2011 oficial data, Canadá has a territory of 9,984,670 sq km and has a population of 34,300,083 (July 2012 est.) [898]. It was one of the six founding members of the Commonwealth. It became a member in 1931 after implementation of the Statute of Westminster. Canada is a federal state and one of the 16 states of the Commonwealth Realm, meaning Queen Elizabeth II is the Queen and Head of State of Canada.

THE EU, CANADA AND THE COMMONWEALTH RELATIONSHIP

Canada's reaction to the United Kingdom entry to the European Communities was similar to Australia's:

As we have explained in depth in the first part of this work, the Commonwealth was a factor in the breakdown of negotiations when Britain first applied to join the EEC. "In 1961, Britain was still primarily oriented towards the Commonwealth in terms of trade, foreign policy and sentiment."[899]

Britain's first application to join the European Economic Community – 1961-1963

> "New Zealand's representatives "made it clear that they could not at present see any effective way of protecting New Zealand's vital interests other than by maintenance of unrestricted duty-free entry". New Zealand at least expressed a willingness to understand Britain's position. **This was not the case with Canada and Australia, both of whose Governments were in part dependent on the support of rural constituencies**. The Australian Government, while recognising that it was not appropriate openly to criticise British plans, "made

[898] USA Central Intelligence Agency (CIA), "Pakistan", the CIA World Fact Book, from: <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>, (accessed 8 December 2012).

[899] London South Bank University, "The Commonwealth during the period of Britain's first application to join the EEC", The European Institute Research Papers, from: <http://bus.lsbu.ac.uk/resources/CIBS/european-institute-papers/papers1/295.PDF>, (accessed 8 July 2012).

> it clear that the absence of objection should in the circumstances not be interpreted as implying approval".19”[900]

Britain’s Second Application to join the European Economic Community, 1966-67

> “In January 1967 [British Prime Minister] Wilson and Brown, [from the Department of Foreign Affairs] began their tour of the EEC capitals. In the opening meeting with the Italian government on 16 January, Wilson told the Italians that ‘we have come to the discussions with the clear intention of entering into the Community: and we have decided to go right to the very end’.51 Wilson emphasised that Britain ‘had embarked on a great effort and would not like to see the great issues bogged down in discussions of questions such as kangaroo meat’.52 ‘Kangaroo meat’ has become a byword for Australia’s stubborn defence of its own interests during the 1961-63 negotiations. **Brown told the Italians that ‘in relation to the Commonwealth trade it was well known that there were problems affecting Australia and Canada**, but the really difficult case was that of New Zealand’. Brown therefore stressed the need for special arrangements for New Zealand as opposed to transitional arrangements for other Commonwealth countries. In the following weeks, Wilson and Brown presented the same arguments during their visits to the remaining capitals of the EEC.[901]”

Both Australia and Canada reacted to the United Kingdom’s entry to the European Communities because it would clearly impact trade relations that they held with the United Kingdom and it would complicate their privileged relationship. After examining the documents, we can see that the change in relations went through three distinct phases. The first from 1970-1976 was marked by tension due to the loss of privileges for some countries, Canada among them, resulting from the United Kingdom’s joining the European Communities. Canada adjusted to the new requirements in this phase and there was not much close collaboration between the European Communities and Canada, the few agreements in place did not go beyond the economic scope.

In the second stage from 1976 – 1996, relations were normalised and formalised. Three highly important agreements were signed that went beyond the purely economic-trade realm. Thus, in 1976, the **Framework Agreement for Commercial and Economic Cooperation was signed. In 1990** the Transatlantic Declaration established how Canada and the European Union were to consult with each other. In 1996 the Joint Canada-EU Political Declaration and Action Plan was signed, which outlined commitments to working together in many areas.

There is a clear attempt in the third stage by both parties to continue deepening their relations. For Canada today, the European Union represents Canada's second largest trade and investment partner and a natural ally on many foreign and security issues. According to Verdun, both Canada and the European Union are eager to take the next steps, so it is highly likely that there will be significant strengthening of Canada-EU relations in the future.

We have indicated that the privileged relationship Canada holds with the United Kingdom in the context of the Commonwealth influence from the start its relations with the European

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[900] Ibidem.

[901] DADOW, O.J., *Harold Wilson and European Integration: Britain's Second Application to Join the EEC*, London, Frank Cass Pbl., 2003, p.187.

Communities. At the same time that the Commonwealth was undergoing profound changes and a process of adaptation to a new reality marked by the dismantling of the tariff preferences and the configuration of a new international position, Canada was starting overcome tensions and normalising its relationship with the European Communities. Relations between Canada and the European Union cannot be understood without a third actor, the United States. Verdun notes that "Canada's relationship to the European Union is completely coloured by its relationship with the United States".

Canada has realised that excessive dependence on a single partner is dangerous and there are other trade, political and defence models that are compatible with their own besides the United States and can even offer it better solutions for the problems it faces.

> "When Canada's dependence on the United States for its market or its military support is getting too large, Canada turns to Europe. When Canada finds that it wants to keep its healthcare system in tact but cannot find a successful model in the United States to copy (or to learn from) it focuses on the European Union Member States. Even in the area of research and higher education Canada seeks to collaborate with the European Union member states to have the next generation learn something from their European cousins. When examining these polices we can draw some broad comparisons. Canada uses Europe to find a successful model when in its view the U.S. model is no longer valid, or when the U.S. model no longer serves as a good example to solve the current day problems[902]".

One has to be realistic. Relations with the European Union must continue to progress and it must try to deepen them. Because Canada continues to be focused on the United States it is difficult to overcome or equal this tie. We cannot overlook that, with Mexico, they make up NAFTA, the North American Free Trade Agreement. "The European Union is the next biggest market for Canada, but falls well behind the U.S. market. Although in absolute terms the trade volume with Europe has increased, in relative terms its share has fallen behind that of the trade with the United States. Policy makers have signaled out the European Union as being a very important trading partner, in which Canada wants to invest more in order to have diversified trading markets[903]".

It is also interesting to highlight that Canada holds firm in claiming its identity. For some authors like Verdun,[904] in some aspects, the Canadian identity has more in common with Europe than the United States.

> "Besides these relationships the two neighbouring developed North American countries have a considerable amount in common, yet a distinct sense of their role in the world and their philosophy at home regarding policies[905]".

> "(..) In some factors the Canadian identity was closer to that of the Europeans than that of the U.S. Americans. If one examines the multiculturalism, the more languages, the role of the welfare states and the importance of public education, as well as the social solidarity one finds more natural support from policies pursued in some of the EU countries rather than necessarily in the United States. There is one more factor that

[902] VERDUN, A., "Canada and the European Union: Strengthening Transatlantic Relations", *Jean Monnet/Robert Schuman Paper Series*, Vol. 3, November 2003, Num. 10, p. 5.
[903] Ibidem.
[904] Ibidem.
[905] Ibidem.

> pushes Canada (under Chretien) closer to Europe than to the United States: foreign policy[906]".
>
> "In discussing Canadian identity the government of Canada has also often stressed that Canada sees itself as subscribing to a number of key values. These values include democracy, human rights, multiculturalism, social cohesion, respect for equality and diversity. It considers it important to highlight these values when dealing with other countries[907]".

It has been traditionally interpreted that the British Crown serves to reinforce Canada's identity, and thus distinguishes it from the United States. According to Smith, for many Canadians,

> "The Queen is a symbol of the Canadian history and heritage. Indeed, the monarchy has been a part of Canada as long as Canada itself, from our inception as a British colony to the continual affirmation of our nationhood in later years. And while the Queen appears to do little these days she is in fact the basis of our nation's power and existence[908]"

The Crown has significant popular support in Canada, with one Ipsos-Reid poll in 2002[909] stating that 84 per cent of Canadians believe that Queen Elizabeth II has done a good job as monarch. There's even a club for avid supporters, called the Monarchist League of Canada, with more than 20 branches nationwide. Something similar happened in Australia, the citizens in a national referendum in 1999, when the majority of citizens voted to retain the monarchy.

However there are voices who claim for the end of formal ties with the British Crown "The reality is that the monarchy has evolved into such a benign institution in the last 50 years that nobody thinks of it any more[910]". Something similar happens in Australia, in the referendum held in 1999, where a small majority of a little more than 54% voted against a republic and to keep Queen Elisabeth II as monarch of Australia.[911]

POLITICAL AND LEGAL APPROACH

The relationship between the EU and Canada dates back to 1976, the EC's oldest formal relationship with any industrialised country. Canada and the EU share common values that underpin the fundamental nature of their societies. Both share close historical and cultural ties, as well as the respect for multilateralism, which are the foundations of their partnership[912]. There is a clear will to keep on progressing in their relationship and deepening in their cooperation framework as well as expanding to new areas of collaboration.

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[906] Ibidem.
[907] Ibidem.
[908] SMITH, D., *The Invisible Crown: The First Principle of Canadian Government and The Republican Option in Canada: Past and Present*, Toronto, University of Toronto Press, 1995, p.22.
[909] Institute of Political and Social Studies, "Canada", News and Polls, Institute of Political and Social Studies, from: <http://www.ipsos-na.com/news-polls/pressrelease.aspx?id=1639>, (accessed 30 March 2013).
[910] FREDA, T., "Welcome address by Tom Freda, Speeches and commentary", Citizens for a Canadian Republic Pbl., 16 September 2009.
[911] British Broadcasting Corporation (BBC), "World: Asia-Pacific, Australia rejects republic", BBC News, 2009, from: <http://news.bbc.co.uk/2/hi/asia-pacific/507293.stm>, (accessed 30 March 2013).
[912] European External Action Service, "EU-CANADA PARTNERSHIP AGENDA", European External Action Service, EU-Canada Summit, Ottawa, 18 March 2004, from: <http://eeas.europa.eu/canada/docs/partnership_agenda_en.pdf>, (accessed 30 March 2013).

Chronologically, we can see that relations between both began very early in 1959 and were focused on a specific area, atomic energy. Later relations would be formalised with the signing in 1976 of the Framework Agreement on Economic Cooperation. This was the first formal agreement of its kind between what was then the EEC and an industrialised third country, this was committed "to develop and diversify their reciprocal commercial exchanges and to foster economic co-operation".

Since then, the EU and Canada have concluded several agreements on specific areas, covering a wide range of economic activities ranging from: [913]

a- **Fisheries**, such as the 1993 Agreement between the European Community and the Government of Canada concerning fisheries relations[914].This is a cooperation agreement in the fisheries sectors to support effective conservation and sustainable exploitation of north-west Atlantic fisheries resources complying with the decisions of NAFO on fisheries management and conservation, in accordance with their rights and obligations under the NAFO Convention and in conformity with the provisions of the United Nations Convention on the Law of the Sea and the 1978 Convention on Future Multilateral Cooperation in the North-west Atlantic. It has an indefinite duration.

b- **Agriculture**, such as the 2003 Agreement between the European Community and Canada on trade in wines and spirit drinks[915] , which amends the Agreement of 1989 on trade in spirit drinks (Article 38) and introduce new provisions concerning trade and commerce in alcoholic beverages between the Community and Canada. This new agreement provides the conditions to facilitate and promote trade in wines and spirit drinks produced in Canada and the Community.

c- **Veterinary issues**, such as the 1998 Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in live animals and animal products, which was partially amended by the 2005 Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in live animals and animal products[916]. Basically, the modifications concern the equivalence for Canadian exports of pig meat to the EU ante- and post-mortem provisions, the definition of market hogs and other hygiene requirements, as well the equivalence for EU exports of pig meat to Canada.

d- **Atomic energy and nuclear research**, such as the 1998 Agreement between Canada and the European Atomic Energy Community for cooperation in the area of nuclear research[917], it was adopted in order to encourage and facilitate cooperation, in fields of common interest in the peaceful, non-explosive, non-military uses of nuclear energy where the Parties are supporting research and development activities to advance science and/or technology relevant to those fields of interest.

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[913]European Union External Action Service, "Treaties Office Database", European External Action Service, from: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=5761>, (accessed: 24 June 2012).
[914] Ibidem.
[915] Government of Canada, "Agri-Food Trade Policy Canada - European Community Wine and Spirits Agreement", Government of Canada, from: <http://www.agr.gc.ca/itpd-dpci/ag-ac/4971-eng.htm>, (accessed 30 March 2013).
[916] European Union External Action Service, "Treaties Office Database", European External Action Service, from: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=5761>, (accessed: 24 June 2012).
[917] Ibidem.

e- **Scientific and Technological Cooperation**, such as the 1998 Agreement amending the Agreement for Scientific and Technological Cooperation between the European Community and Canada.

f- **Customs co-operation**, such as the 1997 Agreement between the European Community and Canada on customs cooperation and mutual assistance in customs matters[918]. This Agreement covered all matters relating to the application of customs legislation, provided for the possibility to expand its scope and to increase the levels of customs co-operation and supplemented them.

g- **Competition laws**, such as the 1999 Agreement between the European Communities and the Government of Canada regarding the application of their competition laws[919]. This was concluded to promote cooperation and coordination between the competition authorities of the Parties and to lessen the possibility or impact of differences between the Parties in the application of their competition laws.

h- **Higher Education Cooperation**, such as the 2000 Agreement between the European Community and the Government of Canada renewing a cooperation programme in higher education and training, which was partially amended by the 2006 Agreement between the European Community and the Government of Canada establishing a framework for cooperation in higher education, training and youth[920]. This was concluded to promote mutual understanding between the peoples of the European Union and Canada including broader knowledge of their languages, cultures and institutions; to improve the quality of human resources in both the European Community and Canada, by facilitating the acquisition of skills required to meet the challenges of the global knowledge-based economy.

i- **Air Transport**, regarding this area, there are three different agreements concluded, focused on specific issues. These are: the 2005 Agreement between the European Community and the Government of Canada on the processing of Advance Passenger Information and Passenger Name Record data, the 2009 Agreement on Air Transport between Canada and the European Community and its Member States and the 2009 Agreement on civil aviation safety between the European Community and Canada.

j- **Peace and Security**, such as the 2005 Agreement between the European Union and Canada establishing a framework for the participation of Canada in the European Union crisis management operations[921] , until 2005 the participation of Canada in civilian and military crisis management operations conducted by the EU was done on the basis of ad hoc arrangements. Canada has participated in several EU-led operations, such as:

- EU Police mission in Bosnia and Herzegovina (EUPM),
- Operation Artemis in the Democratic Republic of Congo (in 2003),
- Operation ALTHEA in Bosnia and Herzegovina and
- EU Police mission in the Democratic Republic of Congo (EUPOL Kinshasa).

We also note that there is a large variety of agreements in specific areas where the European Union collaborates with Canada. Currently, the European Union and Canada work closely together on global challenges throughout the world, such as:

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[918] Ibidem.
[919] Ibidem.
[920] Ibidem.
[921] Ibidem.

- The environment,
- climate change,
- energy,
- security and regional stability

The European and Canadian representatives meet regularly to exchange views. The preparation and follow-up of EU-Canada summits is carried out by officials in the framework of the EU-Canada Co-ordination Group, which was created under the 2004 Partnership Agenda and meets roughly four times a year. EU-Canada foreign Ministers' meetings are also held on an annual basis[922].

In chronological order, the regulatory framework of relations between the European Union and Canada is governed by the following accords:

- In 1976 the European Economic Community (EEC) and Canada signed a Framework Agreement on Economic Co-operation, the first formal agreement of its kind between the EEC and an industrialised third country.
- A Declaration on Transatlantic Relations was then adopted in 1990, extending the scope of their contacts and establishing regular meetings at Summit and Ministerial level.
- And at the 1996 Ottawa summit, the new Political Declaration on EU-Canada Relations adopted joint Action Plan identifying additional specific areas for cooperation.
- The 2004 Partnership Agenda.

The 1990 Declaration on Transatlantic Relations,[923] which extended the scope of their their contacts and establishing regular meetings at Summit and Ministerial level. In this Declaration they recognised their common heritage and close historical, political, economic and cultural ties, as well as the transatlantic solidarity has played a historical role in presenting peace and freedom and can greatly contribute in the future to the continued stability and prosperity of Europe and North America.

COMMON GOALS:

- support democracy, the rule of law, and respect for human rights and individual liberty,
- safeguard peace and promote international security, especially by cooperating with other nations of the world against aggression and coercion and other forms of violence by strengthening the role of the United Nations and other international organisations, and by contributing to the settlement of conflicts in the world,
- pursue policies aimed at achieving a sound world economy marked by sustained economic growth with low inflation, a high level of employment, equitable social conditions and a stable international financial system,
- promote market principles, reject protectionism and expand, strengthen and further open the multilateral trading system,
- reaffirm their commitment to help developing countries in their efforts towards political and economic reforms by improving development assistance, broadening market access,

[922]European External Service, "EU's relations with Canada", European External Action Service, from: <http://eeas.europa.eu/canada/>, (accessed 4 April 2014).
[923]European External Action Service, "Declaration on Transatlantic Relations 1990", Delegation of the European Union to Canada from:
<http://eeas.europa.eu/delegations/canada/eu_canada/political_relations/bilateral_agreements/1990_declaration/index_en.htm>, (accessed 4 April 2014).

strengthening the debt strategy and encouraging the efficient use of foreign assistance and national resources,

- provide adequate support, in cooperation with other states and organisations, to the countries in Europe undertaking fundamental economic political reforms and encourage their participation in the multilateral institutions of international trade and finance.

AREAS OF COOPERATION

Both Parties will consult on:

- humanitarian,
- Political,
- Cultural
- economic and trade issues and,
- on matters of mutual interest.

Regarding economic, trade and cultural issues they agreed on the importance of strengthening the multilateral trading system, in order to support further steps towards liberalization, transparency, and the implementation of GATT and OECD principles concerning both trade in goods and services, and investment.

They agreed to develop their dialogue, which was already underway, on other matters such as technical and non-tariff barriers to industrial and agricultural trade, services, competition policy, transportation policy, standards, telecommunications, high technology, and other relevant areas.

They agreed to support the activities of the IBRD, IMF, OECD, G.24, EBRD and other multilateral fora. In this same line and within international bodies, they agreed exchange information and seek close cooperation.

Their committed to foster mutual cooperation in various other fields which directly affect the well-being of their citizens, such as exchanges and joint projects in science and technology, including space, research in medicine, environmental protection, energy conservation, and the safety of nuclear and other installations, and in communication, culture and education, including academic and youth exchanges.

MEETINGS- INSTITUTIIONAL FRAMEWORK FOR CONSULTATION:

- Both sides will make full use of the mechanisms established under the EC/Canada Framework Agreement and enhance their consultative arrangements through:
- regular meetings, in Canada and in Europe, between the Prime Minister of Canada on one side and, on the other, the President of the European Council and the President of the Commission:
    - bi-annual meetings, alternately on each side of the Atlantic, between the President of the Council of the European Communities, with the Commission, and the Secretary of State for External Affairs of Canada;
    - annual consultations between the Commission and the Canadian Government;
    - briefings by the Presidency to Canadian representatives following EPC meetings at the Ministerial level.

TRANS-NATIONAL CHALLENGES:

Canada and the European Community and its member states listed a number of trans-national challenges which they assigned a high priority, these were and still are:

- the combatting and prevention of terrorism,
- the fight against the production and consumption of drugs and related criminal activities, such as illegal trafficking and the laundering of money,
- the control of the proliferation of the instruments of war and weapons of mass destruction,
- the protection or the environment and the pursuit of sustainable development within each country as well as the preservation of the fragile global ecosystem, which calls for effective international action and multilateral cooperation,
- appropriate measures concerning large-scale migration and the flow of refugees.

M. 1996 Joint Political Declaration and Action Plan: At the 1996 Ottawa summit they adopted joint Action Plan identifying additional specific areas for cooperation. It is a very comprehensive agreement which includes the following areas of cooperation:

- **Economic and Trade Relations**:

- Reinforcing the multilateral trading system

- Strengthening the WTO
- Uruguay Round unfinished negotiations: work together for and commit themselves to the successful completion of the negotiations on telecommunications and financial services, aiming at the conclusion of genuine multilateral agreements based on the MFN principle, as well as ensuring multilateral liberalisation of maritime transport.
- Government procurement
- New issues on the trade policy agenda:
    - Environment
    - Investment
    - Competition
    - Labour Standards
- Opening New Markets: they agreed to co-operate in creating additional trading opportunities, bilaterally and throughout the world in conformity with WTO rules.
- Intellectual property rights (IPR)
- Standards and technical regulations: they agreed to co-operate to ensure the full implementation of the Technical Barriers to Trade and Sanitary and Phyto-sanitary Agreements, and give consideration to developing further initiatives in the WTO to eliminate technical barriers to trade.

- **Reinvigorating the bilateral economic relationship**: Trilateralisation between Canada, the European Union and the United States for subjects included in the New Transatlantic Market Place.

- Dealing with bilateral trade disputes and facilitating trade.
- Joint study: They committed to carry out a joint study on ways of facilitating trade in goods and services and further reducing or eliminating tariff and non-tariff barriers.
- Standards certification and regulatory issues: They agreed to conclude a bilateral agreement on mutual recognition of conformity assessment, which includes certification and testing procedures for several sectors, as well as to strengthen regulatory co-operation, in particular by encouraging regulatory agencies to give high priority to co-operation with their transatlantic counterparts.
- Competition policy.
- Government procurement.
- Financial services: They committed to co-operate with a view to facilitating market access to their respective financial services industries.
- Intellectual property rights (IPR): They agreed to renew their efforts to resolve all remaining bilateral IPR problems.
- Customs and indirect taxation.
- Anti-dumping and countervailing duties: They agreed to work together towards the achievement of multilateral consensus in the interpretation and implementation of the WTO rules concerning anti-dumping and countervailing duties.
- Fisheries.
- Veterinary, sanitary and phyto-sanitary co-operation.
- Transport.
- Energy.
- Statistical co-operation.

- **Employment and Growth**: Faced with the twin challenges of achieving economic growth and combating unemployment, they will co-operate in the follow-up to the G-7 Summit initiative and the G-7 Jobs Conference.

- To exchange views on macroeconomic issues.
- To establish a dialogue on employment policy as well as labour related and social issues under the aegis of the Joint Co-operation Committee.

- **Euro- Atlantic Security Issues**: Recognising the indivisible character of Euro-Atlantic security they confirm that NATO remains, for its members, the centrepiece of transatlantic security, providing the indispensable link between North America and Europe.

- **Global Issues**:

- United Nations.
- Global security, disarmament and non-proliferation.
- Human rights and democracy: consult bilaterally and within the framework and the relevant bodies of the UN, especially the UN Commission on Human Rights.
- improve international coordination in post-conflict situations.

- **Regional Cooperation**: Within the general framework of their consultations, Canada and the EU will enhance the level of their co-operation in specific areas, such as:

- OSCE.
- The Balkans.
- Central and Eastern Europe.
- Russia, Ukraine and other NIS.
- Middle East.

- **Development Co-operation**: the priority they attach to development aid, notably with respect to the least developed countries, they agree to reinforce their coordination in multilateral fora and co-operate more actively at the bilateral level.

- **Humanitarian Assistance**: They will consult on improving the delivery of multilateral humanitarian assistance and the efficiency of UN humanitarian operations and, where appropriate, may undertake joint initiatives towards these ends.

- **Preservation of the environment**: They will reinforce their efforts to improve the effectiveness of multilateral actions to protect the global environment including by strengthening the exchange of information and reporting on global environmental issues.

- **Artic co-operation**: co-operate on the sustainable development and the environmental protection of the Arctic region.

- **Migration and asylum**:

- to jointly explore measures to combat illegal migration
- exchange information on asylum trends and on initiatives in the area of asylum system.
- work towards the development of appropriate multilateral and bilateral co-operation and exchange information and experiences on the application of migration and asylum policies.
- Fight Against Terrorism: work on assessing and responding, appropriately, to terrorist threats in particular through close co-operation in all areas concerned;

- **Combating international organised crime, drug trafficking, and misuse of the information highway (exchange of information and promoting public policies)**

Legal Matters:

- identify means of strengthening international legal assistance, extradition mechanisms, and of co-operating in the obtaining of evidence and other relevant information;
- Examine possible co-operation on judicial seizure and forfeiture of assets.

- **Health**: Canada and the EU will work together to develop a co-operative approach which recognises the need to share information and experiences on health issues. Increasing globalization has lead to the need to collaborate on a variety of health issues including those related to communicable diseases and the regulation of health goods and services.

- **Educational and cultural links science and technology:** further strengthen their co-operation through the Agreement on Higher Education and Vocational Training. History, language, commercial relations, and long-standing cultural exchanges have cemented transatlantic ties on culture and society. To allow this valuable relationship to grow further into the next century and beyond, new bridges need to be built between the peoples of Canada and the EU. One of the key issues is to disseminate information for the mutual recognition of university studies, degrees, and professional qualifications;

- **Science and technology:** Building on the Agreement for Scientific and Technological Co-operation between Canada and the EC, which entered into force in February 1996, they will further strengthen and broaden their co-operation in the area of science and technology.

- **Business-to-business contacts:** They will co-operate in order to support the establishment of transnational strategic business alliances, technology transfers and other forms of industrial co-operation. They will co-operate in the field of bio-technology and encourage regulatory co-operation, including with respect to genetically modified organisms.

- **People to people links:**

- facilitate the movement of each other's citizens across their respective borders;
- facilitate contacts between parliamentarians;
- encourage increased contacts between citizens and institutions in diverse fora: youth (including through working vacations), artists, professionals, indigenous people, think tanks, etc.;
- promote activities in the field of tourism;
- promote joint conferences, symposia and workshops in the context of the information society to encourage information exchange in particular to foster industrial and institutional relationships (eg. links between regions having similar interests).

The 2004 EU-Canada Partnership Agenda[924] adopted at the Ottawa Summit on 18 March 2004, identifies ways of working together to move forward, especially where joint action can achieve more than acting alone Canada and the EU to deepen consultative mechanisms in order to enhance our relationship and strengthen our contacts at the political level in order to:

- advance international security and effective multilateralism
- further global economic prosperity
- deepen cooperation on justice and home affairs
- address global and regional challenges
- foster closer links between the people of the EU and Canada

In order to manage the growing Canada-EU relationship effectively and to identify areas in which our dialogue should be strengthened, Canada and the EU will:

- maintain the high level dialogue at Summit and Ministerial level on critical issues facing the international community;
- make full use of opportunities for contacts between Canadian Ministers and their EU counterparts on policy issues of mutual relevance;

[924] European External Action Service, "EU-CANADA PARTNERSHIP AGENDA", European External Action Service, EU-Canada Summit, Ottawa, 18 March 2004, from: <http://eeas.europa.eu/canada/docs/partnership_agenda_en.pdf>, (accessed 30 March 2013).

- establish a Coordination Group to ensure the prompt and effective implementation of decisions taken at the political level, to review all elements of the relationship and ongoing discussions between Canada and the EU, to identify new areas for cooperation, and to prepare meetings at Summit and ministerial level;
- bring the legal framework governing EU-Canada relations up to date, once the enlarged EU has concluded its process of constitutional reform.

The EU's Industrialised Countries Instrument for 2007-2013[925]

The objective of the financing instrument for cooperation for the period 2007-2013 is to promote enhanced cooperation between the European Union (EU) and industrialised and other high-income countries. The European Community intends to further deepen its bilateral relations with industrialised and other high-income countries to strengthen the EU's role and place in the world, to consolidate multilateral institutions and to contribute to balance in the world economy and the international system. Over € 5 million are earmarked for the cooperation with Canada under 2 focal areas: **people to people and cooperation**.

ECONOMIC APPROACH

If we take data in the documents into consideration and use the classification we have designed, we conclude that the EU-Canada relationship is **very symmetrical**, in terms of relevance. The European Union is Canada's second largest trading partner after the United States (2011). Within the European Union, the United Kingdom, the Netherlands and Germany were Canada's largest export destinations,[926] and Canada is the European Union's 12th top trading partner (2012).[927] Trade between the two economies continues to grow steadily while for the European Union, Canada ranks 12th among its trading partners. **We see that it is an overriding objective since is very close to the 10 main trading partners position.**

BILATERAL RELATION	EU INTEREST	TRADE RANKING POSITION
CANADA- EUROPEAN UNION	**Overriding objective**	2nd
EUROPEAN UNION-CANADA	Very High Objective	12th

If we look at a list of free trade agreements concluded and free trade agreements in negotiation, we see that the European Union and Canada currently find themselves immersed in the process of negotiating a free trade area that has still not been concluded. The main obstacle that is holding up the timetable for conclusion of the negotiations (it was planned to be finalised in 2011) is centred on the areas of agriculture and livestock. Both parties are demanding better market access for their products. We should recall that **Canada has not has**

[925] European Commission, "Financing instrument for cooperation with industrialised and other high-income countries and territories (2007-2013"), Summaries of EU Legislation, European Commission, from: <http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/industrialised_countries/r14107_en.htm>, (accessed 26 June 2012).

[926] GAUTHIER, A., *Canadian Trade and Investment Activity: Canada–European Union, Ottawa*, Library of Parliament of Canada Research Publications, Trade and Investment Series, 2011, p.6.

[927] European Commission, "Top Trading Partners", EU Commission: Directorate General Trade, 12 January 2012, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).

privileged access to any European market since Britain dropped its trade preference for Commonwealth countries in the 1960s.

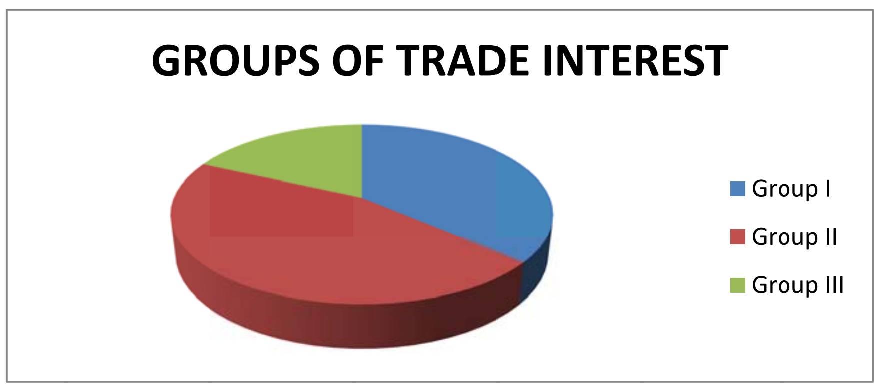
CHAPTER VII: REFLEXIONS AND PROPOSALS: TOWARDS THE FORMATION OF A HOMOGENOUS GROUP OF INTERESTS: ELEVEN STATES OR A GROUP OF ELEVEN STATES?

After having analysed the different nations in depth and determining the type of relationship that they have with the European Union, we will next go on to determine whether it is possible to put them in subgroups of interests. This division will be carried out based on different approaches. Once we have established the different subgroups, we will examine if the type of relationship that the European Union has with the countries of each subgroup corresponds with the type of relationship that it currently has or whether it should modify it. Afterwards, we will evaluate the viability and advantages for the parties of an overall agreement (with the 11 countries) or if it is better to maintain the division and relationship in subgroups.

1. TRADE INTEREST

Looking at the classification that we have presented in the trade profiles of each country, we will analyse the different subgroups of trade interests that are articulated.

GROUP	MEMBERS
GRUPO I: OVERRIDING	India, Canada, Australia, Singapore.
GROUP II: HIGH	Bangladesh, Malaysia, New Zealand, Pakistan, Sri Lanka.
GROUP III: LOW	Brunei, The Maldives



With regard to trade interests, we can outline three major groups. **The first** refers to the overriding interests. For both the European Union as well as the member states of the Commonwealth, the establishment of solid relations is a **overriding objective.** Of the member states analysed in this chapter, 36% of them, or four of the eleven, are included in this group. The European Union still has not concluded a free trade agreement with any of them, but is in the negotiation phase with three: Canada, India and Singapore. Whereas with Australia, that also is in a priority position and have yet to start negotiations, it would of interests of both to explore this possibility given the very high trade activity.

GROUP I:

INDIA- EUROPEAN UNION	Overriding
EUROPEAN UNION-INDIA	Overriding

CANADA- EUROPEAN UNION	Overriding
EUROPEAN UNION-CANADA	Very High Objective

AUSTRALIA- EUROPEAN UNION	Overriding
EUROPEAN UNION-AUSTRALIA	Very High Objective

SINGAPORE- EUROPEAN UNION	Overriding
EUROPEAN UNION-SINGAPORE	Very High Objective

The second group also would seem to be of great interest for the trade interests of both parties. It refers to those countries whose trade relation with the European Union is a priority and for the European Union to maintain relations with them **would be of great importance**. We are talking about most of the countries analysed in this group, 45% or five of the eleven nations. The European Union still has not concluded a free trade agreement with any of them but is in negotiations with one of them: Malaysia. Meanwhile, negotiations still have not been started with Bangladesh, New Zealand, Pakistan and Sri Lanka that also hold important ranking as trade partners. It would be in the interest of both to explore this possibility given the large amount of trade activity.

GROUP II

NEW ZEALAND- EUROPEAN UNION	Overriding
EUROPEAN UNION-NEW ZEALAND	High Objective

MALAYSIA- EUROPEAN UNION	Overriding
EUROPEAN UNION-MALAYSIA	High Objective

BANGLADESH- EUROPEAN UNION	Overriding
EUROPEAN UNION-BANGLADESH	High Objective

PAKISTAN- EUROPEAN UNION	Overriding
EUROPEAN UNION-PAKISTAN	High Objective

Finally, the **third group** would be a group of very asymmetrical trade relations on the part of the countries that are part of this. They have an overriding interest in deepening trade relations with the European Union since it represents one of their largest trading partners. On the other hand, the trade volume with these countries is low or very low. This group would be made up of only two countries of the eleven that we have analysed in this chapter and make up 18% of the total.

GROUP III

SRI LANKA- EUROPEAN UNION	Overriding
EUROPEAN UNION-SRI LANKA	Medium

BRUNEI- EUROPEAN UNION	Overriding
EUROPEAN UNION-BRUNEI	Low

THE MALDIVES- EUROPEAN UNION	Overriding
EUROPEAN UNION-THE MALDIVES	Very Low

2. **Geographic and social Criteria**

GROUP A: **AMERICA** We have only one country in this group, which is why we can evaluate the homogeneity or heterogeneity in bilateral relations. As we have explained earlier, with Canada, there is not only a trade interest, but a political and cultural interest.

To measure the degree of economic and social development of the countries in this chapter, we will use the UN Human Development Index. In the 2012 ranking, of a total of 186 nations, Canada ranks: [928]

STATE	POSITION	CLASSIFICATION
Canada	11	Very High Human Development

GROUP B: ASIA In this group, we find most of the countries analysed in this chapter: India, Pakistan, Bangladesh, Singapore, Malaysia, Brunei, Sri Lanka and the Maldives. There is a great degree of heterogeneity among these members.

We said that India is now one of the world's fastest developing economies, Pakistan has significant macroeconomic problems, but its economy continues to grow. The same is

[928] United Nations (UN), UN Human Development Report, UN Human Development, 2013 from: <http://hdr.undp.org/en/>, (Accessed 15 April 2013).

happening with Bangladesh. Despite political instability, poor infrastructure, corruption, insufficient power supplies, and slow implementation of economic reforms, Bangladesh's economy has grown 5.8% in real terms per year since 1996.[929] Bangladesh remains a poor, overpopulated, and inefficiently-governed nation. Fom the three countries, Bangladesh is the one that is experiencing more economic difficulties, but poverty is still widespread in all three nations.

Singapore has a highly developed and successful free-market economy. It enjoys a remarkably open and corruption-free environment, stable prices, and a per capita GDP higher than that of most developed countries. Malaysia is a middle-income country, has transformed itself since the 1970s from a producer of raw materials into an emerging multi-sector economy. Malaysia is attempting to achieve high-income status by 2020[930].

Brunei is a country with a small, wealthy economy, based on revenue from natural resources and foreign and domestic entrepreneurship. After the end of the 26-year conflict Sri Lanka continues to experience strong economic growth, traditionally the country's economy has been based on agriculture, but now is predominantly services-based.

Finally, The Maldives largest economic activity is tourism and fishing is the second leading sector, but the fish catch has dropped sharply in recent years. Agriculture and manufacturing continue to play a lesser role in the economy[931].

If we look at the 2012 UN Human Development Index, the ranking of countries is the following:

STATE	POSITION	CLASSIFICATION
India	136	Medium Human Development
Pakistan	146	Low Human Development
Bangladesh	146	Low Human Development
Singapore	18	Very High Human Development
Malaysia	64	High Human Development
Sri Lanka	92	High Human Development
Brunei	30	Very High Human Development
The Maldives	104	Medium Human Development

We see that from each category of development, there are two countries that appear in the same. Therefore, 25% of the countries of the Asia group are medium human development, 25% are low, 25% high and 25% very high.

GROUP C: OCEANIA is an isolated continent. The nations of Australia and New Zealand encompass this group. They could also be classified as belonging to the Asia-Pacific zone. In

[929]Indexmundi, “Bangladesh Economy Profile”, Indexmundi, from: <http://www.indexmundi.com/bangladesh/economy_profile.html>, (Accessed 15 April 2013).

[930] Ibidem.

[931]Indexmundi, “Bangladesh Demographics Profile”, Indexmundi, from: <http://www.indexmundi.com/bangladesh/demographics_profile.html>, (accessed 20 December 2012).

fact, both countries have been members of the APEC (Asian Pacific Economic Cooperation) group since 1989.

This is a homogeneous group, although New Zealand and Australia have different economic profiles. New Zealand is more dependent and traditionally had been considered as one of the most regulated in the OECD (Organisation for Economic Co-operation and Development)[932] . Currently it has become one of the least regulated. Therefore, both New Zealand and Australia have open economies that work on free market principles and enjoy stable and democratic political systems. If we look at the 2012 UN Human Development Index, both Australia and New Zealand rank among the top.

STATE	POSITION	STATUS
Australia	2	Very High Human Development
New Zealand	6	Very High Human Development

The American group is geographically homogenous since it only has one country whose degree of economic and social development is very high. The Oceania group is also very high. Both Australia and New Zealand show a high level of economic and social development, therefore, both geographic groups should be a priority for European Union interests and is it is along these lines that it should move forward. As we have seen, the European Union is working on the establishment of a Comprehensive Economic and Trade Agreement with Canada, but it is not doing it with Australia and New Zealand. The three countries are under the European Union's 2007-2013 financing instrument for cooperation with industrialised and other high-income countries and territories, which aims to strengthen its bilateral relations with industrialised and other high-income countries and territories.

As to the Asia group, we have noted that there is a great deal of heterogeneity. We point out three subgroups:

- **A first subgroup of countries** from Asia is made up of Malaysia, Sri Lanka, Brunei and Singapore, whose degree of economic and social development is between high and very high. Of these, only Singapore and Brunei are recipients of the 2007-2013 European Union's financing instrument for industrialised countries and territories.

- **A second subgroup** is made up of India and the Maldives with a medium economic and social development. In this case, none of the countries are part of the European Union's instrument for industrialised countries and territories. Another type of agreement has been signed with these countries. In the case of India, it is of more interest from a trade perspective since it is one of the European Union's largest trading partners and is in negotiations for a free trade agreement.

- **A third group is** formed by Pakistan and Bangladesh, where economic and social development is low. However, the volume of trade exchanges with the European Union is high. In this case, the European Union has an interest in continuing a deepening of cooperation in the areas of social and human development and poverty alleviation.

[932] New Zealand Government, "Economic Overview", New Zealand Government: Immigration Department, from: <http://www.newzealandnow.govt.nz/investing-in-nz/opportunities-outlook/economic-overview>, (accessed 27 April 2013).

GROUP	STATUS
AMÉRICA	OVERRIDING
OCEANIA	OVERRIDING
ASIA	HETEROGENEOUS
	- Subgroup I: PRIORITY
	- Subgroup II: Medium
	- Subgroup III: Low

If we ignore geographic criteria and we only take into account the human development index as a criterion for forming a group or various subgroups of countries, the result would be the following:

- ✓ Almost half (45%) of the 11 countries of the Commonwealth that we have analysed in this chapter show very high economic and social development and 18% of these are high economically and socially developed countries.
- ✓ Sixty-three percent of these nations have a high or very high degree of development. Nevertheless, not all are recipients of the 2007-2013 European Union's financing instrument for industrialised countries.
- ✓ Eighteen percent are medium economically and socially developed states and the remaining 18% show a low degree of development.

3. <u>Areas of Activity Criterion</u>

Outside of the trade area, the European Union has established relations of cooperation that go beyond the trade realm with the 11 countries that we have analysed in this chapter. They have signed different sectorial agreements, whose numbers and areas vary with each country. In addition, the European Union has concluded general accords that encompass various areas of cooperation. These agreements vary depending on the economic and social development of the country as well as it political stability.

As we saw in the first chapters of this thesis, the Commonwealth Secretariat carries out activities in the following areas:

- Democracy and Consensus Building
- Economic Development

- Education
- Research, Science and Technology
- Environment and Climate Change
- Gender
- Good offices for peace
- Health
- Human Development
- Human Rights
- Rule of law
- Public Sector Development
- Sport
- Youth

Most of these areas of cooperation correspond with the areas of cooperation included in the agreements with each of the countries.

Apart from the sectorial agreements concluded with each nation, such as we have seen in the group of 5 nations that benefit from the European Union's financing instrument (Australia, New Zealand, Canada, Brunei and Singapore), the European Union cooperates in the following areas. We will highlight in yellow those that the Commonwealth carries out.

- ✓ Education, training and scientific research
- ✓ Bilateral trade, investment flows and economic partnerships;
- ✓ Development cooperation
- ✓ The promotion of dialogues between political, economic and social actors of both parties;
- ✓ The promotion of people-to-people links and culture
- ✓ The promotion of Human Rights, participation in Humanitarian Missions
- ✓ Research, science and technology;
- ✓ Energy;
- ✓ Transport;
- ✓ Environmental matters.

With India, which is in the negotiation phase of a free trade area, the areas of cooperation are very broad. We highlight in yellow those areas that coincide with the activities of the Commonwealth Secretariat.

1. POLITICAL AND DIALOGUE COOPERATION

- PLURALISM AND DIVERSITY
- DIALOGUE AND REGIONAL COOPERATION
- DEMOCRACY AND HUMAN RIGHTS
- EFFECTIVE MULTILATERALISM
- PEACE AND INTERNATIONAL SECURITY
- DISARMAMENT AND NOT PROLIFERATION OF WEAPONS MASSIVE DESTRUCTION
- DIALOGUE ON REGIONAL COOPERATION

2. CULTURE AND SOCIAL COOPERATION

- MIGRATION AND CONSULAR ISSUES
- PARLIAMENTARY EXCHANGES
- EDUCATION & ACADEMIC EXCHANGES

- CIVIL SOCIETY EXCHANGES
- CULTURAL COOPERATION
- INCREASING MUTUAL VISIBILITY

3. ECONOMIC POLICY DIALOGUE AND COOPERATION

- INDUSTRIAL POLICY
- SCIENCE AND TECHNOLOGY
- FINANCE AND MONETARY AFFAIRS
- ENERGY
- INFORMATION AND COMMUNICATION TECHNOLOGIES
- TRANSPORT
- SPACE AND TECHNOLOGIES
- PHARMACEUTICALS AND BIOTECHNOLOGY
- AGRICULTURE
- CUSTOMS
- EMPLOYMENT AND SOCIAL POLICY
- AGRICULTURE

4. ENVIRONMENT

- CLEAN DEVELOPMENT AND CLIMATE CHANGE

5. DEVELOPING TRADE AND INVESTMENT

- DEVELOPMENT COOPERATION
- INTELLECTUAL PROPERTY RIGHTS
- TECHNICAL BARRIERS TO TRADE (TBT)/SANITARY AND PHYTOSANITARY (SPS) ISSUES
- SERVICES
- PUBLIC PROCUREMENT

Along with Malaysia, all the areas in which the European Union cooperates are also ones that the Commonwealth carries out.

- ✓ Trade and investment relations,
- ✓ Human capital via higher education and research,
- ✓ Human rights,
- ✓ Governance,
- ✓ Sustainable forestry and biodiversity management and related trade.

Finally, there is the Pakistan, Bangladesh, Sri Lanka and the Maldives group that are eligible for the application of the European Union’s Generalised System of Preferences (+), which allows a developing country to pay lower duties on their exports to the European Union and grants better access to European Union market. The new GSP scheme will be in effect as of 2014. The "GSP+" enhanced preferences systems means full removal of tariffs on essentially the same product categories as those covered by the general arrangement. However, the beneficiary countries need to ratify and implement international conventions relating to human and labour rights, environment and good governance.[933]

[933] European Commission, “Trade: Generalised Scheme of Preferences (GSP)”, European Commission, from: <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm>, (Accessed 27 April 2013).

Cooperation with these countries is framed in the following areas, all of which coincide with activities carried out by the Commonwealth:

1- <u>Humanitarian aid and Development Co-operation</u>

- ✓ Poverty alleviation;
- ✓ Sustainable Economic-growth (pro-poor economic growth);

2- <u>Political Reforms</u>

- ✓ Improvement of democracy, good governance and human rights;
- ✓ Improvement of Global and regional security;
- ✓ Implementation of effective counter-terrorism measures;

3- <u>Economy and trade reforms</u>

- ✓ Employment-oriented;
- ✓ Social protection;

4- <u>Social reforms</u>

- ✓ Education Sector Reform;
- ✓ Education For All Programme;
- ✓ Health for All Programme;
- ✓ Gender;

5- Environmental policy reforms

In addition to the areas of cooperation being in all cases compatible with the efforts carried out by the Commonwealth, the agreements between the European Union and each of the 11 countries coincide in the following areas of cooperation:

- ✓ Education, training and scientific research;
- ✓ Development trade and cooperation;
- ✓ The promotion of dialogues between political, economic and social actors of both parties;
- ✓ The promotion of people-to-people links and culture;
- ✓ The promotion of Human Rights, participation in Humanitarian Missions;
- ✓ Research, Science and Technology;
- ✓ Environmental matters;

In ending this chapter, after having analysed in depth each of the 11 countries and having used different criteria of analysis, we are ready to respond to the question that we posed at the beginning of the chapter, are these eleven countries a handful of countries without any kind of bond between them, or, can we bring them together in a single group, with which the European Union can establish relations? The answer that we arrive at is clear, the formation of a single group is viable if we are addressing the last approach (the analysis by areas of activity) and we consider the Commonwealth as a unifying force. Other approaches do not work when forming a single group that comprises eleven countries, at most the only thing they can do is group them in subgroups:

1. Geographically, we said that we can distinguish between three subgroups: Asia, America and Oceania. But the European Union does not maintain the same degree interest in all of them. While the last two subgroups had their own overriding interest, the first was more heterogeneous. There was not an overriding interest on the part of the European Union for all members when they considered deepening relations.

2. Following the UN Human Development index criteria, we note that it is also impossible to establish a single group. On the other hand, three subgroups can be distinguished. One, where social and economic development is high or very high (that were most of the eleven countries), The second has a medium level of development and a third with low development. In this context, we conclude that the European Union should intensify relations with Australia, New Zealand, Malaysia and Brunei, as has already been done with Canada and Singapore, since they have a very high development index and would be attractive partners for collaborating in this area.

3. The trade criteria is also not useful as a criteria for establishing a single group that includes the eleven countries because not all the countries arouse the same degree of trade interest from the European Union and not all move the same amount of trade volume. India, Canada, Singapore and Malaysia are in the negotiation phase of a free trade area. They are all major trading partners of the European Union. However, the same cannot be said for Australia and New Zealand, while even being major trading partners with the European Union, especially in the case of Australia that ranks 15th in trade, no negotiation for a free trade agreement is underway.

4. The political approach or the division by areas of activity is the criteria that makes it possible for single group of countries to work in some common areas and to resolve transnational challenges like: education, training and scientific research, development trade and cooperation, the promotion of dialogues between political, economic and social actors of both parties, the promotion of people-to-people links and culture, the promotion of human rights, participation in humanitarian missions, research, science and technology and environmental matters. Regardless, with some countries there are more areas for cooperation or for further deepening of relations that the rest. The Commonwealth would act as a unifying element since these eleven countries form part of the same and work in the same areas that we just indicated.

5. Also in this last group of eleven countries, the establishment of bilateral relations between the Commonwealth and the European Union would be feasible and very relevant. It not only would it be including these 11 countries, most having, as we have seen, are of overriding interest for the European Union, (in some of the areas analysed), it would also include most of the members of the Africa Caribbean and Pacific Group, the British Overseas Countries and Territories and the three members that both organisations share. Cooperation would extend beyond the trade scope.

6. As we already know, the adoption of an international agreement between the European Union and the Commonwealth today turns out to be complicated for a number of reasons, the main one being the Commonwealth's lack of legal status. We know that this is easy to resolve as long as there is the political will of the 53 members to expressly or tacitly assign it to them.

The second makes reference to the very philosophy of the Commonwealth. We should recall that the characteristics of flexibility and the lack of institutionalisation of this international organisation result in that the norms that are adopted are of a soft law type, for which the

adoption of a legal international agreement would go against the very spirit of the Commonwealth.

7. A good regulatory framework of reference that would link these 11 states with an already consolidated group and directly related with the Commonwealth is the Africa Caribbean and Pacific Group. In simple terms, an agreement would try to be made that is similar to Cotonou or to broaden the **regional area** of the existing one. It should be recalled that this agreement encompasses distinct regions (Original says "Asia", but it should be Africa, Caribbean and Pacific), made up of countries with heterogeneous profiles towards which the European Union has had different interests, as happens with these 11 countries. So it is clear that the eleven would not be recipients of the same regimen, but, as we have seen, this has already happened with South Africa, which is a member of the Africa Caribbean and Pacific Group but has its own arrangements under the Cotonou Agreement. Something similar could be provided for countries like Canada, New Zealand, Australia and Singapore. Let us recall that the areas of cooperation of the Cotonou Agreement go beyond the establishment of free trade areas and that they are totally compatible with the areas in which the European Union cooperates with each one of these eleven countries and with Commonwealth activity areas.

COTONOU'S MAIN AREAS OF COOPERATION can be summarised as follows:

- Peace and Security: State fragility, peace building and conflict prevention.
- The Millennium Development Goals, food security, HIV-AIDS and sustainability of fisheries.
- Environment and climate change.
- Trade: the new trade relationship and the expiry of preferences at the end of 2007.
- Development cooperation and poverty allevation.
- Democracy, Human Rights and the Rule of Law.

Clearly, a Cotonou type agreement or the broadening of the same would greatly simplify the European Union's relations with these 11 countries and the endless sectorial and general agreements that it maintains with each one of them and further, would improve its visibility in the international realm as a true international actor.

CONCLUSIONS

CONCLUSIONS

The hypothesis we put forward at the beginning of this thesis has been verified in the previous pages: the Commonwealth and the European Union can and must initiate a solid framework of foreign policy by intensifying institutional contacts and opening up new areas of cooperation. As we have seen, they are international organisations that carry out fully compatible and complementary activities, share a series of common elements, and appear linked in numerous areas. We have focused on the areas they share in this thesis as well as their linked members. In addition, we have confirmed that the two organisations pursue similar objectives that go beyond the area of trade, as both are transmitters in different ways of humanitarian and supportive values. This has been valuable to them for consolidating themselves as true leaders in these areas and for the many states that receive and benefit from the actions of these two organisations.

Following the line of analysis used throughout this dissertation, we can draw the following conclusions:

FIRST: From a historical approach, we conclude that the history of the two organisations is complementary, and that their evolutionary processes have influenced one another. Both organisations are the result of a historical process of transformation, that is, a process of a change in mentality that responds to different historical reasons. The history of the Commonwealth begins at the end of the First World War, when the British colonies began to express their first yearnings for freedom, while the idea of creating a united Europe began at the end of the Second World War, when it became clear that after two world wars that were particularly devastating for the European continent, the European nations needed to find a lasting peace, stabilise the continent and put an end to fratricidal confrontations.

Thus, the two organisations derive (in case of the Commonwealth) or arise (in case of the EU) from similar historical contexts. Specifically, they originated from conflicts of an international scope, which gradually reverberated on the organisation and institutionalisation of the international community.

Hence, apart from coinciding in the post-war context in which they came into existence, the formation of the Commonwealth and the European Communities represent a pragmatic response to specific realities. Those realities were different, since the two organisations were trying to address different concrete needs. The Commonwealth was Britain's answer to the inevitable transformation of the British Empire. There was a high risk that the territories of the Empire would separate and sever ties. Indeed, other empires disappeared and their respective former-metropolis was unable to find an appropriate way of maintaining a relationship with their former colonies. What happened to the British dominions was exactly the opposite: as the colonies gained independent, the empire was transformed into a complex structure of relationships among sovereign states headed by the British Crown.

As for the European Union, many thinkers, among them Comte, Mazzini, Victor Hugo, Proudhon, Kalergi, and Briand, had contemplated the idea of creating a European Federation. However, their proposals were not suitably channelled. Whereas the pragmatic proposal suggested by Robert Schuman and Jean Monnet of using a functionalism model, based on concrete objectives and gradual change, became fundamental to the unification process in Europe. Unlike the organisations created until that time, such as the Council of Europe, the three European communities (CECA, EURATOM, and CEE) were the first to prevail over inter-governmentalism. The countries that formed this organisation yielded part of their sovereignty to a common institution. This was the first step towards a future European federation that still does not exist, and we are uncertain whether one day it will, but the cornerstone has been laid and the process, despite the difficulties entailed, has proved unstoppable.

CONCLUSIONS

As explained in this dissertation, I have used the variable of "integration" in the historical analysis of the Commonwealth and the European Union. This has shown that both organisations have different historical evolution processes. Thus, the Commonwealth has experienced a process of disintegration regarding the British Empire. Whereas the European Union has experienced a process of integration regarding the European Communities. These processes do not necessarily have to follow a linear logic; in fact, they have undergone significant variations throughout their respective lives.

Consequently, the two organisations have had to mould and adapt their structure to the concrete requirements of each historical stage. We have seen that both of them have suffered crises that have threatened their existence, although they have been able to overcome them. **As for their outlook, uncertainties lay ahead for both of them, yet there is no doubt that, if they channel their respective potentials properly, they will be able to interact successfully on the international stage. In this sense, the stagnation of the two projects makes it essential that the Commonwealth consolidate itself as a true global player and overcome its imperial complexes. Since the Declaration of London in the late forties, it has been clear that the Commonwealth is not a club of former colonies where everybody speaks English and drinks tea. Rather, it is an organisation of 54 sovereign and equal states that represents 30% of the world population.**

If the Commonwealth chooses to play an active role in this post-international era, that is, in a new international context based on regionalisms, over which foreign policy seems to be consolidating itself, the Commonwealth will inevitably have to face a process of institutionalisation, without having to renounce its flexible structure, founded largely on unwritten and traditional procedures. Thus, bearing in mind the peculiarities of this organisation and its capacity of adaptation, the Commonwealth should be able to find a formula to become a true subject of international law and conserve its essence. It is time to face a new period.

The EU, exactly like the Commonwealth, is going through difficult moments, with an outdated model and a need to re-define its aims. As we have seen, the deliberate avoidance of debate on the ultimate (political) objectives of European integration and the proliferation of ad hoc cooperation schemes have led to a situation in which its citizens are unable to make sense of its present structure.

SECOND: From the economic approach, we can conclude that one of the most important achievements of the European Union has been the creation and implementation of the euro. The Commonwealth, as we have seen, had the Sterling Area, which came into existence at the outbreak of World War II, as a wartime emergency measure. It involved cooperation in exchange control matters between a group of countries that, at the time, were members of the Commonwealth. These either used sterling as their currency, or else their own currency was pegged to the British pound; even member countries with their own currency held large sterling balances in London for the pursuit of conducting overseas trade. The purpose of the sterling area was to protect the external value of the pound sterling. The entire British Empire, except Canada, Newfoundland and Hong Kong, joined the sterling area in 1939. As we have already seen, The Sterling Area did not cease to exist on a specific date, but disappeared in phases between June 1972 and 1979.

As pointed out in the previous section, the European Union and the Commonwealth have evolved in a complex way, each one adapting itself to its own specific requirements, its own structural needs and the needs that emerged out of its historical context. The Commonwealth

has experienced a contrary process of currency integration to that of the EU. In the late seventies, the Sterling Area ceased to exist, while by 2011, 17 European states belonged to the Euro zone, of which Malta and Cyprus are also members of Commonwealth.

As it has already been explained, the Commonwealth structured its trade using the so-called Imperial Preference Trade System, which was partially applied to the self-governing dominions following the Ottawa Conference of 1932. The system gradually fell into disuse after 1945 as changing trade patterns diminished the importance of intra-Commonwealth commerce at the same time as margins of preference were eroded by inflation and British membership of the European Free Trade Association (EFTA). Its effective demise came with the twin blows of sterling devaluation in 1967, followed by British entry into the European Economic Community in 1973.

We return to the same idea concerning the dynamics of “integration” and “disintegration”. The Commonwealth constituted a consolidated trade bloc, albeit a "sui generis" one, since it was strongly influenced by imperial patterns. However, it gradually disappeared (disintegration). The European integration process, on the other hand, has consolidated a Common Market.
Therefore, from the economic and commercial viewpoint, we may conclude that the EU and the Commonwealth are not as different as they may seem. Rather, the two have undergone different evolutionary processes and result from different historical realities that have affected their economic and commercial structures. However, they share similar experiences. The Commonwealth had its own currency area, the Sterling Area, and a system of trade preferences for its members. Today, the EU has a common currency, the Euro, and a common market.

THIRD: We have seen that the two international bodies are “sui generis” organisations and they have great specificities that make them unique. From a legal perspective, the conclusions follow this same line. Their legal nature and structure are complex and difficult to analyse. The nature of the EU has become clearer since the Lisbon Treaty came into force in 2009. At present, the EU has been granted an international legal personality, which has simplified and clarified the legal nature of the organisation. However, the nature and structure of the Commonwealth has not been modernised, hence it remains very complex.

Further to this, I have repeatedly expounded throughout these pages that the legal nature and status of the two organisations was similar before the Lisbon Treaty came into effect. The EU and the Commonwealth are international bodies, as they meet all the necessary requisites to be constituted as such. In first place, they are voluntary associations of states: 28 states belong to the EU, and 54 states to the Commonwealth. Second, both organisations were founded on international agreements: the EU was established following the 1951 Treaty of Paris, the 1957 Treaties of Rome and the 1992 Treaty of Maastricht; the Commonwealth was founded following the 1926 Balfour Declaration and the Declaration of London in 1949.

The European Union in its present form was created by the Maastricht Treaty of the early nineties, whereas the modern Commonwealth was the result of the Declaration of London in the late forties. Both “foundational” acts share a common feature, the lack of legal definition regarding the nature of the organisations. None of these acts expressly attributes legal personality to them. Of the many doctrinal opinions on the matter presented in this work, some authors hold that the attribution of the juridical personality to an organisation must be explicit, whereas others contend that the juridical personality may be implicit, that is to say, acquired in practice. Hence, each case needs to be examined separately.

In connection with this last idea, I agree with the doctrine led by Dr Díez de Velasco on the point that the international personality of each organisation has a variable content, which means that a case-by-case examination is necessary to specify it, determining in each case which international competencies it is capable of practising. Nevertheless, Díez de Velasco suggests that it is possible to identify a number of international rights and obligations that make up the minimal content of the international juridical personality of the international organisations that have been examined in depth throughout these pages.

In the case of the European Union, this has been settled by the adoption and subsequent coming into force of the Lisbon Treaty, since this agreement expressly affords it juridical personality. By contrast, the legal nature of the Commonwealth remains unclear. We have explained that the doctrine on this issue is divided. Some authors support a restrictive conception of this question, suggesting that the Commonwealth does not enjoy a legal personality, since there is no explicit act of attribution. Whereas other authors, with whom I agree, propose a wide-ranging interpretation of the term, indicating that the legal personality of the Commonwealth has been acquired de facto, since it exercises competences in the international arena.

In any event, it is clear in the conclusions of this work that the Commonwealth, according to the spirit of Anglo-Saxon law, advocates a flexible and informal conception on its own status. This was confirmed to me by the several members of the Commonwealth Secretariat and by specialists of the Institute of Commonwealth Studies whom I met in London.

The above-mentioned conception conflicts with the idea of formalising, in writing, the Commonwealth's legal status. Thus, I doubt the Commonwealth member states will attribute an explicitly legal personality to the organisation. I consider that precisely the flexible and informal character of the organisation facilitates the possibility that it might have acquired or may acquire the aforementioned personality, without need of an express measure. If this happens, the legal complexity would be simplified significantly and international relations with third countries would be facilitated, especially if the Commonwealth seeks to become a real global player, capable of having a presence on the international stage and of interacting with other players, on equal terms.

From a legal perspective, the structure of the two was very similar before 2009. The European Union was composed of three legally differentiated communities, each with its own legal personality: the CECA, EURATOM and CEE (later CE); and the Commonwealth also consists of three legally independent organisations, each with a differentiated personality: the Commonwealth Foundation, the Commonwealth of Learning and the Commonwealth Secretariat. The last of these three constitutes the mainstay of the Commonwealth, as was the case of the EU, where the European Community was the main body among the three communities.

To conclude, the complexity of the structure, status and legal nature of the organisations implies a point in common between the two. The European Union has solved a large part of this question by adopting the Lisbon Treaty, which expressly attributes legal personality to the EU. Moreover, the treaty gives it a President of the European Council and the figure of a High Representative for Foreign Affairs. **The Commonwealth, as indicated previously, relies on the principles of flexibility and informality as a pretext to avoid any type of institutionalisation. To my mind, these principles are fully reconcilable with the idea of clarifying the nature and juridical status of the Commonwealth**. This is demonstrated by the fact that the Commonwealth Secretariat, which is part of the Commonwealth, has its own legal personality, without having yielded to the principles of flexibility and informality**. It is necessary to simplify**

the structure and clarify the nature of the Commonwealth if it seeks to become an international subject, capable of interacting in the post-international scene. In the same vein, in the Report of November 2009, the Eminent Persons Group considered that it is essential to clarify the legal nature of the Commonwealth, if this organisation is to play a crucial role in the international community and achieve the objectives for which it was reformulated in 1949.

FOURTH: Some important conclusions can be drawn from the political analysis: first, we can deduce that both organisations are very similar in the conception of which fundamental values govern them. They share the key values of peace, freedom, non-discrimination, human dignity, equality, democracy, rule of law, respect of human rights, tolerance and justice. While, as I have already explained, justice and solidarity are values expressly set out in European Union treaties and values such as the rejection of colonialism or racism concerns to Commonwealth philosophy.

Secondly, it seems to be difficult for the two organisations to establish relations or sign cooperation agreements, since there has been no common ground on which to collaborate. Nevertheless, I have shown that there are many common areas of interest and action. In some of these areas, cooperation already exists and, in others, it needs to be developed. In this thesis we present a series of common aspects that should serve to provide a framework for stable cooperation and demonstrate that the some of the work of both organisations is compatible and complementary.

Thus, we have emphasised throughout this dissertation that, **although the framework for action developed by the two organisations is very different, there are several areas of common action where they could collaborate or even cooperate. Both bodies have signed cooperation agreements with other international organisations**. One example of this is the agreement in the area of Youth signed between the Commonwealth and the International Labour Organisation. As already explained, **the Commonwealth and the EU concur in the following areas: Climate action/environment, natural disasters, Economy, Trade, Development, Human rights and human aid, Youth and Health**.

These conclusions are corroborated by recent events, such as the steps taken to achieve closer ties between the two organisations. In 2005, during a one-day visit to Belgium, the former Commonwealth Secretary-General Don McKinnon and the European Commission President José Manuel Barroso held a meeting in order to strengthen their political and strategic partnership. Both leaders agreed to develop greater collaboration in building democracy and providing targeted assistance for small island developing states. Efforts will also be made to extend support for capacity-building for the African, Caribbean and Pacific (ACP) Group of States. The Commonwealth and the EU are also committed to an open and fair international trading system and the elimination of poverty.

The Secretary-General, Don McKinnon told the Commonwealth ambassadors that strategic partnerships can be built on some of the world's pressing political issues - quite easily if there is a will, and the Commonwealth with its diverse membership is ideally placed to achieve consensus on international trade matters. The Secretary added that their membership is present in every single key grouping around the WTO table and beyond – the G8, G20, G90, the Quad, the Cairns Group, the OECD and the G77, and they are present and active in all of them. Accordingly, they can affect the outcomes of the Doha Development Agenda.

Hence, the Secretary-General highlighted that efforts must be made to get small states more involved in the trade negotiations agenda and to ease access to the European market for

Developing Country exports. Promoting investment would increase the trade capacity of Commonwealth countries.

McKinnon pointed out that there were several strategic options for the European Union to consider in taking forward the relationship with the Commonwealth in the future through practical ways. The proposed new areas for collaboration and partnership include the promotion of democracy and good governance within the Commonwealth, and the promotion of trade and development, particularly for small island developing states. The Secretary-General also expressed hope of securing a partnership support for the institutions of the African Union and the New Economic Partnership for Africa's Development.

While ties between both organisations have become closer, we have noted that they are insufficient. It would be meaningful to work in the creation of a stable cooperation framework, since the activity of both organisations is complementary. As I have defended throughout these pages, and in agreement with McKinnon, aside from trade, there are many areas of activity where collaboration and cooperation is necessary.

FIFTH: In addition to areas of cooperation where the two organisations could make joint and complementary efforts that would be of great benefit for the international community, there is also another link between them. It binds them much more tightly than compared to other organisations, and neither one of them has known how to suitably take advantage of them. If it is correctly channelled, it would become a key point when institutionalising relationships and establishing a true framework of EU-Commonwealth cooperation. We are referring to the different nations that belong to the two organisations and the bond that they have with one another.

We have analysed this type of bond over the last chapters of this thesis. **At the beginning we did not know if we would be able to demonstrate that all the Commonwealth Member States were related or directly linked to the European Union since, on the surface, this seemed difficult, especially taking into account the geographic, economic and political heterogeneity of the members of the Commonwealth. Now we have been able to verify that there is a direct relationship with the European Union, although not all members are related in the same way.**

We have divided the members of the Commonwealth into four large groups, depending on the degree and type of relationship that they have with the European Union. The first group, whose link with the two organisations is complete and absolute, is made up of three member states that belong to both: the United Kingdom, Malta and Cyprus. **We have argued in these pages that the three act as a bridge or link between the Commonwealth and the European Union and they are taking the lead in a new framework of relations that is deeper and more open to cooperation in areas besides trade.**

We can conclude that the three member states have a status and undertake a very different role in both organisations. As we have seen, the United Kingdom could have been the founding member of both organisations, but she expressly refused it and decided to disassociate herself from the European integration process as well as resign herself to becoming one of the six founding members of the European Communities. However, regarding the Commonwealth, the United Kingdom is considered to be one of the six founding members of the Commonwealth. Malta and Cyprus are not founding members of either organisation. Both countries share an important characteristic that makes them at once vulnerable (due to their size/territorial dimensions) and attractive (because of their condition as islands) from a geo-strategic point of view. Both Malta and Cyprus remained under British rule between the

nineteenth and the twentieth centuries. However, each nation had its own colonial circumstances and characteristics on their road to independence and subsequent membership of the Commonwealth.

In the case of Malta, the initial Euroscepticism prior to its entry into the European Union was overcome and today it is an outstanding member of this organisation. As for Cyprus, its membership as we have seen turns out to be more complex, mainly because of the conflict and later occupation of part of its territory, which is why only the Greek-Cypriot part of the island is a member of the European Union. It also has the British Sovereign Base Areas on its territory, which are not part of the European Union and have their own special regime. These anomalies directly affect its membership. We highlight two main aspects that are affected by this: the so called Schengen Area and the monetary area. Only the Greek part of the island has adopted the Euro and it is a member of the Schengen Agreement but has not yet fully implemented it.

The United Kingdom's relationship with the European Union is also complex but for different reasons than the previous case. Historically, British Euroscepticism has marked the development of relations with the European Union and today, four decades after the UK's entry, this continues to be very widespread among the British, to the point that the British government has decided to hold a new referendum in 2017. The first was held in 1975 and gave victory to its continuation in the Union. However, this has not been enough to quell the discontent and dissatisfaction that the British feel towards the process of European integration. There are a number of aspects that we have analysed in depth that make this relationship difficult like the common agricultural policy, monetary policy, the establishment of the so-called Schengen Area and the binding effects of the Charter of Fundamental Rights.

It is clear that the United Kingdom has not found adequate flexibility in the European Union. Its vision of the common project differs in great measure from the so-called continental members like France and Germany and this means that there will gradually be a greater distancing between them. We do not consider that the United Kingdom's abandonment of the European Union is the correct option. Despite counting on certain expectations with regard to the application of acquis communautaire, most of British legislation more or less comes directly from EU regulations. In addition, the European Union is the United Kingdom's biggest trading partner and on a bilateral level three member states rank in the top positions. Germany leads the ranking above the United States, followed by the Netherlands and France. We believe that the objective of holding a new referendum, as occurred in 1975, is to seek a renegotiation of both its status and role within the European Union.

On the other hand, despite the major difficulties experienced with the Commonwealth, the United Kingdom has never shown any strong interest in, or even less, has it held a referendum to abandon it. In fact, the United Kingdom has been able to find flexibility in this organisation and adapt itself through the different stages of the Commonwealth up to today. This country clearly feels more comfortable in an organisation like this. It is true that this has always been in the consciousness of British foreign policy. During the negotiations on the United Kingdom's entry into the European Communities, the concern for the survival and new adaptability of bonds established with the Commonwealth were always present. Despite the general belief that the Commonwealth is in decline, we have seen how there is a call from many political and institutional sectors of the United Kingdom for greater involvement, a renewing of relations with their "natural partners" and a re-launching of this organisation's activities. In our opinion, the United Kingdom should not have to choose between one and the other, but should use its comparative advantage of its membership in the European Union to achieve a better fit with the Commonwealth on the whole.

For its part, the Commonwealth must make difficult but necessary decisions to ensure its own future in order for this option to be possible, and the United Kingdom can act as a link by establishing a stable framework of cooperation between the two. One of the main questions concerns its legal status. It must clearly establish itself as an international subject and establish itself as a legal entity. We emphasise again there is no legal impediment to do so, but is only a matter of the will of its members, and recall that these types of decisions will not affect its flexible and decentralised nature or its use of soft law regulatory instruments. We have also analysed the possibility and viability of whether Ireland could become a fourth common member of both organisations considering that it was a member of the Commonwealth, but decided to leave it at the end of the forties. It has sometimes expressed an interest in returning, since the current Commonwealth has rid itself completely of any hint of colonialism.

SIXTH: The second group studied in this thesis is made up of territories that form part of the Commonwealth and that, in turn, are directly linked with the European Union, although in lesser measure than the previous group of countries. Rather than sovereign nations they comprise the so-called British Overseas Territories (BOTs). These are territories that were part of the former British Empire and during its dismantling and subsequent process of decolonisation and self-determination did not seek independence or did not view independence as viable since they did not see themselves as able to survive without the aid (economic) of the United Kingdom. These territories became dependent on the United Kingdom. Their status has evolved over time and today, despite being under the sovereignty of the United Kingdom, which oversees their foreign policy, defence and security as well as having to help them provide high quality local governance, these territories must administer themselves in accordance with their constitutions and fully respect the United Kingdom's international obligation relevant to them. Thus, the United Kingdom must allow the BOTs to determine their own future and enjoy a high degree of autonomy. These territories, with the sole exception Gibraltar, are not part of the European Union, which, as indicated in article 198 of the Treaty on the Functioning of the European Union (TFEU), grants the status of associated territories to the British Overseas Territories. The recognition of this status results in these territories benefiting from a special relationship with the European Union.

Most of the BOTs are in a seriously vulnerable situation, either because of their isolated geographical situation, propensity to suffer from natural disasters or unstable economic or political conditions. Because of this, the European Union has granted them a trade system based on non-reciprocal preferential tariffs and they receive financial aid, mainly from the European Development Fund. However, the terms of this relationship are being reconsidered, particularly with respect to trade relations. Our proposal in this respect is clear. We believe that all of the overseas territories, including the BOTs, should be part of the European Common Market since it would be advantageous to the territories as well as for the member nations with which there is a special bond and for the rest of the nations of the European Union. They would not be part of the Schengen Area since the United Kingdom, which is responsible for their foreign policy, chose not be a part of this area or assume the so-called Schengen acquis, although it also allowed them to take part in some of the provisions of the Schengen acquis.

On the other hand, Gibraltar is the exception as it is both a British Overseas Territory and a part of the European Union. It citizens have the right to vote in the European parliamentary elections. Nevertheless, Gibraltar joined the European Union as a European territory for whose foreign policy Britain is responsible. So, like the United Kingdom, Gibraltar does not form part of the Schengen Area and the result is an external Schengen border with Spain.

CONCLUSIONS

On the Schengen question, the interests of the United Kingdom do not appear to coincide with those of Gibraltar and Spain. Whereas the United Kingdom does not seem very interested in accepting the Schengen acquis, we have indicated that Gibraltar would have interests and good reasons for wanting to be part of the Schengen Area since it shares a physical border with Spain and not with the United Kingdom, and its entry would result in huge advantages in technical matters and effectiveness.

We have not found any official Spanish sources that address this matter but we have found some newspaper articles from Gibraltar, one of which reported that the Spanish Government would not object to Gibraltar joining Schengen. There are two reasons for this. It could be seen as a kind of rapprochement to facilitate Gibraltar's interests and for reasons of efficacy since it would make trade exchanges easier. It would also avoid the long queues upon entering and leaving the BOT, and passport controls at airports. Nevertheless, it is difficult for Gibraltar to join the Schengen Area because it is not a decision that Gibraltar can make unilaterally as the United Kingdom is responsible for Gibraltar's foreign policy.

We have also analysed the Crown Dependencies from this group while noting the differences with the BOTs. We have seen that the British Overseas Territories make up a singular reality. The Crown Dependencies represents an even more anomalous situation. As occurred with the British Overseas Territories, the Crown Territories are the result of a specific historic reality although one that is completely different from that of the British Overseas Territories. All of the Crown Dependencies are insular territories and are not part of the United Kingdom. The Crown Dependencies have never been colonies of the United Kingdom and they are not Overseas Territories. They have an altogether different type of relationship. They enjoy a high degree of autonomy although, as in the case of the BOTs, the United Kingdom is responsible for the foreign policy of the Crown Dependencies. Thus, they are not subject to International Law, yet they play a role in the international arena by participating in certain international organisations.

Having said this, the international projection of the Crown Dependencies is undeniable and increasingly noticeable. Nevertheless, foreign policy continues to be formally in the hands of the United Kingdom despite the fact that the Crown Dependencies not form part of that state. In general, this model of representation has been developed without significant incidences and there is no evidence to show that there is desire to change it. In recent years, there has been growing criticism from within the Crown Dependencies, primarily because some of these territories consider that their interests are often not satisfactorily represented or defended by the United Kingdom, especially in fiscal matters where the differences between the Crown Dependencies and the United Kingdom are even more remarkable. The prior consultation procedure that the United Kingdom should undertake when negotiating international agreements whose provisions affect the interests of the islands is considered unsatisfactory, as it is slow and ineffective. This has led these territories to demand improvements and changes to and more flexibility in the representation model to bring it more into line with their interests.

Given the growing dissatisfaction of the Crown Dependencies, our proposal consists of recognition on the part of the British Crown of an international capability and subjectivity restricted to fiscal and cultural matters of the Crown Dependencies. It is in these areas where they enjoy most autonomy. Furthermore are the most difficult areas for the United Kingdom to represent because of the disparity in the models of each of the parties. We consider that separately both the Crown Dependencies and United Kingdom could in this way more effectively represent their interests and therefore reduce criticism and tensions.

On an international legal and constitutional level there is no impediment for this proposal to be carried out. The sui generis nature of the Crown Dependencies would justify this idea. It only calls for the political will of the parties.

The Crown Dependencies are neither members of the European Union nor associate members of the European Union, although they enjoy a special relationship with the EU, which was negotiated at the time of the United Kingdom's accession to the European Economic Community (EEC) in 1973. **Nevertheless, these territories belong to the Customs Union, under the same conditions as the United Kingdom, although there are some restrictions concerning certain products. This seems peculiar to us if we compare it to the British Overseas Territories, which are not part of the customs union. Because of this, we believe that both the Crown Dependencies and the BOTs should form part of it. It is also curious that the BOTs have an associate territories status whereas the Crown Dependencies do not. This is also an issue that deserves a more profound analysis, especially considering that in 2011 the Isle of Man opened a permanent office in Brussels to defend its interests, in the belief that the United Kingdom has not always adequately represented them.**

Neither the British Overseas Territories nor the Crown Dependencies can be members of the Commonwealth with full rights since they do not fulfil one of the main requirements for joining – being a sovereign nation. This is the only possible criterion for joining since the Commonwealth does not recognise either observer status or associate status.

Like in the previous case, these territories are part of the Commonwealth, while the United Kingdom, which is a member, is charged with representing their foreign policy. In both territories, although particularly in the case of the Crown Dependencies, who have a greater degree of autonomy from the United Kingdom, similar arguments are used to demand a greater role in the Commonwealth. They want a greater degree of involvement in the Commonwealth because they believe they should be allowed to participate in the Commonwealth's principal institutions and discussion and decision forums like the Commonwealth Heads of Government Meeting, in order to be able to better represent their interests and have a voice.

Furthermore, we should recall these territories belong to the so-called Commonwealth Family, including the Commonwealth Parliamentary Association, Commonwealth Youth Parliament and the Commonwealth Games Association but they are not full members of the Commonwealth in their own right. **In this thesis we recommend and agree with the proposal of different experts and political leaders that both the Crown Dependencies and the BOTs can formally be represented on their own, and not only through the United Kingdom, in main institutions of the Commonwealth, We likewise recommend exploring the possibility of creating other categories of participation in the Commonwealth, apart from full membership, such as the recognition of the Observer or Associate Member Status. As the EU has done regarding the British Overseas Territories.**

SEVENTH: The third group of countries that we have analysed in this thesis, directly linked with both organisations, makes up the so-called Africa Caribbean and Pacific Group. We point out that relations between the African, Caribbean and Pacific Group and the European Union is in a period of significant difficulty because most of these countries have not been able to adapt to the new trade conditions where the old regime of non-reciprocal trade tariff preferences that had been granted had to be replaced by other types of agreements consistent with international standards. The African, Caribbean and Pacific Group are reluctant to implement the so-called Economic Partnership Agreements (EPA) and the European Union is not interested in the relationship. The member nations of the European Union are divided as to

the position to take with respect to this privileged relationship of the African, Caribbean and Pacific Group. As we have explained in the corresponding chapter, the existing division of opinions cannot only be argued on the basis of geopolitical or trade interests, but rather there are historical reasons that have to do with the colonial past of some member states that better explain this division. Countries with colonial ties with the African, Caribbean and Pacific Group like France and the United Kingdom have always defended this special relationship while countries like Sweden and Germany are in favour of dissolving the European Union-African, Caribbean and Pacific Group special relationship since this relationship discriminates against less developed countries with no colonial ties.

As to the process of negotiation and adoption of the Economic Partnership Agreements, the Commonwealth Secretariat (CS) has been very critical of the European Union's position, which it considers as unrealistic and inflexible since the African, Caribbean and Pacific Group does not have enough time to adapt to the trade liberalisation requirements within the planned time period. The Commonwealth Secretariat voiced its dissatisfaction on this point in many meetings and reports.

The Commonwealth Secretariat has expressed its concern for the serious adverse consequences that would result from the failure by one African, Caribbean and Pacific Group country to sign or ratify an Economic Partnership Agreement along with its regional partners since it would undoubtedly affect the coherence and, possibly, relevance of the regional integration process in the Economic Partnership Agreement configuration. It recommends the effective conclusion of a truly development-oriented Economic Partnership Agreement as perceived by all the parties involved rather than on an arbitrary deadline. However, it is aware that the solution adopted will ultimately depend on the political will of all the parties, notably the European Union. We should add that it also depends on the role they adopt in the future.

We believe that the Commonwealth could and should adopt a more active role in this process. Its actions until now are valuable. It has disagreed with the position of the European Union in this process but we believe that it has not used all the right mechanisms or avenues. The holding of conferences and the issuing of reports are useful, however, right now the African, Caribbean and Pacific Group needs a partner that can influence the opinion of the European Union. We should recall that the Commonwealth includes countries like India or South Africa that are of great interest to the European Union and they should show their support for their fellow countries in their time of need. We recommend the holding of regular bilateral meetings between the Commonwealth Secretariat and the European Union and the adoption of a common working framework. It would be of great help to the survival of the Africa Caribbean and Pacific Group.

Our conclusion is clear, the European Union should not lose interest and disassociate itself from this group of countries that it contributed to creating and has argued so much for its regionalisation, financing and institutionalisation and even less so if this indifference is based on economic and trade reasons. In a way the European Union is responsible for the future of this group, not only for the enormous colonial debt they owe to these countries, but because the European Union must continue to represent values of partnership and support. It must continue being the world's largest aid donor and not allow its global leadership in development policy to be undermined. To let go of the African, Caribbean and Pacific Group now would be nothing less than cruel and inhumane. The trade reciprocity that the European Union demands from them within the deadline seems unrealistic and unsupportive. As we have said, we argue in this thesis for flexibility in the timetable and understanding of each particular case. Furthermore, the heterogeneity must not be used as an excuse to undo the

group but rather for understanding the different realities and finding an appropriate and more just solution.

These countries, and especially its citizens, are making real efforts to move forward. Unfortunately, many of them are dependent on help from the European Union. Abandoning them will not make them self-sufficient, but will make them even poorer. The European Union must serve as an example by understanding their needs and giving them a hand. We know very well that, for the moment, the relationship between the two is going to be completely asymmetrical, especially if we frame it in terms of trade. But the relationship must be maintained with them and must go beyond this realm if this group is to be able to successfully face the challenges that confront them like immigration, climate change. The benefits for them and for the European Union will be incredible.

With regard to the Commonwealth, we point out that 50.6% of the African, Caribbean and Pacific Group are also members of the Commonwealth. This is why the action of this organisation, when it comes to defending the interests of this group, besides being totally justified, can be very useful both for the African, Caribbean and Pacific Group's own interests as well as the European Union's. The Commonwealth can mediate on subjects where there is little understanding between the parties and propose a beneficial solution for those countries that find themselves, as we have seen, in an asymmetric situation with respect to the European Union and specifically in an impasse situation in the negotiations for the Economic Partnership Agreement.

The establishment of the African, Caribbean and Pacific Group, as well as the development of relations with the European Union is the centrepiece of this thesis since it provides clear proof that understanding between the Commonwealth and the European Union in the area of cooperation in development and humanitarian aid is possible and very beneficial. The policy with respect to the African, Caribbean and Pacific Group has represented an obvious example where the Commonwealth and the European Union can and must establish a framework of stable collaboration and take on common projects. It is precisely additional action that has provided big results. As we have seen, the traditional argument that the Commonwealth and the European Union are very different organisations, which do not have common elements or overlapping areas of interest, is not valid.

We have analysed the "Hub and Spokes" project in depth, which was born when the European Commission, Commonwealth Secretariat and Organisation Internationale de la Francophonie with the support of the African, Caribbean and Pacific Group Secretariat launched a joint initiative titled 'Building the Capacity of African, Caribbean and Pacific Group countries in Trade Policy Formulation, Negotiations and Implementation'. This project was designed with a set duration. It was planned to expire in 2010 and had a €17 million grant, with the European Union as the principal funding source. But given its success, it was decided to renew and we now find ourselves in Phase II of this project.

At present, collaboration between the Commonwealth with the European Union and the African, Caribbean and Pacific Group centres on areas of cooperation in development and humanitarian aid but there is no impediment to extending this collaboration to a greater number of areas. It should be recalled that the Cotonou Agreement in effect until 2020 takes in more areas than just trade. It is now necessary for both organisations to institutionalise and establish their relations and maintain regular contact, some that is not happening now.

EIGHTH: Finally, the last of the groups that we have examined are the remaining countries: Canada, Australia, New Zealand, India, Pakistan, Bangladesh, Sri Lanka, Brunei, the Maldives,

Singapore and Malaysia, which do not fall into any of the previous categories, that is, they are not members of the European Union or belong to the group of Overseas Territories and Countries or the African, Caribbean and Pacific Group. They are very heterogeneous countries. Nevertheless, this also occurs in the African, Caribbean and Pacific Group. It is not, however, a group to be ignored. In it, we find countries like Canada and India in which the European Union has a keen interest in establishing stable and lasting relations. In this chapter a major question has been presented to us: if it was possible to put them in the same category for the purposes of establishing relations with the European Union, or if, on the other hand, it is only possible to establish ad hoc relations with each one of them. Furthermore, we asked ourselves if the Commonwealth could play a role in the formation in such a group.

Our conclusion is the following: the establishment of a single group is viable as long as we take the very Commonwealth as a unifying element and we take into account the activity areas. We have verified that there are agreements between these countries and the European Union with respect to cooperation. The other approaches that we use, like geographic, political and trade criteria do not serve as a unifying element for establishing a single group that makes up these eleven countries. The most that it can result in is the establishment of various subgroups.

Furthermore, we conclude that with respect to this group of eleven countries, the establishment of bilateral relations between the Commonwealth and the European Union would be feasible and extremely relevant since most of these, as we have seen, are of overriding interest for the European Union (in one or some of the areas analysed).

NINETH: In short, from this thesis, we argue for the establishment of a framework of stable and durable relations between the Commonwealth and the European Union that includes all the groups that we have analysed: the common members, British Overseas Territories, the African, Caribbean and Pacific Group and the so called group of eleven since we have verified that there is great mutual interest and with all of them there are direct and solid ties. In addition, this framework of relations must be opened beyond the trade realm since we have shown that there are more coinciding areas of activity and that working together would of great benefit.

As we have seen, the adoption of an international agreement between the European Union and the Commonwealth today turns out to be complicated for various reasons. Among them are the principles that affect its legal status. We know that this aspect is easy to resolve as long as there is the political will of the 54 members to expressly or tacitly grant it. Furthermore, contacts and the holding of meetings must be intensified between the leaders of both organisations since they are currently not sufficient and are not useful for setting a timetable for joint efforts.

We reason that if the Commonwealth and the European Union can resolve the issues noted, a good starting point would be the Cotonou and African Caribbean and Pacific Group agreement since it would serve as a model and frame of reference for the institutionalisation of the relations between both organisations. As we have indicated, the United Kingdom could play an important role in reaching a possible understanding between the two. Simply put, it would involve extending it to the rest of the Commonwealth or drafting a similar agreement. This agreement encompasses different regions (Asia, Caribbean and the Pacific), made up of countries with heterogeneous profiles. The European Union has different interests with respect to these groups. It is clear that the 54 member countries of the Commonwealth would not be recipients of the same regime because of their different profiles. Nevertheless, this is not a problem. It has already occurred with South Africa, which

is a member of the African, Caribbean and Pacific Group but has its own arrangements under the Cotonou Agreement. Something similar could be foreseen for countries like Canada, New Zealand, Australia and Singapore, which do not have the same needs as the Maldives and Sri Lanka. With regard to areas of cooperation, these could be broadened without problems, as happened under Cotonou Agreement, which went beyond the trade scope.

Clearly, a European Union-Commonwealth agreement like Cotonou or its broadening would make European Union relations easier with the different groups of countries that we have outlined in this thesis and would simplify the endless sectorial and general agreements that it has concluded with each of them. Furthermore, a bilateral agreement would improve visibility both for the Commonwealth as well as for the European Union on the international stage.

BIBLIOGRAPHIC, ELECTRONIC AND LEGAL RESOURCES

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A) BOOKS AND BOOK CHAPTERS

- ABBOTT, F. L., *British Withdrawal from the European Union*, London, ISR Business and the Political-Legal Environment Studies, 2002.

- AMERY, L.S., *My Political Life: The Unforgiving Years. 1929–1940*, London, Hutchinson, 1955.

- ANDREWS, E.M., *The ANZAC Illusion: Anglo-Australian Relations During World War I*, Cambridge, Cambridge University Press, 1993.

- APICELLI, M., *The Beginnings of Cypriot History*, New York, Maxwell School of Syracuse University, 2006.

- ATKINSON, R., *Europe's Full Circle: Corporate Elites and the New Facism*, Newcastle Compuprint Publishing, 1997.

- BEKKER, P., *Commentaries on World Court Decisions 1987-1996,* Leiden, Martinus Nijhoff Publishers, 1998.

- BERGER, C., *The sense of power: studies in the ideas of Canadian imperialism, 1867-1914,* Toronto, University of Toronto Press, 2013.

- BERGER, C., *Imperialism and nationalism, 1884-1914: a conflict in Canadian thought*, Michigan, Copp Clark, 1969.

- BLACK, J., *Convergence or Divergence: Britain and the Continent,* London, Macmillan, 1994.

- BLACKSHIELD, T., WILLIAMS, G., *Australian Constitutional Law and Theory*, Canberra, Federation Press, 1998.

- BOCZEK, B.A*., International Law: A Dictionary*, Lanham, Scarecrow Press, 2005.

- BROWNLIE, I., *Principles of International Law*, Oxford, Oxford University Press, 2008.

- CAIN, P.J., HOPKINS, A. G., *British Imperialism: Crisis and Deconstruction, 1914- 1990*, London, Longman, 1993.

- CAMERON, B., *The Case for Commonwealth Free Trade*, Bloomington, Trafford Publishing, 2005.

- CAMPS, M., *Britain and the European Community*, *1955-63*, Oxford, Oxford University Press, 1964.

- CHRISTOPHER, F., *The Challenge of Euroscepticism*, in GOWER, J ed., *The European Union Handbook* , Chicago, Fitzroy Dearborn Publishers, 2002, pp. 73-84.

- COLLEY, L., *Britons: Forging the Nation 1707-1837*, New Haven, Yale University Press, 1992.

- CRAWFORD, J.R., *The creation of States in International Law*, Oxford, Oxford University Press, 2006.
- CROSSMAN, R., *The Diaries of a Cabinet Minister*, London, Hamish Hamilton & Jonathan Cape Pbl., 1977.
- DADOW, O.J., *Harold Wilson and European Integration: Britain's Second Application to Join the EEC*, London, Frank Cass Pbl., 2003.
- DALE, W., *The Modern Commonwealth*, London, Butterworths, 1983.
- DAVENPORT-HINES, R.P.T, JONES, G., *The End of Insularity,* Essays in Comparative Business History, London, Routledge, 1990.
- DEIGHTON AND MILWARD, D., *Widening, deepening 1957- 1963,* Baden-Baden, Bruylant, 1999.
- DIXON, M., *Textbook on International Law*, Oxford, Oxford University Press, 2007.
- DJAMSON, E.C., *Dynamics of Euro-African Co-operation*, Leiden, Martinus Nijhoff, 1976.
- DRUMMOND, I. M., *The Floating and the Sterling Area 1931-1939*, Cambridge, Cambridge University Press, 1981.
- EDEN, A., *Full Circle: The Memoirs of Anthony Eden*, London, Cassell, 1960.
- FAWCETT, J. E.S., *The British Commonwealth in International Law*, London, Stevens & Sons, 1964.
- FOLEY, C., SCOBIE, W.I., *The Struggle for Cyprus*, Stanford, Hoover Institution Press, 1975.
- FORSTER, A., *Euroscepticism in Contemporary British Politics: Opposition to Europe in the British Conservative and Labour Parties since 1945*, London, Routledge, 2002.
- GAUTHIER, A., *Canadian Trade and Investment Activity: Canada–European Union*, Ottawa, Library of Parliament of Canada Research Publications, Trade and Investment Series, 2011.
- GOPAL, S., *Jawaharlal Nehru*: *a Biography,* Delhi, Harvard University Press, 1979.
- GOWLAND, D., TURNER, A., WRIGHT, A., *Britain and European Integration since 1945: On the Sidelines*, London, Routledge, 2009.
- GREEN R., The *Commonwealth Secretariat*, London, The Commonwealth Yearbook, 2005.
- GREEN, R., *The Commonwealth Secretariat*, London, The Commonwealth Yearbook, 2006.

- HALL, H. D., *Commonwealth: A History of the British Commonwealth of Nations*, New York, Van Nostrand Reinhold Pbl., 1971.
- HARVEY, H.J., *Consultation and Co-operation in the British Commonwealth: A Handbook on the Methods and Practice of Communication and Consultation Between the Members of the British Commonwealth of Nations*, Oxford, Oxford University Press, 1952.
- HOLLAND, R., *Britain and the Commonwealth Alliance, 1918-39,* London, Macmillan, 1981.
- HOLLAND, R., *European Decolonization, 1918-81: An Introductory Survey*, London, Macmillan, 1985.
- HOLLAND, R., *The Pursuit of Greatness: Britain and the World Role 1900-1970,* London, Fontana/Harper Collins, 1991.
- HOLLAND, R., *Britain and the Revolt in Cyprus, 1954-59*, Oxford, Oxford University Press, 1998.
- HOLLAND, R., *Blue-Water Empire: the British in the Mediterranean since 1800*, London, Allen Lane/Penguin, 2012.
- HOLLAND, R., MARKIDES, R., *The British and the Hellenes: struggles for mastery in the eastern Mediterranean, 1850-1960*, Oxford, Oxford University Press, 2006.
- JENKINS, L., *Disappearing Britain: The EU and the Death of Local Government*, New York, Orange State Press, 2005.
- JEBB, R., *Studies in Colonial Nationalism*, London, E. Arnold Pbl., 1905.
- KNOWLAN, K.B., WILLIAMS, T.D., *Irish Foreign Policy, 1945-51 in Ireland in the War Years and After 1939-51*, Dublin, Gill and Macmillan, 1969.
- LAMBERT, M., SURHONE, L., TIMPLEDON, M., MARSEKEN, S., *Udal Law*, London, Betascript Publishing, 2010.
- MACMILLAN, H., *At the End of the Day*, London, McMillan, 1973.
- MADDEN, F., *The End of the Empire: Select Documents on the Constitutional History of the British Empire and Commonwealth*, Greenwood Press, Vol. VIII, 2000.
- MANSERGH, N., *Documents and Speeches on British Commonwealth Affairs: 1931-1952*, London, published by the Council on Foreign Affairs, vol.2, 1953.
- MANSERGH, N., *The Commonwealth Experience,* London, MacMillan Press Ltd., Vol. II: *From British to Muti-racial Commonwealth*, 1982.
- MAYLL, J., *The Contemporary Commonwealth 1965-2009*, London, Routledge, 2009.

- MAZRUI, A. A., *The Anglo-African Commonwealth: Political Friction and Cultural Fusion*, Oxford, Pergamon Press, 1967.
- MCCORMICK, J., *The European Union: Politics and Policies*, Bolder, Westview Press, 2008.
- MCEVOY, F. J., *Canada, Ireland and the Commonwealth: The Declaration of the Irish Republic*, Dublin, Irish Historical Studies Publications, 1985.
- MCINN, W.G., *A Constitutional History of Australia*, Oxford, Oxford University Press, 1979.
- MCINTYRE, D., *A Guide to the Contemporary Commonwealth*, London, Palgrave Macmillan, 2001.
- MCINTYRE, D., *The Commonwealth of Nations: Origins and Impact*, Minnesota, University of Minnesota Press, Vol. IX: *Europe and the World in the Age of Expansion*, 1977.
- MCINTYRE, D., *The significance of the Commonwealth 1965-90*, Christchurch, Canterbury University Press, 1991.
- MILLER, J.D.B., *Survey of Commonwealth Affairs: Problems of Expansion and Attrition 1953-1969*, Oxford, Oxford University Press, 1974.
- MILLER, L.B., *Cyprus: The Law and Politics of Civil Strife*, Cambridge (Massachusetts), Center for International Affairs, Harvard University, 1968.
- MILWARD, A. S., *The European rescue of the nation-state*, London, Routledge, 2000.
- MORGAN, K., *Symbiosis: Trade and the British Empire*, London, BBC Editions, 2009.
- MULLER, A. S., *International organisations and their host States*, Leiden, Martinus Nijhoff Publishers, 1995.
- MURPHY, P., *Government by blackmail: The origins of the Central African Federation reconsidered* in MARTIN LYNN (Ed), *Retreat or Revival: The British Empire in the 1950s,* London, Palgrave, 2005, pp. 53-76.
- MURPHY, P., *Monarchy and the End of Empire The House of Windsor, the British Government, and the Postwar Commonwealth*, Oxford, Oxford University Press, 2013.
- MURPHY, P., *The Old Pals' Protection Society? The Colonial Office and the British Press on the Eve of Decolonisation,* in CHANDRIKA KAUL (Ed), *Media and the British Empire* London, Palgrave, 2006, pp. 55-69.
- MURPHY, P., *Party Politics and Decolonization: The Conservative Party and British Colonial Policy, in Tropical Africa 1951-1964*, Oxford, Oxford University Press, 1995.
- MUSHIN, J., *The Sterling Area*, University of Wellington, Economic History Association Encyclopedia, 2012.

- MYRDAL, G., An International Economy, Problems and Prospects, New York, Harper, 1956.
- NORTHRUP, T.A., *The Dynamic of Identity in Personal and Social Conflict*, in KRIESBERG, L., *Intractable Conflicts and Their Transformation*, New York, Maxwell School of Syracuse University, 1998.
- NOVOTNY, D., PORTELA, C., *EU-ASEAN Relations in the 21st Century: Strategic Partnership in the Making*, London, Palgrave Macmillan, 2012.
- NUGENT, N., *The Government and Politics of the European Union*, London, Macmillan, 1994.
- PEASLEE, A.J., *International Governmental Organisations*, Leiden, Martinus Nijhoff Publishers, Vol. Constitutional Documents, 1979.
- PIROTTA, M., *Fortress Colony: The Final Act 1945-1964*, Valletta Studia Editions, Vol. II, 1991.
- POMFRET, R., *The economics of regional trading arrangements*, Oxford, Oxford University Press, 1997.
- PORTER, B., *Britain, Europe and the World 1850-1986: Delusions of Grandeur*, London, George Allen and Unwin Pbl., 1983.
- PORTTMAN, R., *Legal Personality in International Law*, Cambridge, Cambridge Studies, 2010.
- RIX, A., *Coming to terms: the politics of Australia's trade with Japan 1945-1957,* Sydney, Allen and Unwin, 1986.
- ROOTH, L., *British Protectionism and the international economy*, Cambridge, Cambridge University Press, 1993.
- SCHEMERS, H.G., BLOKKER, M. N., *International Institutional Law*, Leiden, Martinus Nijhoff Publishers, 1997.
- SCHENK, C. R., *Britain and the Sterling Area*, London, Routledge, 1994.
- SCHNEIDER, P., *Intervention in Kosovo*, Candor, Telos, 1999.
- SHAW, M., *International law*, Cambridge, Cambridge University Press, 2003.
- SLINN, P., *The Commonwealth and the Law* in MAYLL, J., *The Contemporary Commonwealth 1965-2009*, London, Routledge, 2009.
- SMITH, A., *Stitches in Time- The Commonwealth in World Politics*, London, Beaufort Books, 1983.

- SMITH, D., *The Invisible Crown: The First Principle of Canadian Government and The Republican Option in Canada: Past and Present*, Toronto, University of Toronto Press, 1995.

- SMITH, D., *Head of State*, London, Macleay Press, 2005.

- STARKE J. G., *Introduction to International Law*, London, Butterworth-Heinemann, 1989.

- SUTTON, A., *The evolving legal status of the Crown Dependencies under UK*, European and International Law, Jersey, White and Case Pbl, 2008.

- THIO, L.A., TAN, K. Y.L., *Evolution of a Revolution: Forty Years of the Singapore Constitution*, London, Routledge, 2009.

- TUNSTALL, J., *Newspaper Power: The New National Press in Britain*, Oxford, Oxford Claredon Press, 1996.

- URBAN, G. R., *Diplomacy and Disillusion at the Court of Margaret Thatcher: An Insider's View*, London, I.B. Tauris, 1996.

- VERDUN, A., *Economic and Monetary Union*, Princeton, Princeton University, 2005.

- WARD, S., *Australia and the British Embrace: The Demise of the Imperial Ideal,* Melbourne, Melbourne University Press, 2001

- WEIGHT, R., *Patriots: National Identity in Britain 1940-2000*, London, Macmillan, 2002.

- WHEARE, K., *The Constitutional Structure of the Commonwealth*, Oxford, Clarendon Press, 1960.

- WHEELER-BENNETT, J. W., *King George VI: His Life and Reign*, London, St. Martin's Press, 1958.

- WHITE, N. D., *The law of international organizations*, Manchester, Manchester University Press, 2005.

- WHITE, N.D., ABASS A., *Countermeasures and Sanctions,* in EVANS M. (ed.), *International Law*, Oxford, Oxford University Press, 2003.

- WHITE, N.D., *The Law of international organisations,* in SCHILL, M., *Studies in International law*, Manchester, Manchester University Press, 2005.

- YOUNG, H., *This Blessed Plot: Britain and Europe from Churchill to Blair*, London, Macmillan, 1999.

B) <u>JOURNALS, PAPERS AND REVIEWS</u>

- ATHANASSIOU, P., "Withdrawal and Expulsion from the EU and the EMU", *Legal Working Paper Series*, 2009, Num. 10, pp. 1-49.

BIBLIOGRAPHIC, ELECTRONIC AND LEGAL RESOURCES

- AUSTIN, D., "The Commonwealth and Britain", London, *Chatham House Papers*, 1988, pp. 1-15.

- AYTAÇ, E. S., SABRI KIRATLI, O., "EU Accession Process and Euroscepticism in Candidate Countries", Riga, University of Latvia, Paper presented at the *Fourth Pan-European Conference on EU Politics ECPR Standing Group on the European Union*, 25-27 September 2008.

- BAKER, D., "Britain and Europe: The Argument Continues", *Hansard Society for Parliamentary Government*, Vol. Parliament Affairs, 2001, Num. 54, pp. 276-288.

- Barcelona Centre for International Studies (CIDOB), "Political System and State Structure of Pakistan", *CIDOB International Yearbook 2012*, 2012, pp. 1-8.

  BARTELS L., GOODISON, P., "EU Proposal to End Preferences of 18 African and Pacific States: An Assessment", *The Commonwealth Secretariat Trade Hot Topics Papers*, 2011, Issue 91, pp. 1-47.

- BARTELS, L., "The Trade and Development Policy of the European Union", *The European Journal of International Law,* Vol. 18, 2007, Num. 4, pp. 715- 756.

- BORDONARO, M., "A Mediterranean Success Story: Malta's EU Integration", *The Ambassadors Review*, 2008, pp. 35-38.

- BRADY, H., "The Schengen Crisis in the Framework of the Arab Spring, Culture and Society: Migrations", *IEMED Observatory Journal*, 2012, Num. 275, pp. 1-4.

- BYRON, J., "Singing From the Same Hymn Sheet': Caribbean Diplomacy and the Cotonou Agreement", *Revista Europea de Estudios Latinoamericanos y del Caribe*, 2005, Num. 79, pp. 1-24.

- CINI, M., "The Europeanization of Malta: Adaptation, Identity and Party Politics", *South European Society and Politics*, Vol. 5, 2000, Num. 2, pp. 261-276.

- CINI, M., "Malta Votes Twice for Europe: The Accession Referendum and General Election", *South European Society and Politics,* Vol. 8, 2003, Num. 3, pp. 132-146.

- CONNELL, J., "Britain's Caribbean Colonies: The end of the era of decolonization", *Journal of Commonwealth and Comparative Politics*, 1994, Num. 32, pp. 87-106.

- CRAIG, P., "The European Union Act 2011: Locks, limits and legality", *Common Market Law Review*, 2011, pp. 1915- 1944.

- CUTHBERT, J., CUTHBERT, M., "The wrong sort of rebate: the need to reform the UK budget adjustment", *Quarterly economic commentary*, Vol. 30, 2005, Num. 2, pp. 1-16.

- DALE, W., "Is the Commonwealth an International Organisation?"*, International & Comparative Law Quarterly, Cambridge Journals,* 1982, Num.31, pp. 451-473.

- DELANY, H., "The Constitution of Ireland: Its Origin and Development", *The University of Toronto Law Journal*, Vol. 12, 1957, Num. 1, pp. 1-26.

- DOXEY, M., "The Commonwealth Secretary-General: Limits of Leadership", *International Affairs Journal,* Vol. 55, 1979, Num.1, pp. 67–83.

- DRUMMOND, I. M., "Imperial Economic Policy 1917-1939: Studies in Expansion and Protection", *International Journal*, Vol. 30, 1975, Num.3, pp. 472- 496.

- DUXBURY, A., "The Commonwealth and the Edinburgh CHOGM: Challenges and Opportunities", *Australian National University Press*, Vol. 5, 1994, Num. 4, pp. 441-451.

- EDGE, P., AUGUR PEARCE, C.C., "The work of a religious representative in a democratic legislature: A case study of the Lord Bishop of Sodor and Man in Tynwald, 1961-2001", *Marburg Journal of Religion*, Vol. 9, December 2004, Num. 2, pp. 29-57.

- European Centre for Development Policy Management, "Differentiation in ACP-EU Cooperation: Implications of the EU's Agenda for Change for the 11th EDF and beyond", *European Centre for Development Policy Management Discussion Paper*, October 2012, Num. 134, pp. 1-36.

- FABER, G., ORBIE, J., "The EU's insistence on reciprocal trade with the ACP group Economic interests in the driving seat?", *Paper for the European Union Studies Association*, Tenth Biennial International Conference Montreal, 17-19 May 2007.

- FERNÁNDEZ SOLA, N., "La subjetividad internacional de la Unión Europea", *Revista de Derecho Comunitario Europeo*, 2002, Num. 11, pp. 87-88.

- GEORGE, S., "Britain: Anatomy of a Eurosceptic State", *Journal of European Integration*, Vol. 22, 2000, Num. 1, pp. 15-33.

- GOLD, P., "Identity Formation in Gibraltar", *University of West England Research Papers,* Geopolitics, Vol. 15, 2010, Num. 2, pp. 367-384.

- GORDON, M., "The European Union Act 2011", *The UK Constitutional Law Review*, 12 January 2012, pp. 1-5.

- GRANOVETTER, M., "Economic action and social structure: a theory of embeddedness", *American Journal of Sociology*, Vol. 91, 1985, Num.3, pp. 481-510.

- HALLER-TROST, R., "The Brunei-Malaysia Dispute Over Territorial and Maritime Claims in International Law", *International Boundaries Research Unit, University of Durham Review*, Vol.1, 1994, Num. 3, pp. 1-63.

- HAMILL, J., "South Africa and the Commonwealth part one: the years of acrimony", *The Contemporary Review*, vol. 267, 1995, pp. 13-22.

- HAPPOLD, M., "'Fourteen against One: the EU Member States' Response to Freedom Party Participation in the Austrian Government", *The International and Comparative Law Quarterly*, 2000, Num. 49, pp. 953- 963.

- HAUSNER, K. H., "The European Budget in the Years 2007 to 2013 and the Common Agricultural Policy", *Intereconomics: Review of European Economic Policy*, Vol. 42, 2007, Num. 1, pp. 54-60.

- HOLLAND, M., "EU in the Views of Asia-Pacific Elites: Australia, New Zealand and Thailand", National Centre for Research on Europe (NCRE), *University of Canterbury Research Series,* 2005, Num. 5, p. 1-14.

- HOLLAND, R., STOCKWELL, S., "Ambiguities of Empire: Essays in Honour of Andrew Porter", *English Historical Review*, Vol. CXXVI, 2011, Num. 521, pp. 989-990.

- INGRAM, D., "Abuja Notebook", *The Round Table: The Commonwealth Journal of International Affairs*, Vol. 93, January 2004, Issue 373, p. 11- 41.

- Institute of Law*, "*Jersey Legal System & Constitutional Law", *Institute of Law Jersey Journal*, 2012, pp. 1-5.

- JOSEPH, S. J., "The United Nations as an Instrument of National Policy: The Case of Cyprus", *The Cyprus Review*, 1989, pp. 125- 143.

- KILLINGRAY, D., TAYLOR, D., "The United Kingdom Overseas Territories: Past, Present and Future", University of London, *OSPA Research Project at the Institute of Commonwealth Studies*, 2005, Num. 3, pp. 53- 64.

- LAPORTE, G., "What future for the ACP and the Cotonou Agreement? Preparing for the next steps in the debate*", European Centre for Development Policy Management Papers*, 2012, Num. 34, pp. 1-8.

- LEA, R., "Should UK business look to the Commonwealth", *Journal of the ICAEW Corporate Finance Faculty*, 2011, pp. 1-4.

- LECZYKIEWICZ, D., "The EU Charter of Fundamental Rights and its effects", *UK Constitutional Law Group Review,* 2011, p. 1-5.

- London South Bank University, "The Commonwealth during the period of Britain's first application to join the EEC", *The European Institute Research Papers*, from: <http://bus.lsbu.ac.uk/resources/CIBS/european-institute-papers/papers1/295.PDF>, (accessed 8 July 2012).

- MACLEOD, R., "Canada's attitude towards Cyprus joining the Commonwealth", *The Round Table: The Commonwealth Journal of International Affairs;* Vol. 328, 1993, Issue 1, pp. 391- 396.

- MCEVOY, F. J.,"Canadian-Irish relations during the Second World War", The Journal of Imperial and Commonwealth History, vol. 5, 1977, Num. 2, pp. 206–226.

- MCINTYRE, D., "Governor-General of Malaya to Secretary of State for the Colonies 27 June 1947", Commonwealth Review, Vol. 47, 15 September 1947, Num. 3, pp. 65-99.

- MCINTYRE, D., "The Strange Death of Dominion Status", *Journal of Imperial and Commonwealth History*, Vol. 27, 1999, Num. 2, pp. 193-212.

- MCINTYRE, D., "The Expansion of the Commonwealth and the Criteria for Membership", The Round Table: The Commonwealth Journal of International Affairs, Vol. 97, April 2008, Num. 395, pp. 273-285.

- MEHROTA, S.H., "On the use of the term 'Commonwealth'", *Journal of Commonwealth Political Studies*, Vol. 2, 1963, Num. 1, pp. 1-16.

- MINFORD, P., "Should Britain Join the Euro?", Cardiff University Business School: Centre for Economic Policy Research (CEPR*), IEA Occasional Paper*, 2005, Num. 126, pp. 1-80.

- MOLLETT, J.A., "Note on Commonwealth (Imperial) Preference", *Canadian Journal of Agricultural Economics/Revue canadienne d'agroeconomie*, Vol. 7, 1959, Issue 1, pp. 91-94.

- MOLE, S., "Seminars for statesmen': the evolution of the Commonwealth summit", *The Round Table: The Commonwealth Journal of International Affairs*, Vol. 93, 2004, Issue 376, pp. 533-546.

- MORRISON, D., "The EU: The British rebate", *Labour & Trade Union Review*, 8 August 2005, from: <http://www.david-morrison.org.uk/eu/british-rebate.htm>, (accessed 16 December 2012).

- MURPHY, P., "Intelligence and Decolonization: The Life and Death of the Federal Intelligence and Security Bureau, 1954-63", *The Journal of Imperial and Commonwealth History,* Vol. 29, May 2001, Num. 2, pp. 101-130.

- MURPHY, P., "Creating a Commonwealth Intelligence Culture: The View From Central Africa, 1945-1965", *Intelligence and National Security Review*, Vol 17, 2002, Num. 3, pp.131-162.

- MURPHY, P., "Censorship, declassification and the end of empire in Central Africa", *African Research and Documentation*, vol. 42, 2003, pp. 3-26.

- MURPHY, P., "The African Queen? Republicanism and Defensive Decolonization in British Tropical Africa, 1958-64", *Twentieth Century British History*, Vol. 14, 2003, Num. 3, pp. 243-263.

- MURPHY, P., "By invitation only: Lord Mountbatten, Prince Philip and the attempt to create a Commonwealth Bilderberg Group, 1964-1966", *The Journal of Imperial and Commonwealth History,* Vol. 33, 2005, Num. 2, pp. 245-265.

- MURPHY, P., "An intricate and distasteful subject: British planning for the use of force against the European settlers of Central Africa, 1952-1965", *English Historical Review* Vol. CXXI, 2006, Num. 492, pp. 746-777.

- MURPHY, P., "Breaking the bad news: plans for announcement to the Commonwealth of the death of Elizabeth II, 1952-69", *The Journal of Imperial and Commonwealth History*, Vol. 34, 2006, Num. 1, pp. 139-154.

- MUSONGE, W., "Current State of Play of EU-ACP Economic Partnership Agreements", *World Trade Institute Papers*, 2013, pp. 1-34.
- NICOLLE, S., "The Origin and Development of Jersey law: an Outline Guide", *Jersey and Guernsey Law Review*, 2009, pp. 1-196.
- O'MALEY, C., "Some Legal Issues involved in the association of the European Economic Community with the African and Malagasy States", University of Birmingham, *Journal of Legal Pluralism and Unofficial Law*, Vol.1, 1970, Issue. 1, pp. 53-85.
- ORTEGA, M., "Military Intervention and the European Union", Institute for Security Studies, *Chaillot Papers*, 2001, Num. 45, pp. 1-141.
- OSBORNE, R.P., "The UK Overseas Territories Relationship: An Overview", in KILLINGRAY, D., TAYLOR, D., "The United Kingdom Overseas Territories: Past, Present and Future", University of London, Institute of Commonwealth Studies, *OSPA Research Project Papers*, 2005, Num. 3, pp. 53-64.
- PACE R., "The Maltese Electorate Turns a New Leaf? The First European Parliament Election in Malta", *South European Society and Politics*, Vol. 10, 2005, Num. 1, pp. 121-136.
- PANAGARIYA, A., "EU Preferential Trade Policies and Developing Countries", *University of Columbia Journal*, 2002, pp. 1-31.
- PEDERSEN, K., "Britisk finansminister slår Hjorts EU-drøm til jorden", *Økonomi*, Vol. Politiken, 2011, p. 1-12.
- POND, E., "Kosovo: Catalyst for Europe", *The Washington Quarterly*, 1999, pp. 77-92.
- POSNETT, R., "Britain's Dependent Territories", *Institute of Commonwealth Studies Seminar Paper*, 3 November 1978, pp. 1-276.
- POTTER, P. B., "Origin of the term international organisation", *American Journal of International Law,* Vol. 39, 1945, pp. 803-806.
- ROBERTSON, P., SINGLETON, J., "The Commonwealth as an Economic Network", *Australian Economic History Review*, Vol. 41, 2002, Num. 3, pp. 241-266.
- ROBERTSON, P., SINGLETON, J., "The Old Commonwealth and Britain's First Application to join the EEC 1961-3", *Australian Economic History Review*, Vol. 40, 2000, Num. 2, pp. 153-177.
- SACK, A. N., "Treaty Relations of the British Commonwealth of Nations by Robert B. Stewart", *University of Pennsylvania Law Review and American Law Register*, Vol. 88, 1940, Num. 5, p. 637-640.
- SAROOSHI, D., "Some preliminary remarks on the conferral by States of powers on international organizations", New York University School of Law, *Jean Monnet Working Paper,* 2003, Num. 3, pp. 1-71.

- SCHIEDER, S., KARLS, R., "Why some European member states are prioritizing the group of ACP countries more than other developing countries? The EU's development aid puzzle", Università Roma, XXVI Convegno Società Italiana di Scienza Politica (SISP) Paper, 13 – 15 September 2012.

- SEYERSTED, F., "International Personality of Intergovernmental Organisations", *Indian Journal of International Law*, 1964, Num. 4, pp. 233-269.

- SMITH, S. C., "Integration and Disintegration: The Attempted Incorporation of Malta into the United Kingdom in the 1950s", *The Journal of Imperial and Commonwealth History,* Vol. 35, March 2007, Num. 1, pp. 49-71.

- SOAL, J., "Commonwealth Update*", The Round Table: The Commonwealth Journal of International Affairs,* Vol. 96, 2007, Issue 389, pp. 395–413.

- SOLIGNAC, H. B., "Effectiveness of Developing Country Participation in ACP-EU Negotiations", *Overseas Development Institute Working Paper,* 2001, pp. 1-48.

- SPENCELEY, G., WELCH, C., "Australia-EU Relations and the common Agricultural Policy since 1970: Causes and consequences of policy failure", Monash University of Australia and Macquarie University of Australia, paper presented at ECSA Conference, Seattle, USA, May 1997.

- SPIERING, N., "British Euroscepticism*", Journal of European Studies*, Vol. 20, 2004, pp. 127-149.

- States of Jersey, "Jersey welcomes UK Government support for strengthening of its international identity", *International Insight Journal*, 2010, Issue 3, pp. 1-4.

- SUTTON, A., "Jersey's Changing Constitutional Relationship With Europe*"*, *The Jersey Law Review*, 2005, pp. 1-24.

- SUTTON, P., "Two Steps Forward, One Step Back: Britain and the Commonwealth Caribbean", *Cambridge University Journal*, Vol. 25, 2001, Issue 2, pp 42-58.

- TAGGART, P., SZCZERBIAK, A., "The Party Politics of Euroscepticism in EU Member and Candidate States: Opposing Europe Research Network", *Sussex European Institute, Working Paper,* 2002, Num. 6, from: <sussex.ac.uk/Units/ SEI/ pdfswp51.pdf>, (accessed 3 March 2013).

- TE VELDE, V., "Commonwealth Membership and the Patterson Commission Report: In the light of the Kampala Communiqué", *Commonwealth Policy Studies*, 2009, pp. 1-6.

- The Round Table (Ed.), "The Commonwealth at and immediately after the Coolum CHOGM", *The Round Table: The Commonwealth Journal of International Affairs*, Vol. 91, April 2002, Issue 364, pp. 125–129.

- THOMAS, R., "The WTO and Trade Cooperation between the ACP and the EU: Assessing the Options", *European Centre for Development Policy Management (ECDPM) Working Paper*, 1997, Num. 16, pp. 1-132.

- VALE, C., "The Lome Conventions: From Sunday Charity to a New International Economic Order", *The South African Institute of International Affairs Journal*, 1980, pp. 1-24.

- VERDUN, A., "Canada and the European Union: Strengthening Transatlantic Relations", *Jean Monnet/Robert Schuman Paper Series*, Vol. 3, November 2003, Num. 10, pp. 1-9.

- WESSEL, R., "Revisiting the International Legal Status of the EU", *European Foreign Affairs Review*, Vol. 5, 2000, pp. 507-537.

- WOUTERS, J., GODEERIES, I., NATENS, B., CIORTUZ, F., "Some Critical Issues in EU-India Free Trade Agreement Negotiations", *Leuven Centre for Global Governance Studies Working Paper,* 2013, Num. 102, pp. 1-25.

- YARD, T., "Promises, Promises: A Critical Analysis of Lome III's Private Investment Provisions", *Fordham International Law Journal*, Vol.9, 1985, Issue. 3, pp. 634- 679.

C) <u>OFFICIAL DOCUMENTS, REPORTS AND ESSAYS</u>

- ACP-EU Trade Orgnisation*, "*EPAs: there is no Plan B, An interview with Peter Mandelson", Trade Negotiations Insights, Vol. 6, September 2007, Num. 5, pp. 1-16.

- BANERJI, A., "Amitav Banerji's Speech: 'The Commonwealth: A Force for Democracy'", at Cambridge University, Commonwealth Society, 2 March 2010, pp. 1-3.

- BATTEN, G., "How much does the European Union cost Britain?", UK Independence Party Report, from: <http://www.molevalleyepsom.ukip.org/media/pdf/cost_of_eu.pdf>, (accessed 16 December 2012).

- BILAL, S., "Concluding EPA Negotiations Legal and institutional issues", Policy Management Report 12, 2007, from: <http://www.fes.de/cotonou/OTHER_BACKGROUND_TRADE/EPA_LEGAL_ISSUES_26JULY2007.PDF>, (accessed 8 July 2013).

- BOYD, L., "Smaller colonial territories: Memorandum", Annex B, CAB 134/1295, MC 2 (55), 5, 7 September 1955.

- CARLS, A., "The Origins of the European Community", Archive of European Integration, University of Pittsburgh, 2003.

- Commonwealth Eminent Group, "A Commonwealth of the People: Time for Urgent Reform", Report of the Eminent Persons Group, Commonwealth Heads of Government, Perth, October 2011.

- DAVIES, R. (Deputy Minister of Trade & Industry of South Africa), "Evaluating EPA's: The way forward for the ACP", Welcoming Remarks at Commonwealth Secretariat/ ACP Secretariat Conference, Cape Town, The Commonwealth Files, 7 – 8th April 2008, from: <http://www.thecommonwealth.org/files/177990/FileName/speakingnotes-EPAConference7-8April2008.pdf>, (accessed 16 July 2013).

- Deutscher Bundestag, “Zur Politik der Bundesregierung der Lomé-Abkommen”, Berlin, Deutscher Bundestag, 1997, Drucksache 13/8628.

- European Commission, “EU Bilateral Trade and with the world Report”, European Commission: Directorate General Trade, 23 May 2013, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113391.pdf>, (accessed 1 July 2013).

- European Commission, “Eurobarometer 69 Public Opinion in the EU”, European Commission: Directorate General Communication, June 2008.

- European Commission, “Memorandum on The Community's development policy”, European Commission, Bulletin European Community, 4 October 1982.

- European Commission, “Report to the European Parliament on the State of the Negotiations with the United Kingdom”, EEC Commission, 26 February 1963, pp. 30-67.

- European Community, “The Community's development policy”, Commission memorandum to the Council, COM (82) 640 final, 5 October 1982, Bulletin of the European Communities, Supplement 5/82.

- European Parliament, *“*Relations with the Countries of Africa, the Caribbean and the Pacific: from the Yaoundé and Lomé Conventions to the Cotonou Agreement*”*, Fact Sheets on the European Union, The European Parliament, 2013.

- European Parliament, “Report on the proposal for a regulation of the European Parliament and of the Council amending Annex I to Council Regulation (EC) No 1528/2007 as regards the exclusion of a number of countries from the list of regions or states which have concluded negotiations”, European Paliament, 25 June 2012, (COM(2011)0598 – C7-0305/2012 – 2011/0260(COD).

- European Union, “The European Union in Sri Lanka and the Maldives”, European Union Publications, 2012.

- European Union, “The South Africa-European Union Strategic Partnership”, Joint Action Plan, The Council of the European Union, 15 May 2007, 9650/07.

- FONTAGNE, L., MITARITONNA, C., LABORDE, D., “An impact study of the EU-ACP economic partnership agreements (EPAS) in the six ACP regions”, CEPII-CIREM, Directorate General for Trade, Final Report, January 2008.

- Foreign Affairs Committee - Fourth Report: “The role and future of the Commonwealth”, London, published by the House of Commons, 1 November 2012.

- Foreign and Commonwealth Office, “Gibraltar and General Department and predecessors: future of Dependent Territories”, Records of the Foreign and Commonwealth Office and predecessors, National Archives, 1973, FCO 86/75.

- FREDA, T., “Welcome address by Tom Freda, Speeches and commentary”, Citizens for a Canadian Republic Pbl., 16 September 2009.

- GOLDBERG, J., “The British problem and the enlargement of the EEC in 1973”, Jean Monnet's lifeand European History, 2003.

- Government of Gibraltar, “The Gibraltar Constitution Order 2006”, supplement to the Gibraltar Gazette, 28 December 2006, Num. 3574.

- Government of Jersey, “The European Union Law - Jersey's status in respect of EC Law”, The Government of Jersey, 22 March 2004.

- Government of Malta, “The Mintoff Plan: Memorandum by the Colonial Office for the Cabinet (Official) Committee on Malta”, National Archives of Malta (NAM), 28 July 1955, OPM 512/1955.

- GRANT, C., “Why is Britain eurosceptic?”, Center for European Reform Essays, December 2008.

- HART, N., *EU Referendum*, The UK Government, (September 2010), from: <http://yougov.co.uk/news/2010/09/10/eu-referendum/>, (accessed 15 February 2013).

- Her Majesty Treasury, “The five tests framework: EMU Study”, UK Government official Document, 2003, from: <http://news.bbc.co.uk/2/shared/spl/hi/europe/03/euro/pdf/1.pdf>, (accessed 22 December 2012).

- House of Common, House of Common Debates 102, 25 July 1986, National Archives, col. 574, 16 December 1987, pp.863-6.

- House of Commons – UK Parliament, *Gibraltar, the United Kingdom and Spain*, House of commons RESEARCH PAPER, 22 April 1998, HC 98/50.

- House of Commons European Scrutiny Committee, “The EU Bill and Parliamentary sovereignty”, Tenth Report of Session 2010–11, London, The House of Commons, Vol. 1: *Report, together with formal minutes*, 7 December 2010, HC 633-I.

- House of Commons Justice Committee, “Crown Dependencies”, Eight Report of Session 2009-2010, House of Commons, Vol. 2, 2010.

- House of Commons, “Gibraltar, Eleventh Report of Session 2001-2002”, House of Commons: Foreign Affairs Committee, 19 June 2002.

- House of Commons, “How much legislation comes from Europe?”, House of Commons Library, 13 October 2010, RESEARCH PAPER 10/62.

- ISLAM, S., “Moving EU-Pakistan Relations Beyond Words”, The German Marshall Fund of the United States, Asia Program, 2011.

- Isle of Man Constitution Committee, “Report of the Departmental Committee on the Constitution of the Isle of Man”, presented to Parliament by Command of His Majesty, published at His Majesty's Stationery Office, 1911.

- Isle of Man Government, "Annual Report on the Government Strategic Plan 2007-2011", Isle of Man Government, 2010.

- Isle of Man Government, "Relationship with the European Union", Official Document, The Isle of Man Government, from: <http://www.gov.im/lib/docs/ebusiness/advantages/protocol3.pdf>, (accessed 19 June 2013).

- Isle of Man Government, "Service Delivery Plan 2011/12", Isle of Man Government: Department of Economic Development, from: <http://www.gov.im/lib/docs/cso/plan/2011/ded_sdp2011.pdf>, (accessed 12 June 2013).

- ISAACS, G.A., "Constitutional development in smaller colonial territories", Cabinet Memorandum, UK Government Official Document, 10 March 1949, CAB 129/33/2, CP (49) 62.

- MCKINNON, D., "Statement by the Commonwealth Secretary-General on the occasion of the High Level Plenary Meeting of the United Nations General Assembly", United Nations, New York, 16 September 2005.

- MILLER, V., "UK Government opt-in decisions in the Area of Freedom, Security and Justice", Commons Library Standard Note, The UK Parliament Official Documents, 19 October 2011, Standard notes SN06087.

- Ministry of Justice, "Government Response to the Justice Select Committee's Report: Crown Dependencies", Ministry of Justice, November 2010.

- New Zealand Government, "Economic Overview", New Zealand Government: Immigration Department, from: <http://www.newzealandnow.govt.nz/investing-in-nz/opportunities-outlook/economic-overview>, (accessed 27 April 2013).

- Northern Ireland Access Research Institute, "5 June 1975: The Common Market Referendum", Northern Ireland Access Research Knowledge Reports, from: <http://www.ark.ac.uk/elections/fref70s.htm>, (accessed 11 December 2012).

- Organisation for Economic Co-operation and Development (OECD), "Harmful Tax Competition", Report by the OECD Council of Ministers, November 2000.

- READ, J., "Commonwealth Secretariat: Its Legal Capacities, Immunities and Privileges", Commonwealth Secretariat, 1978.

- ROSSINDELL, A., "British overseas territories and Crown dependencies", UK Parliament Publications, session 2010-12, from: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmbackben/uc100112/ucbb100112.htm>, (accessed 4 July 2013).

- States of Jersey, "OECD Initiative on Harmful Tax Competition", States of Jersey Official Documents 22 February 2002, from: <http://www.oecd.org/ctp/harmful/2067924.pdf>, (accessed 1 June 2013).

- The British Monarchy, “The Queen's speech at the opening of CHOGM”, UK Government, 27 November 2009.

- The British Monarchy, “Commonwealth Day message from HM Queen Elizabeth II, Head of the Commonwealth”, The Commonwealth, 10 March 2014.

- The Commonwealth Human Rights Initiative, “Rwanda’s Application for Membership of the Commonwealth”, Report and Recommendations of the Commonwealth Human Rights Initiative, the Commonwealth Human Rights Initiative Pbl., 2009.

- The Commonwealth Secretariat, “Africa Joins forces with Barclays, UNICEF, ILO and the Ministry of Youth in Zambia”, The Commonwealth Youth Programme, 17 July 2009.

- The Commonwealth Secretariat, “Commonwealth Education Partnership”, The Commonwealth Secretariat, 2009.

- The Commonwealth, “Commonwealth Secretariat Strategic Plan 2008-2012, The Commonwealth Secretariat”, from: <http://www.thecommonwealth.org/document/181889/34293/39128/182141/strategic_plan_2008_2012.htm>, (accessed: 3/3/2010).

- The Commonwealth, “Commonwealth Service Abroad Programme”, The Commonwealth Secretariat from: <http://www.thecommonwealth.org/Internal/190676/190791/190796/commonwealth_service_abroad_programme__csap/ >, (accessed 29/11/10).

- The Commonwealth, “Cyprus”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/Templates/YearbookHomeInternal.asp?NodeID=138423>, (accessed 3/3/2010).

- The Commonwealth, “Report of the Commonwealth Eminent Group of Persons”, Port-of-Spain, November 2009.

- The Commonwealth, “Report on the Committee on Commonwealth Membership”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/document/181889/34293/35468/214257/londondeclaration.htm>, (accessed 3/3/2010).

- The Commonwealth, “The Commonwealth at the Summit: Communique´s of Commonwealth Heads of Government Meetings 1987–1995”, The Commonwealth Secretariat: Commonwealth Secretariat Archives, 1997.

- The Commonwealth, “The Commonwealth Youth Programme”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/subhomepage/152816/>, (accessed: 3/3/2010).

- The Commonwealth, “The Commonwealth’s Climate Change Action Plan”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/document/34923/35144/173014/climateactionplan.htm>, (accessed 29 November 2010).

- The UK National archives, “Speech by the Chancellor of the Exchequer, Gordon Brown MP on EMU”, The UK National archives, 27 October 1997, from: <http://webarchive.nationalarchives.gov.uk/+/http:/www.hm-treasury.gov.uk/speech_chex_271097.htm >, (accessed 27 December 2012).

- The UK Parliament, *Crown Dependencies*, Justice Committee Report, (30 March 2010).

- Turkish Republic of Northern Cyprus Prime Minister’s Office European Union Coordination Centre (EUCC), “ECC Response to the Commission’s Green Paper”, The Review of Council Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, European Union, from: <http://ec.europa.eu/justice/news/consulting_public/0002/contributions/other_governments/turkish_republic_of_northern_cyprus_en.pdf>, (accessed 5 December 2012).

- UK Government, “A New Approach to the British Overseas Territories”, Justice Assistance engagement plan, UK Government: Ministry of Justice, 2012.

- UK Government, “Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man”, UK Government: Ministry of Justice Crown Dependencies Branch, from: <http://www.justice.gov.uk/downloads/about/moj/our-responsibilities/Background_Briefing_on_the_Crown_Dependencies2.pdf>, (accessed 23 June 2013).

- UK Government, Brief VI-C-1, “Cyprus and the Commonwealth”, UK Government, 21 April 1960. PAC RG 25 vol 3446 file 1-1960/3 part 2. Meeting of Commonwealth Prime Ministers, May 1960.Briefs.

- UK Government, “British Overseas Territories”, Home Affairs Office Documents, UK Government: UK Border Agency, from: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/nationalityinstructions/nisec2gensec/Britishoverseasterritories?view=Binary>, (accessed 5 May 2013).

- UK Government, “Cabinet conclusions”, UK Government Official Documents, 30 June 1955, CAB 128/29, CM 19 (55), Num. 10.

- UK Government, “Department of Business Innovation and Skills (BIS) and the Overseas Territories”, Report of the UK Government Department for Business Innovation and Skills, May 2012.

- UK Government, “Letter from Lambe to Lord Selkirk”, UK Government Official Documents, 21 February 1958, ADM 1/27145, TNA.

- UK Government, “Minute by Henry Hopkinson”, UK Government Official Documents, 24 June 1953, CO 926/93, Num. 8.

- UK Government, “Minute from Macmillan to Eden”, UK Government Official Documents, 2 July 1955, PREM 11/1432, Num. 552.

- UK Government, “Memorandum for the Prime Minister from Robert Bryce”, Secretary to the Cabinet and Clerk of the Privy Council, UK Government Official Documents, 30

June 1960, PAC RG 25 ACC 86-7/414, vol. 207 file 12852-40, Commonwealth Study Group, 196.

- UK Government, Memorandum: "Cyprus and the Commonwealth", UK Government Official Documents, 21 February 1961, PAC RG 25 ACC 85-6/551 vol. 3447 file 1-1961/1 part 1. Briefs Prepared for the Meeting of Commonwealth Prime Ministers 1961.

- UK Government, "Operational Plan 2011-2015", UK Government: Department For International Development and Overseas Territories, June 2012.

- UK Government, "Partnership for Progress and Prosperity Britain and the Overseas Territories", UK Government: Secretary of State for Foreign and Commonwealth Affairs, UK Government Official Documents, March 1999, Cm 4264.

- UK Government, "Report Malta Round Table Conference 1955", UK Government Official Documents, Cmd. 9657, 1955, p.21, para.82.

- UK Government, "Report of the Royal Commission on the Constitution (Kilbrandon Commission), 1969-1973", UK Government Official Document, 11 January 1974, Cmnd 5460.

- UK Government, "Report to Parliament on the Application of Protocols 19 and 21 to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) ('the Treaties') in Relation to EU Justice and Home Affairs Matters 1 December 2010 – 30 November 2011", UK Government: Ministry of Justice, January 2012.

- UK Government, "Smaller colonial territories: Memorandum by Lennox-Boyd", UK Government Official Documents, 7 September 1955, annex B, CAB 134/1295, MC 2 (55), Num. 5.

- UK Government, "The Future of British Colonial Territories Memorandum", UK Government: Commonwealth and Foreign Office Official Documents, 27 September 1963, FO 371/172610, Num. 13.

- UK Government, "The Future of Dependent Territories", UK Government: Foreign and Commonwealth Office, 8 November 1973, FCO 86/75.

- UK Government, "The Future of remaining colonial territories", Cabinet Papers, National Archives, 31 May 1965, CAB 148/21.

- UK Government, "The Future of smaller Colonial territories", National Archives, UK Government: Colonial Office and Commonwealth Office, 20 June -16 July 1962, CO 936/733, Num. 43-53.

- UK Government, "The Overseas Territories Security, Success and Sustainability", UK Government: Foreign and Commonwealth Office, June 2012, Cm 8374.

- UK Government, Memorandum, "Cyprus", Prime Minister to Cabinet (C (57) 161), 9 July 1957.

- UK Government, Memorandum, “Practical Problems Which Would Have to be Overcome in the Event of Authority Being Handed Over from the United Kingdom to a new Cyprus State” by official Cyprus Committee (CY (O) (59) 1) 1 January 1959, CAB 134/1592 (PRO).

- UK House of Commons, “Eighth Report of Session 2009–10”, Report on the Crown Dependencies ordered by the House of Commons, UK House of Commons: Justice Committee, 23 March 2010.

- UK Parliament, “Chapter 4: Absorption capacity and the borders of Europe: The Copenhagen accession criteria”, Select Committee on European Union Fifty-Third Report, UK Parliament, 2006.

- UK Parliament, “First Report of the Justice Committee Session 2008-09”, oral evidence on The Work of the Ministry of Justice, 7 October 2008, HC 1076-i.

- UK House of Commons, “Fourth Report on The role of the Commonwealth”, UK House of Commons, 1st of November of 2012.

- UK Parliament, “The future of the European Union: UK Government Policy”, Transcript of Oral Evidences, published by the UK Parliament: House of Commons, 2012.

- UK Parliament, “Turks and Caicos Islands: Government Response to the Committee's Seventh Report of Session 2009-10”, Foreign Affairs Committee, UK Parliament, from: <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmfaff/623/62305.htm>, (accessed 3 July 2013).

- UK Parliament, *Letter to the Clerk of the Committee from the Parliamentary Relations and Devolution Team*, Foreign and Commonwealth Office, Select Committee on Foreign Affairs, UK Parliament: House of Commons Reports, from: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmfaff/166/6121309.htm>, (accessed 20 July 2013).

- UK Parliament: The European Scrutiny Committee, “The EU Bill and Parliamentary Sovereignty -The UK's legal relationship with the EU”, The UK Parliament Official Documents, 2010.

- United Nations (UN), UN Human Development Report, UN Human Development, 2013 from: <http://hdr.undp.org/en/>, (Accessed 15 April 2013).

- United Nations, “Statistical Yearbook 2006-2007”, The United Nations Conference on Trade and Development (UNCTAD), 21 July 2011.

- World Bank, “Education for All Report”, World Bank, from: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTEDUCATION/0contentMDK:20374062~menuPK:540090~pagePK:148956~piPK:216618~theSitePK:282386,00.html>, (accessed: 21December2010).

- World Trade Organisation (WTO), “Historical background and current trends”, World Trade Report 2011, from:

<http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr11-2b_e.pdf>, (accessed 6/12/12).

- World Trade Organisation (WTO), “Trade Policy Review on the European Communities”, WTO Secretariat, 2 March 2009, WT/TPR/S/214.

D) <u>NEWS AND PRESS RELEASES</u>

- ADAMRAH, M., “ASEAN-EU FTA talks frozen”, The Djakarta Post, 7 May 2009.

- BAGEHOT's notebook, “British políticas: Britain changes its mind about a two-speed Europe”, The Economist, 21 July 2011.

- BEUNDERMAN, M., “London faces fresh pressure to give up EU budget rebate”, EU Observer, 2 February 2007.

- BOFFEY, M., HELM, T., “56% of Britons would vote to quit EU in referendum, poll finds”, The Guardian, 17 December 2012.

- British Broadcasting Corporation (BBC), “Cameron defends staying out of euro as he meets Sarkozy”, BBC News, 20 May 2010.

- British Broadcasting Corporation (BBC), “1974: Turkey invades Cyprus”, BBC News, 20 July 1974, from: <http://news.bbc.co.uk/onthisday/hi/dates/stories/july/20/newsid_3866000/3866521.stm>, (accessed: 21 December 2012).

- British Broadcasting Corporation (BBC), “1975: UK embraces Europe in referendum”, BBC News, 6 June 1975, from: <http://news.bbc.co.uk/onthisday/hi/dates/stories/june/6/newsid_2499000/2499297.stm>, (accessed 11 December 2012).

- British Broadcasting Corporation (BBC), “After partition: India, Pakistan, Bangladesh”, BBC News, 8 August 2007, from: <http://news.bbc.co.uk/2/hi/in_depth/629/629/6922293.stm>, (accessed: 17 September 2012).

- British Broadcasting Corporation (BBC), “Brunei Profile”, BBC News, from: <http://www.bbc.co.uk/news/world-asia-pacific-12990058>, (accessed 14 January 2013).

- British Broadcasting Corporation (BBC), “Commonwealth issues Climate Plan”, BBC News, 24 November 2007, from: <http://news.bbc.co.uk/2/hi/africa/7110620.stm>, (accessed: 3 March2010).

- British Broadcasting Corporation (BBC), “EU says UK rebate "not justified", BBC News, 20 May 2005.

- British Broadcasting Corporation (BBC), “Expand the Commonwealth, says Hague”, UK Politics, BBC News, 3 February 2009.

- British Broadcasting Corporation (BBC), “Falklands referendum: Voters choose to remain UK territory”, BBC News, 12 March 2013, from: <http://www.bbc.co.uk/news/uk-217509>, (accessed 5 May 2013).

- British Broadcasting Corporation (BBC), “The UK study on Crown Dependencies' status in commonwealth”, BBC News, 14 December 2011, from: <http://www.bbc.co.uk/news/world-europe-jersey-16170158>, (accessed 3 July 2013).

- British Broadcasting Corporation (BBC), “Tony Blair: UK may face 'interesting choice' over euro”, BBC News, 24 June 2012.

- British Broadcasting Corporation (BBC), “World: Asia-Pacific, Australia rejects republic”, BBC News, 2009, from: <http://news.bbc.co.uk/2/hi/asia-pacific/507293.stm>, (accessed 30 March 2013).

- BURNSIDE, D.W.; “Now is the time for Ireland to rejoin the Commonwealth”, Daily Mail, 9 March 2012.

- CALDWELL, K., “Blair: UK should not rule out joining euro when crisis eases”, Investment and analysis for investment advisors and wealth managers Week-News, 25 June 2012.

- CHOWDHURY, J.R., “The Commonwealth: A free trade area?”, The Times of Malta, 9 February 2012.

- Daily Mail, “Sri Lanka to scrub British colonial name Ceylon from every state institution”, Daily Mail, 2011, from: <http://www.dailymail.co.uk/news/article-1343648/Sri-Lanka-scrub-British-colonial-Ceylon-state-institution.html#ixzz1rGVEigF9>, (accessed 4 March 2013).

- ELLIOTT, L., “EU move to block trade aid for poor”, The Guardian, 19 May 2005.

- European Union, “EU's first Economic Partnership Agreement with an African region goes live”, Europa Press Release, 14 May 2012, Reference: IP/12/475.

- Famagusta Gazzette, “Cyprus Have Your Say: British bases”, Famagusta Gazzette, from: <http://famagusta-gazette.com/cyprus-have-your-say-british-bases-p13866-69.htm>, (accessed 20 July 2013).

- GARCIA, J.; “Spain would not object to Gibraltar joining Schengen”, Gibraltar News Panorama, December 2012.

- GRICE, A., “It is time for the British people to have their say': David Cameron promises EU exit vote by 2017”, The Independent News, 23 January 2013.

- HEWITT, G.; “EU budget commissioner calls for UK rebate to end”, BBC News, 6 September 2010.

- HOOPER, S., WILLERS, B.; “The United Kingdom's tax havens”, Al Jazeera News, 17 June 2013.

- KRISHNASWAMY, P.; "Maldives ready with roadmap towards a full-fledged democracy", Sunday Observer, Sri Lanka's Newspaper, 26 February 2012.

- KUAN, L., "From third world to first: the Singapore story, 1965-2000: Memoirs of Lee Kuan Yew", Times Editions, Singapore Press Holdings, 2000.

- POP, V., "'UK rebate no longer justified,' Brussels says", EU Observer, 6 September 2010.

- The Commonwealth Secretariat, "Commonwealth and EU to strengthen strategic partnership", The Commonwealth News Release, 2 March 2005, from <http://www.thecommonwealth.org/news/34580/34581/142737/commonwealth_and_eu_to_strengthen_strategic_partne.htm>, (accessed 6 July 2013).

- The Commonwealth Secretariat, "Commonwealth Secretariat wins 11m Euros for trade project from European Union", The Commonwealth News Release, 30 July 2003, from: <http://www.thecommonwealth.org/press/31555/34582/35075/commonwealth_secretariat_wins_11m_euros.htm>, (accessed 16 July 2013).

- The Commonwealth Secretariat, "EU Commission President and Commonwealth Secretary-General to discuss Africa strategy", The Commonwealth News Release, 13 October 2006, from: <http://www.thecommonwealth.org/press/31555/34582/155158/eu_commission_president_and_commonwealth_secretary.htm>, (accessed 6 July 2013).

- The Commonwealth Secretariat, "Fiji suspended from the Commonwealth", The Commonwealth Secretariat News, 1 September 2009, from: <http://www.thecommonwealth.org/news/213088/010909fijisuspended.htm>, (accessed: 3 March2010).

- The Council of the European Union, "Fifth India-EU Summit", Joint Press Statement, 8 November 2004, 14431/04 (Presse 315).

- The Council of the European Union, "Schengen enlargement: Liechtenstein to become 26th member state", The Council of the European Union Press Release, 18446/11, Brussels, 13 December 2011, PRESSE 489, from: <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/126860.pdf>, (accessed 10 January 2013).

- The Courier, "ACP-EEC Conventions: Lomé III", The Courier, 1985, Num. 89.

- The Economist, "Britain and the EU: Muscles in Brussels", The Economist, 14 January 2013.

- The European Commission, "Development aid: Europeans show overwhelming support for helping world's poor", European Commission, Press Release, 23 November 2011, IP/11/1390.

- The Jamaican Observer, "New flag and anthem for ACP", The Jamaican Observer, 18 June 2013.

- The Journal of Ireland, “Republic of Ireland should rejoin Commonwealth”, The Journal of Ireland, 7 February 2012.

- The New York Times, “Reykjavik-on-Thames”, The New York Times, 21 January 2009.

- The Telegraph, “William Hague: Commonwealth offers enormous opportunities”, The Telegraph, 9 October 2012, from: <http://www.telegraph.co.uk/news/politics/conservative/9596880/William-Hague-Commonwealth-offers-enormous-opportunities.html#>, (accessed: 26 November 2012).

- The Economist, “Too rich for a rebate; EU rebate”, The Economist U.S. Edition, 10 July 2004, p. 2.

- WATERFIELD, B., “Britain to lose EU rebate as Coalititon faces split on treaty changes”,The Telegraph, 19 October 2010.

- WILSON, J., DOMBEY, D., “Cyprus requests Eurozone bailout”, Financial Times, 25 June 2012.

E) <u>OFFICIAL WEBSITES</u>

- Arhaus University, “The UK Rebate or rethinking the EU Budget?”, Arhaus University, from: <http://pure.au.dk/portal-asbstudent/files/36186903/UK_rebate_or_rethinking_the_EU_budget.pdf>, (accessed 16 December 2012).

- Australian Government, “Australia Fact Sheet”, Australian Government: Department of Foreign Affairs and Trade, June 2012, from: <http://www.dfat.gov.au/geo/fs/aust.pdf>, (accessed 24 June 2012).

- British Broadcasting Corporation (BBC), “The Battle of Largs – 1263”, BBC History, from: <http://www.bbc.co.uk/scotland/history/scotland_united/the_battle_of_largs/>, (accessed 10 May 2013).

- British Broadcasting Corporation (BBC), “Historic Figures: William the Conqueror”, BBC History, from: <http://www.bbc.co.uk/history/historic_figures/william_i_king.shtml>, (accessed 10 May 2013).

- British Embassy in Washington, “Does Britain have a written Constitution?”, British Embassy in Washington, from: <http://ukinusa.fco.gov.uk/en/about-us/faqs/uk-government/written-constitution>, (accessed 17December 2012).

- Central Intelligence Agency (CIA), “Full List- Import Partners”, The CIA World Fact Book, from: <https://www.cia.gov/library/publications/the-world-factbook/fields/2061.html>, (accessed 4 March 2013).

- Channel Islands Brussels Office, “Channel Islands Brussels Office”, from: <http://www.channelislands.eu/about/team/>, (accessed 3 June 2013).

- Civitas, “EU Facts: EU External Trade Policy”, Civitas, 2010, from:

<http://www.civitas.org.uk/eufacts/FSEXR/EC6.htm>, (accessed 3March 2010).

- Commonwealth Ministerial Action Group, "List of Meetings", CMAG, from <http://www.thecommonwealth.org/cmag>, (accessed: 10 June2010).

- Commonwealth ministerial directory, "Commonwealth Ministers", Commonwealth ministerial directory, from <http://www.commonwealthministers.com/about/>, (accessed 1 March 2011).

- Commonwealth Nations Research Society, "The Effect of new trading blocs on the Commonwealth", Commonwealth Nations Research Society, from: <http://cnrsociety.org/Effect_of_New_Trade_Blocs.pdf>, (accessed 15 December 2012).

- Cyprus Government, "Foreign Minister says Cyprus no to join Schengen before 2010", Cyprus Government: Embassy of the Republic of Cyprus in Berlin, from: <http://www.mfa.gov.cy/mfa/Embassies/BerlinEmbassy.nsf/0/9E3EA74BCAD066E5C125727D00493F03?OpenDocument&print>, (accessed 10 December 2012).

- Delegation of the EU to New Zealand, "An Overview of European Union - New Zealand Relations", Delegation of the EU to New Zealand, from: <http://eeas.europa.eu/delegations/new_zealand/eu_new_zealand/political_economics_relations/index_en.htm>, (accessed 12 September 2012).

- Delegation of the EU to Pakistan, "Delegation of the EU to Pakistan", from: <http://www.delpak.ec.europa.eu/eu_and_country/eupak.htm>, (accessed 14 December 2012).

- Delegation of the EU to Sri Lanka, "GSP status", Delegation of the EU to Sri Lanka, from: <http://eeas.europa.eu/delegations/sri_lanka/eu_sri_lanka/trade_relation/gsp_status/index_en.htm>, (accessed 18 March 2013).

- Delegation of the EU to the Republic of Namibia, "Where do EPAs come from?", Delegation of the EU to the Republic of Namibia, from: <http://eeas.europa.eu/delegations/namibia/eu_namibia/trade_relation/epa/background/index_en.htm>, (accessed 20 June 2013).

- Delegation of the European Union to Australia, "Delegation of the European Union to Australia", from: <http://www.delaus.ec.europa.eu/eu_and_australia/index.htm>, (accessed 24 June 2012).

- Delegation of the European Union to Bangladesh, "Delegation of the European Union to Bangladesh", from: <http://eeas.europa.eu/delegations/bangladesh/index_en.htm>, (accessed 3 January 2013).

- Delegation of the European Union to India, "Delegation of the European Union to India", from: <http://eeas.europa.eu/delegations/india/index_en.htm>, (accessed 10 November 2012).

- Delegation of the European Union to New Zealand, “Delegation of the European Union to New Zealand”, from: <http://www.delaus.ec.europa.eu/newzealand/EU_NZ_relations/EU_New_Zealand_Overview.htm>, (accessed 25 July 2012).

- Delegation of the European Union to Singapore, “Delegation of the European Union to Singapore”, from: <http://eeas.europa.eu/delegations/singapore/press_corner/all_news/news/2010/20101206_01_en.htm>, (accessed 7 February 2013).

- Economy Watch, “Singapore Economy”, Economy Watch, from: <http://www.economywatch.com/world_economy/singapore/?page=full>, (accessed 3 February 2013).

- ENGLISH, R.; “The EU Charter: are we in or out?”, UK Human Rights Blog, 1 March 2011, from: <http://ukhumanrightsblog.com/2011/03/01/the-eu-charter-are-we-in-or-out/>, (accessed 3 February 2013).

- EU External Action Service, “Delegation of the European Union to Sri Lanka and the Maldives”, EU External Action Service, from: <http://eeas.europa.eu/delegations/sri_lanka/index_en.htm>, (accessed 3 March 2013).

- EU External Action Service, “Delegation of the European Union to Sri Lanka and the Maldives- Political & economic relations”, EU External Action Service, from: <http://eeas.europa.eu/delegations/sri_lanka/eu_maldives/political_relations/index_en.htm>, (accessed 3 March 2013).

- European Commission, “Access to EU markets for exporters from African, Caribbean and Pacific countries”, European Commission: DG Trade, from: <http://trade.ec.europa.eu/doclib/docs/2011/september/tradoc_148215.pdf>, (accessed 20 June 2013).

- European Commission, “ACP- EU Bilateral Trade and Trade with the World”, European Commission: Directorate General Trade, (23 May 2013), from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113340.pdf>, (accessed 5 June 2013).

- European Commission, “African, Caribbean and Pacific states (ACP): summaries of EU legislation”, European Commission, from: <http://europa.eu/legislation_summaries/development/african_caribbean_pacific_states/index_en.htm>, (accessed 17 May 2013).

- European Commission, “African, Caribbean and Pacific”, The European Commission: DG Trade, Countries and Regions, from: <http://ec.europa.eu/trade/policy/countries-and-regions/regions/africa-caribbean-pacific/>, (accessed 20 June 2013).

- European Commission, “Agriculture and Preferential Trade Relations with ACP Countries, CARIFORUM EPA”, European Commission: Directorate-General for Agriculture and Rural Development, May 2010, from: <http://ec.europa.eu/agriculture/developing-countries/acp/detail/cariforum_en.pdf>, (accessed 30 May 2013).

- European Commission, “Bilateral Relations”, European Commission: DG Trade, from: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/>, (accessed:
- 18December2010).

- European Commission, “Climate Action, the Kyoto Protocol”, European Commission, from: <http://ec.europa.eu/clima/policies/international/negotiations_kyoto_en.htm>, (accessed: 3 March2010).

- European Commission, “Countries and Regions: Pacific”, The European Commission: DG Trade, from: <http://ec.europa.eu/trade/policy/countries-and-regions/regions/pacific/>, (accessed 30 May 2013).

- European Commission, “Education, Training, Youth”, European Commission, from: <http://europa.eu/pol/educ/index_en.htm>, (accessed: 18December2010).

- European Commission, “Environment Policy Review 2008”, European Commission, from: <http://europa.eu/legislation_summaries/environment/general_provisions/ev0016_en.htm >, (accessed 1 January2011).

- European Commission, “EU Bilateral Trade and Trade with the world”, European Commission: DG Trade, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113363.pdf>, (accessed 7 January 2013).

- European Commission, “EU relations with Overseas Countries and Territories”, European Commission: Development and Cooperation- Europeaid, from: <http://ec.europa.eu/europeaid/where/octs_and_greenland/index_en.htm>, (accessed 21 May 2013).

- European Commission, “European Community Regional Trade Agreements”, European Commission: DG Trade, from: <http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_111588.pdf>, (accessed: 18December2010).

- European Commission, “European Development Fund (EDF)”, European Commission: Development and Cooperation Europeaid, from: <http://ec.europa.eu/europeaid/how/finance/edf_en.htm>, (accessed 15 June 2013).

- European Commission, “Financial Programming and Budget”, European Commission, from: <http://ec.europa.eu/budget/biblio/documents/fin_fwk0713/fin_fwk0713_en.cfm>, (accessed 15 June 2013).

- European Commission, “Financing instrument for cooperation with industrialised and other high-income countries and territories (2007-2013”), Summaries of EU Legislation, European Commission, from: <http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/industrialised_countries/r14107_en.htm>, (accessed 26 June 2012).

- European Commission, "Forms of International Cooperation in EU Health Research", European Commission, from: <http://www.ecraal.org/fichiers/Goor_Brussels_ECRAAL_2011_01_27v2_1296474960.pdf>, (accessed 1 January2011).

- European Commission, "From Lomé I to IV", European Commission: Development and Cooperation-Europe aid, from: <http://ec.europa.eu/europeaid/where/acp/overview/lome-convention/lomeitoiv_en.htm>, (accessed 17 May 2013).

- European Commission, "Future relations between the EU and Overseas Countries and Territories (OCTs)", Summaries of EU Legislation, European Commission, from: <http://europa.eu/legislation_summaries/development/overseas_countries_territories/rx0005_en.htm>, (accessed 23 May 2013).

- European Commission, "Health Portal", European Commission, from: <http://ec.europa.eu/health-eu/index_en.htm>, (accessed 21 December 2010).

- European Commission, "How to export to the EU? Story from Bangladesh, Golden fiber brings hope to Bangladesh farmers", European Commission, from: <http://trade.ec.europa.eu/doclib/docs/2012/may/tradoc_149439.pdf>, (accessed 7 January 2013).

- European Commission, "Overview of EPA", European Commission, from: <http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf>, (accessed 20 June 2013).

- European Commission, "Pakistan", European Commission: Directorate General Trade, from: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/pakistan/>, (accessed 20 December 2012).

- European Commission, "Policy Coherence on Development", European Commission: Development and Cooperation- Europeaid, from: <http://ec.europa.eu/europeaid/what/development-policies/policy-coherence/index_en.htm>, (accessed 1 January2011).

- European Commission, "Policy Dialogue in Education with India", European Commission, from: <http://ec.europa.eu/education/external-relation-programmes/doc1190_en.htm> and Regional Cooperation: Asia, from: <http://ec.europa.eu/europeaid/where/asia/regional-cooperation/index_en.htm>, (both accessed: 21December2010).

- European Commission, "Summaries of EU Legislation", European Commission, from: <http://europa.eu/scadplus/glossary/youth_en.htm>, (accessed 3 March 2010).

- European Commission, "Sustainable Development", from: <http://ec.europa.eu/sustainable/welcome/index_en.htm>, (accessed 3 March 2010).

- European Commission, "Pakistan", European Commission: Directorate General Trade, from: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/pakistan/>, (accessed 20 December 2012).

- European Commission, “Top Trading Partners”, EU Commission: Directorate General Trade, 12 January 2012, from: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122529.pdf>, (accessed 8 December 2012).

- European Commission, “Trade and Development”, European Commission, from: <http://ec.europa.eu/trade/wider-agenda/development/>, (accessed 30 March 2010).

- European Commission, “Trade: Generalised *Scheme of Preferences* (GSP)”, European Commission, from: <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm>, (Accessed 27 April 2013).

- European Commission, “United Kingdom: EMU opt-out clause”, Summaries of EU Legislation, European Commission, from: <http://europa.eu/legislation_summaries/economic_and_monetary_affairs/institutional_and_economic_framework/l25060_en.htm>, (accessed 27 December 2012).

- European Commission, “Youth”, European Commission, from: <http://ec.europa.eu/youth/index_en.htm>, (accessed: 3 March2010).

- European External Action Group, “Delegation of the EU to Brunei: Trade”, European External Action Group, from: <http://eeas.europa.eu/delegations/indonesia/eu_brunei/trade/index_en.htm>, (accessed 20 February 2013).

- European External Action Service, “Delegation of the EU to Malaysia”, European External Action Service, from: <http://eeas.europa.eu/delegations/malaysia/index_en.htm>, (accessed 10 January 2013).

- European External Action Service, “Delegation of the EU to Malaysia-Trade”, European External Action Service, from: <http://eeas.europa.eu/delegations/malaysia/eu_malaysia/trade_relation/index_en.htm>, (accessed 14 January 2013).

- European External Action Service, “EU Delegation to Sri Lanka and The Maldives”, European External Action Service, from: <http://eeas.europa.eu/delegations/sri_lanka/>, (accessed 5 March 2013).

- European External Action Service, “EU-CANADA PARTNERSHIP AGENDA”, European External Action Service, EU-Canada Summit, Ottawa, 18 March 2004, from: <http://eeas.europa.eu/canada/docs/partnership_agenda_en.pdf>, (accessed 30 March 2013).

- European External Service, “EU's relations with Canada”, European External Action Service, from: <http://eeas.europa.eu/canada/>, (accessed 4 April 2014).

- European External Service, “India”, European External Action Service, from: <http://eeas.europa.eu/india/index_en.htm>, (accessed 10 November 2012).

- European Parliament, "Data for the year 2000", European Fact Sheets, from: <http://www.europarl.europa.eu/factsheets/3_1_0_en.htm>, (accessed 17 December 2012).

- European Parliament, "EU-Gibraltar: Fabian Picardo", European Parliament, 15 March 2013, The European Parliament, from: <http://www.theparliament.com/policy-focus/economic-affairs/economics-article/newsarticle/eu-gibraltar-fabian-picardo/#.UaJQ9qLwlhg>, (accessed 26 July 2013).

- European Parliament, "Members of the European Parliament*,* Full list", European Parliament, from: <http://www.europarl.europa.eu/meps/en/search.html;jsessionid=86DCA1A95B2FCEBB902CD33642227F4E.node1>, (accessed 5 December 2012).

- European Union External Action Service, "Treaties Office Database", European External Action Service, from: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=5761>, (accessed: 24 June 2012).

- European Union*, "*Budget", European Union, from: <http://europa.eu/pol/financ/index_en.htm>, (accessed: 13 September 2010).

- European Union, "Human Rights", European Union, from: <http://europa.eu/pol/rights/index_en.htm>, (accessed: 3 March2010).

- European Union, "Humanitarian Aid", Eur-Lex, from: <http://eur-lex.europa.eu/en/dossier/dossier_21.htm>, (accessed: 3 March 2010).

- European Union, "Iceland", European External Action Service, from: <http://ec.europa.eu/external_relations/iceland/index_en.htm>, (accessed 27 November 2012).

- European Union, "Preventing excessive budgetary imbalances in the EU", The European Union, (14 July 2004), from: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/908&format=HTML&aged=1&language=EN&guiLanguage=en>, (accessed 22 December 2012).

- Government of Australia, "Malaysia country brief", Government of Australia: Department of Foreign Affairs and Trade from: <http://www.dfat.gov.au/geo/malaysia/malaysia_brief.html>, (accessed 10 January 2013).

- Government of Canada, "Agri-Food Trade Policy Canada - European Community Wine and Spirits Agreement", Government of Canada, from: <http://www.agr.gc.ca/itpd-dpci/ag-ac/4971-eng.htm>, (accessed 30 March 2013).

- Government of Cyprus, "International Organisations and the Cyprus Question: The Commonwealth and the Cyprus Question", Government of Cyprus: Ministry of Foreign Affairs of the Republic of Cyprus, from: <http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/9B7B697CF899E85BC22571EA002780AD?OpenDocument>, (accessed: 8December2010).

- Government of Guernsey, "Douzaines", States of Guernsey, from: <http://www.gov.gg/article/2045/Douzaines>, (accessed 17 July 2013).

- Government of Guernsey, "Law Officers", States of Guernsey, from: <http://www.gov.gg/law>, (accessed 4 July 2013).

- Government of Guernsey, "Official", States of Guernsey, from: <http://www.gov.gg/article/2046/Officials>, (accessed 17 July 2013).

- Government of Guernsey, "Parliament- States of Deliberation", States of Guernsey, from: <http://www.gov.gg/parliament>, (accessed 6 July 2013).

- Government of Guernsey, "Policy Council", States of Guernsey, from: <http://www.gov.gg/policycouncil>, (accessed 26 July 2013).

- Government of Guernsey, "The Council of Ministers", States of Guernsey, from: <http://www.gov.je/Government/HowGovernmentWorks/CouncilMinisters/Pages/About.asp>, (accessed 11 July 2013).

- Government of Guernsey, "The UK and the EU", States of Guernsey, from: <http://www.gov.gg/article/1892/Guernsey-the-UK-and-the-EU>, (accessed 6 July 2013).

- Government of India, India- Fact Sheets, Government of India, from: <http://www.hcindia-au.org/pdf/India%20Fact%20Sheet%202010-2011.pdf>, (accessed 7 October 2012).

- Government of Jersey, "Council of Ministers", Government of Jersey, from: <http://www.cab.org.je/index.php?option=com_content&view=article&id=213:states-of-jersey-council-of-ministers--7121l1-&catid=29&Itemid=53>, (accessed 17 July 2013).

- High Commission of Sri Lanka, "Trade", High Commission of Sri Lanka, from: <http://www.slhcmaldives.com/trade.php>, (accessed 3 March 2013).

- Imperial Federation," Imperialism", Imperial Federation, from: <http://www.jrank.org/history/pages/7416/imperialism.html>, (accessed 15 October 2010).

- Indexmundi, "Bangladesh Demographics Profile", Indexmundi, from: <http://www.indexmundi.com/bangladesh/demographics_profile.html>, (accessed 20 December 2012).

- Indexmundi, "Bangladesh Economy Profile", Indexmundi, from: <http://www.indexmundi.com/bangladesh/economy_profile.html>, (Accessed 15 April 2013).

- Indexmundi, "Sri Lanka Demographics Profile 2013", Indexmundi, from: <http://www.indexmundi.com/sri_lanka/demographics_profile.html>, (accessed 4 March 2013).

- Institute of Political and Social Studies, "Canada", News and Polls, Institute of Political and Social Studies, from: <http://www.ipsos-na.com/news-

polls/pressrelease.aspx?id=1639>, (accessed 30 March 2013).

- Islands life organisation, "History of the Channel Islands", Islands life, from: <http://www.islandlife.org/history.htm>, (accessed 10 May 2013).

- Isle of Man Government, "Parishes", Isle of Man Government, from: <http://www.isleofman.com/places/parishes/>, (accessed 26 July 2013).

- Isle of Man Government, "Legal System: A sophisticated yet familiar approach", Isle of Man Government: Isle of Man Law Society, from: <http://www.gov.im/lib/docs/investiniom/FactSheets2010/legalsystem.pdf>, (accessed 30 June 2013).

- Isle of Man Government, "Legal System", Isle of Man Government, from: <http://www.gov.im/isleofman/legalsystem.xml>, (accessed 30 June 2013).

- Isle of Man Government, "Local Authorities", Isle of Man Government, from: <http://www.gov.im/transport/msd/local/welcome.xml>, (accessed 26 July 2013).

- Isle of Man Government, "Our relationship with the United Kingdom", Isle of Man Government, from: <http://www.gov.im/isleofman/externalrelations.xml>, (accessed 19 July 2013).

- Isle of Man Government, "Parliament", Isle of Man Government, from: <http://www.gov.im/isleofman/parliament.xml>, (accessed 19 July 2013).

- Isle of Man Government, "The Council of Ministers", Isle of Man Government, from: <http://www.gov.im/government/council/council.xml>, (accessed 25 July 2013).

- Ministry of Home Affairs of the Maldives, "Ministry of Home Affairs of the Maldives", from: <http://en.homeaffairs.gov.mv/?page_id=99>, (accessed 18 March 2013).

- MORGAN, K.; "Trade and British Empire", BBC-History, from: <http://www.bbc.co.uk/history/british/empire_seapower/trade_empire_01.shtml>, (accessed: 6 December 2012).

- New Zealand Government, "New Zealand and Europe", New Zealand Government: New Zealand Ministry of Foreign Affairs and Trade, from: <http://www.mfat.govt.nz/Foreign-Relations/Europe/0-eu-overview.php>, (accessed 25 July 2012).

- New Zealand Government, "Statistics", New Zealand Government, from: <http://www.stats.govt.nz/Census/2006CensusHomePage/QuickStats/AboutAPlace/SnapShot.aspx?id=9999999&type=region>, (accessed 4 July 2012).

- New Zealand Government, "The Commonwealth and the Commonwealth Small States", New Zealand Government, from: <http://www.mfat.govt.nz/Foreign-Relations/2-International-Organisations/Commonwealth/0-cwsmallstates.php>, (accessed: 20 December 2012).

- Open Europe, "The EU Charter of Fundamental Rights: Why a fudge won't work", Open Europe, June 2007, from: <http://www.openeurope.org.uk/Content/Documents/PDFs/charteranalysis.pdf>, (accessed 23 January 2013).

- Organisation for Economic Co-operation and Development, "The World Trade Organization, AID-FOR-TRADE: CASE STORY CARIBBEAN COMMUNITY (CARICOM): The EDF (European Development Fund)", Funded Commonwealth Secretariat Trade Policy Formulation, Negotiation and Implementation ("Hub and Spokes") Project, Organisation for Economic Co-operation and Development, from: <http://www.oecd.org/aidfortrade/47479439.pdf>, (accessed 16 July 2013).

- Oxford Dictionaries, "Definition of Balie", On-line Oxford Dictionaries, from: <http://oxforddictionaries.com/definition/english/bailie?q=bailie>, (accessed 6 July 2013).

- Pakistan Defence and Strategic Affairs, "Bangladesh votes against Pakistan in WTO", 2011, Pakistan Defence and Strategic Affairs, from: <http://www.defence.pk/forums/economy-development/139454-bangladesh-votes-against-pakistan-wto.html>, (accessed 3 January 2013).

- PATTERSON, B., "The UK rebate issue", European Movement, 2005, from: <http://www.euromove.org.uk/fileadmin/files_euromove/downloads/Rebate.pdf>, (accessed 20 December 2012).

- Secretariat of the African, Caribbean and Pacific Group of States, "The Secretariat of the African, Caribbean and Pacific Group of States", from: <http://www.acpsec.org/>, (accessed: 18 December 2010).

- States of Guernsey, "Consolidated text, *Projet de Loi*, The Reform (Guernsey) Law 1948", States of Guernsey, from: <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71775&p=0>, (accessed 6 July 2013).

- States of Guernsey, "Government and Administration", States of Guernsey, from: <http://www.gov.gg/Guernsey-Government>, (accessed 11 July 2013).

- States of Guernsey, "Government Departments", States of Guernsey, from: <http://www.gov.gg/article/1707/A-Z-of-Departments>, (accessed 26 July 2013).

- States of Jersey, "Crown Dependencies support G8 on tax, trade and transparency", States of Jersey, from: <http://www.gov.je/News/2013/pages/CrownDependenciesStatementG8.aspx>, (accessed 5 July 2013).

- States of Jersey, "Government and administration", States of Jersey, from: <http://www.gov.je/Government/Pages/default.aspx>, (accessed 25 July 2013).

- Stop EPA Platform, "The Stop EPA Campaign", Stop EPA Platform, from: <http://www.stopepa.org/stopepa/campaign_english.php>, (accessed 27 June 2013).

- TAMPLIN, D., “The Euro-Crisis And The Impact On UK Business”, UK Money Market, 5 December 2012, from: <http://ukmoneymarket.co.uk/investments/the-euro-crisis-and-the-impact-on-uk-busines>, (accessed 3 January 2013).

- The Commonwealth Ministerial Action Group (CMAG), “First Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration”, CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

- The Commonwealth Ministerial Action Group (CMAG), “Twenty-third Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration”, CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

- The Commonwealth Ministerial Action Group (CMAG), *Extraordinary Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration*, CMAG, from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

- The Commonwealth Network, “Australia Fact Sheet”, The Commonwealth Yearbook 2012, from: <http://www.commonwealth-of-nations.org/xstandard/australia_country_profile.pdf>, (accessed 24 June 2012).

- The Commonwealth of Learning, “About the Commonwealth”, The Commonwealth of Learning, from: <http://www.col.org/about/commonwealth/Pages/default.aspx>, (accessed 5 June 2013).

- The Commonwealth Scholarship and Fellowship Plan (CSFP),”The Commonwealth Scholarship and Fellowship Plan” from: <http://www.csfp-online.org/>, (accessed: 21 December 2010).

- The Commonwealth Youth Exchange Council, “The Commonwealth Youth Exchange Council”, from <http://www.cyec.org.uk/>, (accessed 30 March 2010).

- The Commonwealth, “CHOGM 2011”, CHOGM 2011 - Australia Perth, from: <http://www.chogm2011.org/About_CHOGM>, (accessed 1 March 2011).

- The Commonwealth, “Committee to meet on Commonwealth membership”, The Commonwealth Secretariat, 6 December 2006, from: <http://www.thecommonwealth.org/news/157526/commonwealth_membership_in_focus_at_london_meeting.htm>, (accessed: 10 June 2010).

- The Commonwealth, “Commonwealth Ministerial Action Group”, The Commonwealth, from: <http://www.thecommonwealth.org/cmag>, (accessed: 10 June 2010).

- The Commonwealth, “Design Document”, The Commonwealth, (8 May 2010), from: <http://www.thecommonwealth.org/files/222498/FileName/HSII-DesignDocument.pdf>, (accessed 18 July 2013).

- The Commonwealth, “Development Policy”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/Internal/190945/191153/policy_development/>, (accessed: 26 November 2012).

- The Commonwealth, “Environmentally Sustainable Development”, The Commonwealth Secretariat from: <http://www.thecommonwealth.org/subhomepage/190676/>, (accessed 29 November 2010).

- The Commonwealth, “EU Development Commissioner meets Secretary-General”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/news/34580/226931/150710piebalgsmeeting.htm>, (accessed: 3 March 2010).

- The Commonwealth, “Human Rights”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/subhomepage/190707/>, (accessed: 3 March 2010).

- The Commonwealth, “Role of the Secretary-General”, Commonwealth Secretariat from: <http://www.thecommonwealth.org/Internal/169940/role_of_the_commonwealth_secretary_general>, (accessed 1 March 2011).

- The Commonwealth, “The Commonwealth Secretariat support for disaster risk reduction and disaster management in member countries”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/files/219136/FileName/ComsecsupportforDRRandManagementinmembercountries.pdf>, (accessed: 3 March 2010).

- The Commonwealth, “The Commonwealth Secretariat’s Statement to the 2nd Global Platform on Disaster Risk Reduction”, The Commonwealth Secretariat, 16th to 19th June 2009 in Geneva, from: <http://www.thecommonwealth.org/files/219134/FileName/Statementtothesecondsessionofthe GlobalPlatformonDisasterRiskReduction.pdf>, (accessed: 3 March 2010).

- The Commonwealth, “The Maldives Factsheet, Economy”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/templates/system/TextVersion.asp?q=cache:1nawzZmOCmcJ:www.thecommonwealth.org/YearbookInternal/138764/economy/+The+Gambia&access=p&NodeID=20643&output=xml_no_dtd&ie=UTF-8&client=default_frontend&site=default_collection&oe=UTF-8&proxystylesheet=default_frontend>, (accessed 25 March 2013).

- The Commonwealth, “The Secretariat”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/Internal/180412/>, (accessed 17 December 2012).

- The Commonwealth, “What we do”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/>, (accessed: 3 March 2010).

- The Commonwealth, “Who we are?”, The Commonwealth Human Rights Initiative, from: <http://www.humanrightsinitiative.org/>, (accessed: 3 March2010).

- The Federal Trust, "The European Union and Britain's place in it", The Federal Trust website, from: <http://www.fedtrust.co.uk/>, (accessed 22 December 2012).

- The Royal Commonwealth Society, "History of the Commonwealth", The Royal Commonwealth Society, from: <http://www.rcs.ca/commonwealth/history.html>, (accessed 5 November 2012).

- The Royal Court of Guernsey, "The Royal Court of Guernsey", from: <http://guernseyroyalcourt.gg/article/1954/Parishes-and-Douzaines>, (accessed 17 July 2013).

- The Supreme Court, "Judicial Committee of the Privy Council", The Supreme Court, from: <http://www.jcpc.gov.uk/>, (accessed 4 July 2013).

- The Commonwealth Ministerial Action Group, "Sixteenth Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration", from: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=141671>, (accessed: 10 June 2010).

- UK Border Agency, "Who is a British overseas territories citizen?", UK Government-Home Office: UK Border Agency, from: <http://www.ukba.homeoffice.gov.uk/britishcitizenship/othernationality/britishoverseasterritories/>, (accessed 15 May 2013).

- UK European Movement, "The Schengen Area", The UK European Movement Publications, from: <http://www.euromove.org.uk/index.php?id=18538>, (accessed 7 January 2013).

- UK Government, "CHOGM 2009", UK Government: Foreign and Commonwealth Office, from: <http://www.fco.gov.uk/en/global-issues/institutions/commonwealth1/chogm-2009>, (accessed: 10 June 2010).

- UK Government, "Fact sheet on the UK's relationship with the Crown Dependencies", UK Government: Ministry of Justice, from: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185870/crown-dependencies.pdf>, (accessed 23 June 2013).

- UK Government, "Protectorates, protected states, mandated territories and trust territories", UK Border Agency, from: <http://www.ukba.homeoffice.gov.uk/britishcitizenship/othernationality/britishprotectedperson/protectorates/>, (accessed 15 February 2013).

- UK Government, "The Channel Islands", The official website of the British Monarchy, from: <http://www.royal.gov.uk/MonarchUK/QueenandCrowndependencies/ChannelIslands.aspx>, (accessed 10 May 2013).

- UK Government, "The Commonwealth: History and Initiatives", UK Government: Foreign and Commonwealth Office, from: <http://www.fco.gov.uk/en/global issues/institutions/commonwealth1/commonwealth-history/>, (accessed 1 March 2011).

- UK Overseas Territories Conservation Forum ,“British Sovereign Base Areas of Akrotiri and Dhekelia”, UK Overseas Territories Conservation Forum, from: <http://www.ukotcf.org/territories/cyprus.htm>, (accessed 5 July 2013).

- United Nations, “UN List of Least Developed Countries”, United Nations, December 2003, from: <www.un.org/special-rep/ohrlls/ldc/hsi>, (accessed 30 May 2013).

- United Nations, “United Nations Office for Partnerships”, United Nations, from: <http://www.un.org/unop/YNewsMOUwithCommonwealthBusinessCouncil.htm>, (accessed 18 December 2012).

- USA Central Intelligence Agency (CIA), “Cyprus”, The CIA World Factbook, from: <https://www.cia.gov/library/publications/the-world-factbook/geos/cy.html>, (accessed 5 July 2013).

- USA Central Intelligence Agency (CIA), “Malaysia”, The CIA World Fact Book, from: <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html>, (accessed 7 January 2013).

- USA Central Intelligence Agency (CIA), “Pakistan”, the CIA World Fact Book, from: <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>, (accessed 8 December 2012).

- USA Central Intelligence Agency (CIA), “Singapore”, the CIA World Fact Book, from: <http://cia-world-fact-book.findthedata.org/l/979/Singapore>, (accessed 14 January 2013).

- USA Central Intelligence Agency (CIA), “The Maldives”, The CIA World Fact Book, from: <https://www.cia.gov/library/publications/the-world-factbook/geos/mv.html>, (accessed 18 March 2013).

F) <u>LEGISLATION</u>

- ACP Group of States, “Convention de Yaoundé”, ACP Group of States, from: <http://www.acp.int/node/150>, (accessed 3 May 2013).

- Commonwealth Heads of Government Meeting (CHOGM), “The Edinburgh Communiqué, 1997”, The Commonwealth, from: <http://www.secretariat.thecommonwealth.org/files/37061/FileName/1997EdinburghCommunique.pdf>, (12 November 2012).

- European Commission, “Communication from the Commission to the Council: Redirecting the Community´s Mediterranean Policy”, The Commission of the European Communities, 1990.

- European Commission, “Communication of the Commission the EU in Global Health”, European Union: European Commission, Brussels, 31 March 2010, COM (2010)128 final.

- European Commission, “Intra- ACP Cooperation – *10th EDF, Strategy Paper and Multiannual Indicative Programme* (2008-2013)”, European Commission, from:

<http://ec.europa.eu/development/icenter/repository/strategy_paper_intra_acp_edf10_en.pdf>, (accessed 30 May 2013).

- European Commission, "Proposal for a Council Decision on the Association of the Overseas Countries and Territories with the European Union" ("Overseas Association Decision"), COM(2012) 362 final, 16 July 2012, 2012/0195 (CNS).

- European Commission, "Sixth Environment Action Programme 2002-2012", European Commission, from: <http://ec.europa.eu/environment/newprg/index.htm>, (accessed 1 January 2011).

- European Commission, "SRI LANKA Strategy Paper 2007 – 2013", European Commission, from: <http://eeas.europa.eu/sri_lanka/csp/07_13_en.pdf>, (accessed 5 March 2013).

- European Commission, "The Cotonou Agreement", signed in Cotonou on 23 June 2000, revised in Luxembourg on 25 June 2005 and in Ouagadougou on 22 June 2010.

- European Commission, "The Maldives - European Community, Country Strategy Paper 2007-2013", European Commission, from: <http://eeas.europa.eu/delegations/sri_lanka/documents/eu_maldive/031sp2007_2013_en.pdf>, (accessed 25 March 2013).

- European Commission, "The treaty of Rome, 25 March 1957", European Commission, from: <http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf>, (accessed 3 May 2013).

- European Commission, Green Paper: "Future relations between the EU and the Overseas Countries and Territories", Commission of the European Communities, 25 June 2008, COM (2008) 383 final.

- European Commission: Development and Cooperation: Europeaid, "The Cotonou agreement", signed in Cotonou on 23 June 2000, Revised in Luxembourg on 25 June 2005 and in Ouagadougou on (22 June 2010).

- European External Action Service, "Bangladesh -European Community Country Strategy Paper for the period 2007-2013", uropean External Action Service, from: <http://eeas.europa.eu/bangladesh/csp/csp_07_13_en.pdf>, (accessed 3 January 2013).

- European External Action Service, "Declaration on Transatlantic Relations 1990", Delegation of the European Union to Canada from: <http://eeas.europa.eu/delegations/canada/eu_canada/political_relations/bilateral_agreements/1990_declaration/index_en.htm>, (accessed 4 April 2014).

- European External Action Service, "EU-INDIA SUMMIT: Global partners for global challenges: The EU-India Joint Action Plan", Marseille, 29 September 2008, from: <http://eeas.europa.eu/india/sum09_08/joint_action_plan_2008_en.pdf>, (accessed 6 December 2012).

- European External Action Service, "MALAYSIA – EUROPEAN COMMUNITY STRATEGY PAPER FOR THE PERIOD 2007- 2013", European External Action Service, from: <http://eeas.europa.eu/delegations/malaysia/documents/eu_malaysia/malaysia_eu_community_st_07_13_en.pdf>, (accessed 10 January 2013).

- European External Action Service, "Pakistan-European Community Country Strategy Paper for 2007-2013", European External Action Service, from: <http://eeas.europa.eu/pakistan/csp/07_13_en.pdf>, (accessed 14 December 2012).

- European Parliament, "The Charter of Fundamental Rights", European Parliament, from: <http://www.europarl.europa.eu/charter/default_en.htm>, (accessed: 3 March2010).

- European Union, "Consolidated Version of the Treaty on the Functioning of the European Union", Lisbon, 9 May 2008, C 115/49.

- European Union, "Corrigendum to Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories", 30 December 2006, Official Journal L 405.

- European Union, "Council Decision of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis" , 1 June 2000, 2000/365/EC, Official Journal L 131.

- European Union, "Council Decision on the association of the overseas countries and territories with the European Community", 27 November 2001, 2001/822/EC.

- European Union, "Council of the European Union, the New Financial perspective", 19 December 2005, 15915/05, CADREFIN 268.

- European Union, "Council Regulation (EC) No 1257/96, of 20 June 1996 concerning humanitarian aid", from: <http://eur-lex.europa.eu/en/dossier/dossier_21.htm>, (accessed: 3/3/2010).

- European Union, "Council Regulation (EC) No 1934/2006, establishing a financing instrument for cooperation with industrialised and other high-income countries and territories", (21 December 2006).

- European Union, "Protocol (Num. 19) on the Schengen acquis integrated into the framework of the European Union", European Union: Council of European Union, from: <http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01.en08.pdf>, (accessed 12 January 2013).

- European Union, "Protocol (Num. 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice", European Union: Council of European Union, from: <http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01.en08.pdf>, (accessed 12 January 2013).

- European Union, "Protocol (Num.3), Documents concerning the Accession to the European Communities of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, Protocol no 3 on the Channel Islands and the Isle of Man", 11972B/PRO/03, 27 March 1972, Official Journal L 073.

- European Union, "Protocol on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom", 17 December 2007, Official Journal of the European Union C 306/157.

- European Union, "Regulation (EC) No 1907/2006 of the European Parliament and of the Council, cconcerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency Objective", 18 December 2006, Official Journal of the European Union, L 396.

- European Union, "Second Revision of the Cotonou Agreement", Agreed Consolidated Text, (11 March 2010), from: <http://ec.europa.eu/development/icenter/repository/second_revision_cotonou_agreement_20100311.pdf>, (accessed 12 June 2013).

- European Union, "The Charter of Fundamental Rights of the Union", 16 December 2004, Official Journal of the European Union C 310/41.

- European Union, "The Protocol on Cyprus, attached to the Treaty of Accession to the European Union" signed by the Republic of Cyprus, 16 April 2003.

- European Union, "Treaty on European Union", European Union, 29 July 1992, Official Journal C 191, from: <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0087000012>, (accessed 22 December 2012).

- European Union, "The Treaty of Lisbon, 1 December 2009", European Union, from: <http://europa.eu/lisbon_treaty/index_en.htm>, (accessed: 3 March2010).

- European Union, "Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Reinforcing EU Disaster and Crisis Response in third countries", European Union: Eur-Lex, from: <http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2005&nu_doc=153>, (accessed: 3 March2010).

- Government of Autralia, Founding Documents of Australia, "Balfour Declaration", Imperial Conference of British Empire, 15 November 1926, from: <http://www.foundingdocs.gov.au/scan.asp?sID=13>, (accessed 22 November 2010).

- Government of Australia, Royal Power Act 1953 (Aust), Government of Australia, 29 December 1953.

- Government of Guernsey, "Constitution of Guernsey", States of Guernsey, from: <http://www.gov.gg/article/1866/Constitution>, (accessed 6 July 2013).

- Government of Jersey, “Constitution of Jersey”, from: <http://www.gov.je/Constitution>, (accessed 6 July 2013).

- Government of New Zealand, Royal Power Act 1953 (NZ), Government of New Zealand, 17 September 1953.

- Isle of Man Government, “Council of Ministers Act 1990”, Isle of Man Government: Legislation, AT 3 of 1990, from: <http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1990/1990-0003/CouncilofMinistersAct1990_1.pdf>, (accessed 25 July 2013).

- New Zealand Government, “The Royal Power Act- New Zealand, (1953)”, New Zealand Government, from: <http://www.teara.govt.nz/en/1966/history-constitutional/page-7>, (accessed: 23 November 2012).

- Sinclair Organisation, “Treaty of St. Clair-sur-Epte”, France, Sinclair Organisation, 911, from: <http://sinclair.quarterman.org/archive/2002/08/msg00044.html>, (accessed 10 May 2013).

- The Commonwealth, “Agreed memorandum of the Commonwealth Secretariat”, Commonwealth Prime Ministers Meeting, 1965.

- The Commonwealth, “Declaration of London of 1949”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/document/181889/34293/35468/214257/londondeclaration.htm>, (accessed 3/3/2010).

- The Commonwealth, “Declaration of Singapore”, The Commonwealth Founding Documents, 22 January 1971.

- The Commonwealth, “The Commonwealth at the Summit: Communiques of Commonwealth Heads of Government Meetings 1944-86”, London, Commonwealth Secretariat, 1987.

- The Commonwealth, “The Harare Commonwealth Declaration”, issued in Harare, on 20 October 1991.

- The Commonwealth, “The Hub & Spokes Phase II Plan”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/Internal/191502/214699/hub_spokes_phase_ii/>, (accessed 18 July 2013).

- The Commonwealth, “The Hub and Spokes Project”, The Commonwealth Secretariat, from: <http://www.thecommonwealth.org/subhomepage/191502/>, (accessed: 17 July 2013).

- The Commonwealth, “The Kampala Communiqué of the Commonwealth Forum of National Human Rights Institutions”, 19 November 2007.

- The Commonwealth, “The Singapore Declaration of 1971”, The Commonwealth Secretariat, from:

<http://www.thecommonwealth.org/document/181889/34293/35468/35775/singapore.htm> (accessed: 29 November 10).

- The Faculty of Law of the University of New South Wales, "The Royal Power Act-Australia, (1953)", Australasian Legal Information Institute, from: <http://www.austlii.edu.au/au/legis/cth/consol_act/rpa1953177/s2.html>, (accessed: 23 November 2012).

- UK Government, "Britain and the Overseas Territories -A Modern Partnership White Paper", UK Office of Foreign and Commonwealth Affairs, from: <http://www.ukotcf.org/pdf/charters/whitepaper99textonly.pdf>, (accessed 7 July 2013).

- UK Government, "British Nationality Act 1981", UK Government Legislation, from: <http://www.legislation.gov.uk/ukpga/1981/61>, (accessed 15 May 2013).

- UK Government, "British Overseas Territories Act 2002", UK Government Legislation, from: <http://www.legislation.gov.uk/ukpga/2002/8/introduction>, (accessed 15 May 2013).

- UK Government, "Overseas Territories White Paper", UK Government: Foreign & Commonwealth Office, 28 June 2012.

- UK Government, "UK International Priorities: A Strategy for the Foreign Commonwealth Office White Paper ", UK Government: Commonwealth and Foreign Office, 2December 2003, from: <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmfaff/745/74507.htm#note51>, (17 May 2013).

- UK Parliament, "Commission Report: implementation of the provisions of Protocol Num. 3 to the 2003 Act of Accession on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus", EU law and the Sovereign Base Areas (31586), The Parliament of the United Kingdom, 1 October 2010, 9284/10.

- UK Parliament, "European Communities Act 1972", UK Parliament Legislation, 17 October 1972, OJ L 73 of 27.3.1972.

- UK Parliament, "European Union Act 2011", UK Government, from: <http://www.legislation.gov.uk/ukpga/2011/12/contents/enacted>, (accessed 5 February 2013).

- UK Parliament, "Government Bill: European Union Act 2011", The UK Parliament Official Documents, from: <http://services.parliament.uk/bills/2010-11/europeanunion.html>, (accessed 3 February 2013).

- UK Parliament, "International Organisations Act", 7 April 2005.

- Unión Europea, "Protocolo (Num. 19) sobre el Acervo de Schengen integrado en el marco de la Unión Europea", Noticias Jurídicas, from: <http://noticias.juridicas.com/base_datos/Admin/protocolo19.html>, (accessed 12 January 2013).

- United Nations, “Charter of the United Nations”, San Francisco, 26 of June 1945.

- United Nations, “The United Nations Framework Convention on Climate Change”, United Nations, from: <http://unfccc.int/2860.php>, (accessed: 3 March2010).

G) COURT JUDGMENTS

- European Court of Justice, Case of Kingdom of Spain c. United Kingdom of Great Britain and Northern Ireland, Judgment of the European Court of Justice (Grand Chamber), 12 September 2006, Case C-145/04.

- European Court of Justice, Case of Matthews c. The United Kingdom, Judgment European Court of Human Rights, Strasbourg, 18 February 1999, Application Num. 24833/94.

- International Court of Justice, Case of Reparation for injuries suffered in the service of the Nations, Advisory Opinion, ICJ Rep 174, 11th April 1949, ICGJ 232.

APPENDIX I AND APPENDIX II

Free Trade Agreements (FTA) concluded

- South Africa[934]: South Africa is the EU's largest trading partner in Africa. Although it is a member of the ACP group of countries it is by far the strongest of sub-Saharan Africa's economies, as we have previously analised, it was not party to the same arrangements granted to the ACP under the Cotonou Agreement in 2000. South Africa has an FTA with the EU, which fully entered into force on 1 May 2004 after ratification by all signatory parties.

FTA in negotiations[935]

- EU-ASEAN - Free Trade Agreement: In April 2007 the Council adopted a mandate for the European Commission to start Free Trade Agreement negotiations with ASEAN countries (Burma - Myanmar, **Brunei**, Cambodia, Indonesia, Laos, **Malaysia**, Philippines, **Singapore**, Thailand, Vietnam)[936]. The European Commission decided to go for a regional approach on the ASEAN negotiations. In May 2007 the EU-ASEAN economic ministers meeting in Brunei agreed to enter into negotiations for a Free Trade Agreement.

  Seven negotiations rounds were held with the ASEAN. At the last round in March 2009, both sides agreed to take a pause in the negotiations in order to reflect on the appropriate format of future negotiations.

  In spring 2009 the Commission presented a report on the EU-ASEAN negotiations. In this report the EU underlined its intention to remain engaged with the region. It was announced that EU should be ready to engage in bilateral FTA negotiations with individual ASEAN countries. Such bilateral FTAs could constitute "building blocks" that the EU and the ASEAN may wish to consolidate in due course into a region-to-region agreement.

- **EU-Canada Comprehensive Economic and Trade Agreement (CETA)[937]** At the June 2007 EU-Canada Summit, leaders agreed to carry out a joint scoping study to lay the foundation for a future trade agreement. The conclusions of this study, which was presented at the October 2008 EU-Canada Summit, persuaded the leaders to agree to begin negotiations on a Comprehensive Economic and Trade Agreement. Negotiations began in October 2009 and they haven't concluded yet.

- **EU-India Free Trade Agreement:** The Council authorised in April 2007 the Commission to negotiate a comprehensive Free Trade Agreement with India. The negotiations were launched in June 2007 and are still in progress. Two main objectives are: reciprocally liberalising all trade in goods and services and tackling existing and future non-tariff barriers to trade.

- **EU-Malaysia Free Trade Agreement:** The negotiations were launched in October 2010. Negotiators met for the first round of negotiations in Brussels in December 2010.

[934] European Commission, Trade, Countries and regions, South Africa, source: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/south-africa/index_en.htm>, (accessed 9 April 2013)

[935] European Commission, Enterprise and Industry, International affairs Free Trade Agreements, source: <http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/>, (accessed 9 April 2013)

[936] Three of these countries: Brunei, Malaysia and Singapore are members of the Commonwealth

[937] Ibidem

- **EU-Singapore Free Trade Agreement:** Singapore is the first ASEAN country with which the EU launched bilateral FTA negotiations. The first negotiating round took place in Singapore in March 2010.

APPENDIX II: LIST OF COMMONWEALTH COUNTRIES, BRITISH OVERSEAS TERRITORIES, BRITISH CROWN DEPENDENCIES AND EU MEMBER STATES

Commonwealth countries

1. Antigua and Barbuda
2. Australia
3. Bangladesh
4. Barbados
5. Belize
6. Botswana
7. Brunei Darussalam
8. Cameroon
9. Canada
10. Cyprus
11. Dominica
12. Fiji Islands
13. Ghana
14. Grenada
15. Guyana
16. India
17. Jamaica
18. Kenya
19. Kiribati
20. Lesotho
21. Malawi
22. Malaysia
23. Maldives
24. Malta
25. Mauritius
26. Mozambique
27. Namibia
28. Nauru
29. New Zealand
30. Nigeria
31. Pakistan
32. Papua New Guinea
33. Rwanda
34. Samoa
35. Seychelles
36. Sierra Leone
37. Singapore
38. Solomon Islands
39. South Africa
40. Sri Lanka
41. St Kitts & Nevis
42. St Vincent & The Grenadines
43. St. Lucia
44. Swaziland
45. The Bahamas
46. Tonga
47. Trinidad & Tobago
48. Tuvalu
49. Uganda
50. United Kingdom

51. United Republic of Tanzania
52. Vanuatu
53. Zambia

British Overseas Territories

1. Anguilla
2. Gibraltar
3. Bermuda
4. Montserrat
5. British Antarctic Territory
6. Pitcairn Island
7. British Indian Ocean Territory
8. British Virgin Islands
9. Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus
10. St Helena dependencies (Ascension Island, Tristan da Cunha)
11. Cayman Islands
12. South Georgia & the South Sandwich Islands
13. Falkland Islands
14. Turks and Caicos Islands

British Crown Dependencies

Channel Islands:

1. Jersey
2. Guernsey
3. Isle of Man