

The Jean Monnet Seminar Series

**THE THEMATIC STRATEGY ON THE
PROTECTION AND CONSERVATION OF
THE MARINE ENVIRONMENT AND THE
MARINE STRATEGY DIRECTIVE: A
LOCAL AND REGIONAL PERSPECTIVE**

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The Jean Monnet Seminars

The Jean Monnet Seminars are an initiative of the Jean Monnet Chair and the Malta European Studies Association. They are an intrinsic part of the fabric of European Studies development at the University of Malta, bringing together scholars in the field for the purpose of constructive debate and thinking on the main issues in European Integration. The assistance of the European Commission is gratefully acknowledged.

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Typeset by the European Documentation and Research Centre.

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Mr. Michael Cohen has recently become the first Maltese representative to be appointed as Rapporteur to the Committee of the Regions. His opinion concerning the Thematic Strategy and Draft Directive on the European Marine Environment was adopted by the Committee of the Regions during its Plenary Session held in April 2006.

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MICHAEL COHEN

Introduction:

The Committee of the Regions and the Local and Regional Perspective

Before delving directly into the particular issues concerning the Thematic Strategy on the Protection and Conservation of the Marine Environment and the, as yet draft, Marine Strategy Directive, it might be worthwhile that some attention be first devoted to the Committee of the Regions of the European Union. This body serves as custodian and protector of the local and regional perspective in European Politics.

To understand the Committee of the Regions (COR) as an institution, one first needs to reflect on the philosophy behind the establishment of local and regional governments. In this respect, it needs be said that the concept of local government is not new. Indeed it predates national governments. The origin of government dates back to times when society was composed of a myriad of small communities, largish families or clans.

If we look at the birthplace of democracy, we note that Athenian society was rather small, not much larger than a Maltese local council in fact. In Roman times, moreover, government, especially with regard to civil issues, was largely left in the hands of the paterfamilias, who had the power even over the life and death of family members.

In the middle ages, the figures of Barons and feudal Lords began to emerge. Within each fiefdom, each feudal lord had absolute power vested in him. With the unification process of most of Europe into larger states, such powers were transferred to Kings or Emperors.

As a consequence, at the time, very little distinction was made between the legislative, judicial and executive powers of the state, since these were oft vested in the hands of one man - the King.

In modern society, things have developed. Democratic forms of government, in some form or other, today are the norm. We have moved away from the notion of a Hobbesian Leviathan. The concept of separation of powers, where the legislative, executive, and judicial arms of the state are kept separate from one another, is enshrined in the basic laws of modern states. The respect of the rule of law, with the ancillary notion of respect of fundamental human rights and freedoms, find themselves at the basis of modern European societies. All this shows a growing respect for the individual person within society.

This growing respect, however, needed to be accompanied by other developments. The larger states grew, the further away from the individual person government was taken. A growing sense of frustration and alienation among the people set in. Central government was, and will always remain, too distant from the people no matter what.

Subdivisions of government began to be created. From a national level to a regional or state level. The larger the country, the more complex the governmental structure, with an increasing number of levels of government exercising competence in different areas. Imperceptibly, the concept of subsidiarity had set in.

Obviously, there are numerous reasons for this phenomenon. The most straightforward being that people like to feel involved in the process of decisions that effect their lives. The further away from them decisions are taken, the less likely it is for people to embrace them. A feeling of alienation sets in. This is dangerous.

It is for this reason that in the Maastricht Treaty of the European Union we find enshrined the doctrine of subsidiarity. Decisions should be taken as closely to the citizen as reasonably and practically possible. If a decision can effectively be taken at a lower

level of government, then that would be the appropriate level at which that decision should be taken.

It is important to remark that the practical translation of the subsidiarity principle in practice has not followed a uniform approach. The different regional, state, and local entities in Europe enjoy very diverse powers and responsibilities. In some countries, the demarcation lines are very clear. In others rather vague. In some countries, this exercise of power-sharing among the different levels of government has a long history; in others, Malta included, it is only just beginning.

Thus, although from a purely historical approach, one can detect instances of local government or experiments in local government in Malta, the present notion of Local Government in Malta was only born in 1993, with the advent of the Local Councils Act.

If the Maltese local councils are a novel experiment, at a European level we find the creation of an even more novel institution. The Committee of the Regions which brings together representatives of the various local and regional governments of the European Union, has just last year celebrated its tenth anniversary.

The Committee of the Regions is a fully fledged institution which, however, is still in its infancy. Established to bring in the local and regional dimension within the European framework of decision-making, the COR started off as a consultative body. In fact, the European Commission, in its role as initiator of legislative proposals within the European Union is treaty bound to consult with the Committee of the Regions in a number of policy areas. In many other areas, it is the COR itself that of its own volition decides to declare itself by providing an opinion.

Currently, efforts are being made by some local and regional representatives within the Committee of the Regions for this body to transform itself into a sort of second chamber in parallel with the European Parliament. Whether this will be achieved in the future is not for me to say. What is certain, however, is that the COR has

served to fill a deeply felt void, that of bringing a local and regional dimension into European politics.

The Thematic Strategy on the Protection and Conservation of the Marine Environment and the Draft Marine Strategy Directive

One such instance of influence on European politics is the debate concerning the Thematic Strategy on the Protection and Conservation of the Marine Environment and the draft Marine Strategy Directive, for which issue I have had the honour to serve as *Rapporteur* to the Committee of the Regions.

Through this Thematic Strategy and draft Directive, the European Commission has given notice that it has woken up to the stark reality that after years of environmental neglect, if not abuse, the European marine environment is not enjoying a clean bill of health. Recognition is given to the fact that significant deterioration of the marine environment and of the ecology therein contained has been taking place over the past years with human intervention and over-exploitation taking a heavy toll on the state of our marine environment.

Taking on board the concept of sustainable development, a concept which can be broadly defined as that development which meets the needs of the present generations without compromising the ability of future generations to meet their own needs, the European Commission, in drafting the Thematic Strategy and draft Directive, takes note of the legal obligations with regard to the Environment placed upon it by the Member States through the Treaty.

This being said, however, environmental considerations, whilst at the basis of the Thematic Strategy, are not the only considerations which the European Commission has taken on board. Indeed the Commission recognizes that there are wider social and economic impacts that an overall decline in the state of the marine environment can have upon present and future generations of Europeans.

It is on the basis of this that the European Commission notes the significant input towards the generation of wealth and employment that is made possible by the potential offered by Europe's oceans and seas, by giving recognition to the fact that a healthy marine environment can play an important role in achieving the ambitious objectives of the Lisbon Agenda.

The overall objective behind the Commission's strategy is that of providing an integrated policy framework taking into account all pressures and impacts and setting clear and operational actions in order to protect Europe's marine environment more effectively. The Commission's target is that of achieving such goals by 2021, at the latest.

In accordance with the subsidiarity principle, in its draft Directive, the Commission proposes to achieve its ambitious objectives in a way that it takes into account the significantly different realities that exist within Europe's marine regions. Consequently, the Commission proposes that whilst the overall objectives of the strategy should be agreed at supra-national level, the actual operational implementation of the programmes should be effected at the level of marine regions.

In fact, the Commission refrains from proposing any specific management levels at EU level, and it is up to the individual Member States within the different marine regions to develop and implement programmes and measures directed at achieving the overall objectives of the strategy within their waters. These programmes and measures however, have to be approved by the Commission.

The marine regions being proposed in the draft Directive are the Baltic Sea, the North East Atlantic Ocean, and the Mediterranean Sea. The draft Directive, furthermore, provides that these three marine regions may, by taking into account the specifications of a particular area, be further sub-divided into sub-regions.

The draft Directive sets out a blue-print for the development of the marine strategies which each State within a marine region must

develop and implement. This blue-print is structured in a way that an initial assessment of the current environmental status of the waters concerned and the environmental impact of human activities thereon, is to be followed by an exercise determining a good environmental status for the waters concerned, which in turn is to be followed by an exercise establishing the environmental targets to be achieved. The final step in this blue-print would be the establishment and implementation of a monitoring programme for ongoing assessment and regular updating of targets.

The draft Directive proposes that the programme of measures designed to achieve good environmental status be developed by 2016, which programme is to enter into operation by 2018.

The draft Directive also provides for a continuous process of review, requiring States to issue assessment reports every six years, with interim reports being issued every three years. The Commission itself is bound to publish a first evaluation report on the implementation of the Directive within two years of receiving all programmes of measures or by 2021 at the latest. Moreover, the European Commission is bound to publish further reports every six years, which reports are to be submitted to the European Parliament and to the Council.

The draft Directive calls for the effective co-operation of the parties concerned, including non-Member States bordering upon any one of the identified marine regions. Moreover, the draft Directive requires Member States to ensure the active involvement of all interested parties in its implementation.

The Committee of the Region's Reaction and Opinion

In its Opinion adopted during the April 2006 Plenary Session, the Committee of the Regions welcomed the Commission's Thematic Strategy and draft Directive.

The Committee of the Regions noted the general positive aspects of the Strategy as expressed in the proposed Directive, and expressed

an overall generally favourable opinion, supportive of the Strategy and the proposed Directive.

This support was based on the premise that the marine environment is indispensable for the sustainability of human life, with the COR noting the essential role played by the marine environment in a modern economy, and thus of its ancillary role in furthering the sustainability of the economic livelihood and standard of living of those who earn a living from the sea.

The Committee of the Regions welcomed the departure from the traditional piece-meal and sectoral approaches to environmental protection, and expressed its strong support for the development of an integrated EU policy regulating maritime affairs.

Agreeing in principle with the proposed Strategy of establishing common goals and objectives at European level, whilst leaving actual implementation in the hands of the identified marine regions, the Committee of the Regions' opinion, however, expresses concern that in certain instances actual execution of programmes may be hindered by a lack of co-ordination and intent between the parties involved, and this more so in those cases where the co-operation of non-Member States is required. For this reason, the COR has called upon the European Commission to retain a residual role in monitoring the implementation process, and to take it upon itself to act as an effective coordinator and facilitator where necessary. Moreover, the Committee of the Regions has further called upon the Commission to clarify what the consequences would be should a Member State fail to meet its goals and measures.

As to the identification of the marine regions themselves, the Committee of the Regions has noted a significant omission on the part of the European Commission in not including the Black Sea (which is bordered by Romania and Bulgaria, two acceding countries, as well as by Turkey, with which accession negotiations are under way), as a distinct marine region within the ambit of this Strategy, and has called upon the Commission to remedy this omission. Moreover, in its Opinion, the COR also made reference

to the situation of the different islands and territories forming part of the European Union's geographical area but which are located outside of the established marine regions and sub-regions, and called for their inclusion within the ambit of this policy.

As to the time frames proposed in the draft Directive, the Committee of the Regions in its opinion advocates that shorter time-frames be set in such a way as to ensure that the positive effects of the Strategy and the Directive begin to bear fruit at a much earlier date. In this context, the COR has called upon the Commission to bring forward its target date for the achievement of an integrated policy framework to 2018, at the latest.

Understanding that, whilst there might be short-term costs, adherence to the Strategy and draft Directive should lead to long term benefits for all, the Committee of the Regions opined that with respect to the short-term costs, such burdens should not be allowed to be carried by local or regional governments - or worse still by individual persons or communities - alone. Thus, the creation of specific assistance programmes, at European level, designed to help directly affected persons and communities to alleviate any direct negative impact on their economic or social standards of living caused by the implementation of the strategy and directive, have been called for by the COR.

Moreover, the Committee of the Regions gave due consideration to the fact that the marine environment, and its protection and conservation, has significant local and regional effects. In this respect, it stressed the fact that local and regional authorities have a key role to play in implementing the objectives laid down in the strategy. In this regard, in its Opinion the COR expresses the belief that local and regional governments can play a significant role in providing information and garnering the support of the general public, and thus extended the offer of playing a partnering role to the Commission and the Member States by recommending a long-term information campaign involving local and regional authorities.

The Next Step

Now that the Committee of the Regions' Opinion has been formally adopted, the next step is for the COR to lobby for its views to be accepted by the Commission and reflected in the Directive.

Presently, the Thematic Strategy and draft Directive are being discussed by the European Parliament, which in fact is due to hold its first hearing on this issue early in July. Following discussions with the Parliament's Rapporteur on the subject, I am confident that the European Parliament's Opinion will share the recommendations and observations made by the Committee of the Regions. In this way, the two institutions can present a united front to the Commission, thereby giving greater weight to the arguments being made.

Once the process reaches its natural conclusion and the directive does become law, one would be mistaken to think that the whole process will have been terminated. In fact, not only is this an open-ended policy area in its own right, but more importantly, it serves as one of the two pillars (the other being the Lisbon Strategy) upon which the Commission's Green Paper on Maritime Policy, which has just been launched by Commissioner Borg earlier this month, is based.

In this context, thus, discussions concerning the protection and conservation of Europe's marine environment are destined to remain at the fore of European policy-making for a considerable length of time. This state of being constantly in the spotlight, in my view, bodes well for the state of Europe's marine environment.

Conclusion

Allow me to conclude by expressing the view that the whole *raison d'être* of government is that of striving to improve the general quality of life of the people. This is no easy task. It can be achieved only after hard and strenuous efforts. Whatever we do will never

be enough. We should realise that, but that realisation should not discourage us from striving harder.

If our whole purpose is to work towards the improvement of the general quality of life of the people, then it is obvious that we need the people on board. The Lincolnian phrase - government of the people, for the people, by the people - is at the heart of this philosophy. No government can ever succeed in achieving the goal of improving the general quality of life of its citizens without the active support of those same people. It is the citizens who must tell the political class which direction they want to take. It can never be the other way round.

It is precisely because of this that when 'thinking global' we need to 'act local'. It is at the level of local government that the people are actually found. It is all well and good for world leaders to sit down and talk about the state of the environment, for instance, but it is at local level that concrete measures can actually be implemented. If, at local level, the grand designs dreamt up by world leaders are not taken on board then nothing of substance will be achieved.

It is also with this in mind that the European Union has increasingly been devoting significant attention to its regional policy. To me, perhaps, this is one of the, if not the, most important policy pillar behind the entire European project.

If the visions of the European forefathers - people such as Jean Monnet, Robert Shuman, David Mitrani - are ever to materialise if a de facto solidarity amongst the people of Europe is ever to be achieved, then it is essential for the people to feel part of the project. Europe can no longer remain the monopoly of national governments and political leaders. If the European project is really to come alive, then the people need to acquire ownership of it. This can never happen if we continue to think along the traditional, nationalistic, modes of thinking.

Investing in regional development is an essential building block in this endeavour. People from different cultural, ethnic, political, or

even religious, backgrounds need to be brought together. They need to be helped break down the wall traditionally enclosing them; they need to be encouraged to mix with other peoples; to learn that together we are richer and stronger.

I have no illusions. This is no easy task. It is a long-winding and treacherous journey. The pitfalls will be many. But we have no choice. The alternative is too horrendous to contemplate. We either move forward in this direction, or we risk reverting back to the past. Even now, across most of Europe, extreme right wing ideology, one that we thought had been laid to rest once and for all following the Second World War, is raising its head. Racism and intolerance are on the increase. Nationalistic sentiments are again coming to the fore. Witness the French and the Dutch no votes in the EU Constitution referenda. Witness the deeply felt scepticism to Turkey's application to join the European Union. Witness the growing resistance amongst many EU Member States to adhere to the principles of free movement of persons enshrined in the Treaties.

Admittedly, the current times are fraught with deep economic uncertainties. The general economic sentiment is negative. We are in a recession, which is growing deeper by the quarter. These are times when grand designs of solidarity may be far away from people's minds. However, I feel that we are duty bound to press forward. The principles behind Monnet's vision remain valid today, as much as they were sixty years ago. To survive, Europe can only move forward. We have an obligation not to allow it to go backwards in time. If we are to avert reliving the horrors of Fascism and Nazism; if we are never again to experience the horrors of war; then it is our duty as local leaders to instil in our peoples a culture of tolerance, of acceptance, of embracing differences between people as a means of enriching our identities.

The grand 'global' designs of solidarity can only be achieved if we act, and act convincingly, locally. It is precisely with this need in mind that the Committee of the Regions strives to act constantly to remind the European policy makers that they cannot afford to overlook the perspective of local and regional governments.