



Title	The Art of Retreat: A Use of Subsidiarity by Jacques Delors 1992-93
Author(s)	ENDO, Ken
Citation	北大法学論集, 48(6), 394-378
Issue Date	1998-03-31
Doc URL	http://hdl.handle.net/2115/15757
Type	bulletin (article)
File Information	48(6)_p394-378.pdf



[Instructions for use](#)

The Art of Retreat:
A Use of Subsidiarity by Jacques Delors 1992-93

Ken ENDO

Introduction

Political leadership is not simply initiatory and expansive; it can well be a bold retreat, thereby reducing constraints and retaining the leadership potential for the later stages. Underlying this theme is the assumption that any leader, however influential he or she might be, is condemned by the limited set of resources and opportunities to select policy or political targets and to pursue them sparingly.

The present study illustrates how a top executive is able to reduce constraints upon him or her. It does so by taking the case of a tactical retreat by Jacques Delors, the President of the European Commission from 1985-95, conducted under the banner of subsidiarity.

Subsidiarity is a common sense principle that contains two concepts in one. The first and primary concept of subsidiarity is negative in the sense that a larger entity should not intervene in what a smaller one can do for itself ('negative subsidiarity'). Yet what makes subsidiarity distinctive is the secondary and positive concept which is always attached to the first one: a larger entity should intervene when a smaller one cannot attain its goals for itself ('positive subsidiarity').¹

These two concepts make subsidiarity a chameleon doctrine that has been used and misused for different purposes in the context of European Community or Union politics.² Those who see interest in preserving the

¹ With regard to the history and contents of the idea of subsidiarity, see Endo (1994): chaps. I and II; also Millon-Delsol (1992).

² For an analysis of the usage of subsidiarity in EC politics, see, for instance, Wilke and H. Wallace (1990). The terms 'Community' and 'EC' are used throughout this article, mainly for the sake of convenience but also due to the facts that the period

strength of nation-states would place emphasis upon negative subsidiarity in terms of EC-state relations (though not of state-region relations). In contrast, those in favour of further European integration are likely to stress positive subsidiarity or to reject the idea of subsidiarity altogether. And yet, so long as the word subsidiarity is used, it cannot be entirely reduced into the negative concept, however hard anti-integrationists try to underline only this primary sense of subsidiarity.³

Delors made full use of both of these two concepts, depending on the situation. When he was riding high in 1990-1991, he pressed the case for positive subsidiarity, by stating:

Subsidiarity is not simply a limit to intervention by a higher authority vis-à-vis a person or a community in a position to act itself, it is also an obligation for this authority to act vis-à-vis this person or this group to see that it is given the means to achieve its ends.⁴

When facing an increasingly difficult environment after the Danish referendum in 1992, he swiftly shifted emphasis to the negative concept of subsidiarity, promising to return some competences to national capitals. Nevertheless, by using the term subsidiarity, he also left scope for the Commission to act in essential matters that could be argued to be best done at Community level. Eventually, he emerged from the unfavourable situation with the essential Commission prerogatives almost untouched.

This study focuses on the ways in which Delors made this retreat. They involved skilful redefinition of the principle of subsidiarity, a promise to return some competences to the member governments and a reduced amount of legislative propositions. By this retreat, it will be argued, Delors retained some leadership potential of the Commission presidency. In so doing, Delors accommodated the opposition within the Commission to the retreat. If, on the contrary, he was not adaptive to the negative situation and had persisted on his original agenda, he would have increased the circumstantial constraints, perhaps

covered by this article is 1992-93 and that the European Union has formally come to existence only since October 1993.

³ Endo (1994): chap. III.

⁴ Delors (1991): 9.

to the extent that the Commission's essential prerogatives and long-term influence might have been seriously diluted. In this context, this article deals with a damage limitation exercise by the Commission President.⁵

The analysis starts from the post-Maastricht unfavourable environment in which Delors added constraints upon himself. It goes on to examine the process in which Delors made a retreat, tug-of-war struggles on the operational definition of subsidiarity amongst the member states, and the internal division of the Commission. Then it reviews the settled formula and draws an evaluation of the retreat. The last section summarises the argument.

§1. Post-Maastricht Situations and Delors's Dashes

The Delors Commission moved to further deepening of European integration immediately after the member states' governments signed the Maastricht Treaty in February 1992. This move provoked sharper resistance from the member governments and national publics, so creating greater constraints upon the Commission and its presidency.

After the adoption of the Treaty on European Union at Maastricht in December 1991, the member states' governments felt a sense of euphoria as well as fatigue.⁶ It was on the one hand a great relief for those who were engaged in the year-long intense negotiations over the Treaty. On the other hand the Treaty created a number of tasks that were not easy to be tackled, be they in the form of ratification or implementation of the Treaty.

For Delors, the Treaty appeared to have created ample scope for further actions. At the same time, he was feeling the necessity for regaining the initiative from his side, not least because he had failed to involve himself deeply in drafting many of the Treaty's important clauses to his great regret.⁷

In February 1992, Delors announced the Commission's budgetary plan — known as the Delors Package II — for the next several years. The issue of the

⁵ Concerning the institutional resources of and constraints upon the Commission presidency, see Endo (1995); as to the Commission's leadership capacity in general, see for instance Nugent (1994).

⁶ For example, see David Buchan, "All at sea in Europe," *Financial Times*, 3.5.1992, p. 18; "Post-Maastricht Tension," *The Economist*, 9.5.1992, pp. 14-15.

⁷ On the negotiation process of the Maastricht Treaty, see Cloos et al. (1993); and with regard to Delors's role in it, see Endo (1998 forthcoming): chap. 8.

Community's finance, in particular of the cohesion funds, had been a contentious and divisive one during the Maastricht negotiations; the less developed countries led by Spain clashed with the net-contributors such as Germany and the UK. Delors's *cabinet* had already been preparing for the multi-annual budget in parallel with the negotiations, in view of the fact that the previous Delors Package would expire by 1993.⁸ With the Treaty's Article 130 and Protocol on cohesion funds, the Commission attempted to implement the Treaty that was not yet ratified – a similar move to that of the post-SEA period. This strategy would later pay off, when the December 1992 Edinburgh Council agreed on the matter adopting a similar line to the original Commission's plan, although the size of the budget was smaller than Delors would have liked.⁹ At the same time, however, the Commission's proposal on the increase in the budget, just after the hard bargaining over the unratified Treaty, left uneasiness amongst some member governments, notably in London and Bonn.¹⁰

In April 1992, Delors further warned against the risk of institutional paralysis with the prospect of enlargement of the Community's membership towards the East. Speaking at the European Parliament, he remarked that the forthcoming European Council in Lisbon

is likely to come as a political, intellectual and institutional shock to the twelve Member States, which to my mind have not yet given enough thought to what it would be like for the Community to be opened up to, say, 35 national-states that we already have in Europe, not even counting those of the Commonwealth of Independent States.¹¹

Delors suggested strengthening the Commission as the genuine executive power, rotating the presidency amongst groups of member states (instead of individual states as now), and a greater use of majority voting in Council meetings, especially in the common foreign and security policy matters. Meanwhile, the Commission's Vice-President, Frans Andriessen, floated the idea

⁸ For details, see Ross (1995); 197ff.

⁹ H. Wallace (1994): 59.

¹⁰ David Gardner, "Delors tries to head off row over EC budget," *Financial Times*, 13.2.1992, p. 1.

¹¹ *Official Journal of the European Communities, Debates of the European Parliament (Of-EP)*, No. 3-417, 7.4.1992, p.81.

of a 'mini-intergovernmental conference' before the full IGC scheduled in 1996 so as to allow the Community to tackle the issues related to enlargement.¹² These sent the wrong signals to member states, particularly those which had yet to ratify the Treaty, because they were now obliged to press the case for ratification with the prospect of further radical plans waiting soon after.

Delors ordered the in-house Institutional Group to elaborate an in-depth report on the institutional implications of enlargement. This report had been requested by the Maastricht European Council in December 1991 on the initiative of French President François Mitterrand.¹³ One of the many drafts concerned a diminished role for smaller countries as the Community's Council President. When the draft was publicised through the (acting) chief spokesman of Delors, it did not help those campaigning for ratification of the Maastricht Treaty in Denmark. Foreign Minister Uffe Elleman-Jensen, who led the campaign in the country, was furious about the draft. He openly threatened to veto the reappointment of President Delors for a further two-year term in the forthcoming Council, unless Delors dissociated himself from the reported draft.¹⁴

§2. Retreat

The Danish referendum of 2 June 1992 with the majority choosing "No" to the Treaty threw the Community into turmoil. This prompted Delors to take a series of measures of a low-key style. In the press conference on the same day, Delors who had promised to deliver a shock to the member states with his radical plan repeated that instead he was himself shocked by the result.¹⁵

Delors immediately declared his intention to give back some of the Community's competences.¹⁶ In doing so, he admitted the necessity to fully

¹² Grant (1994): 213.

¹³ David Buchan, "Mutiny rocks EC ship of state," *Financial Times*, 4.6.1992, p. 14.

¹⁴ Grant (1994): 214-215. Delors did so in due course, despite his declared policy for institutional reforms in the preceding months, including curbing of the role of small countries.

¹⁵ "Press Conference of Jacques Delors, President of the European Commission" (transcript), 2.6.1992.

¹⁶ For instance, David Buchan, "Delors promises a more decentralised EC," *Financial Time*, 25.6.1992, p.1.

implement the principle of subsidiarity enshrined into the Treaty, stressing its negative aspect. The case for less intensive legislation and execution of the Community laws was particularly emphasised. At the same time, he pledged for a more open and democratic Community, by making it transparent in its decision-making process and avoiding complexity in legislation and regulation.¹⁷

On 20 June 1992 when the EC's Foreign Ministers met in Luxembourg, Delors made a presentation on subsidiarity in a personal capacity.¹⁸ François Lamoureux, Delors's deputy chef de cabinet, and his colleagues in the Commission's internal 'groupe subsidiarité'¹⁹ wrote a preliminary report on the implementation of subsidiarity, and using that as a basis, the College of Commissioners discussed the matter on 24 June. Each directorate general was requested by the College to find examples of subsidiarity in its policy area. The work to relocate power to the national governments was thus inaugurated.

The Lisbon Summit soon after was dominated by the ratification problem of the Maastricht Treaty. Despite the fact that the principle of subsidiarity was incorporated into the unratified Treaty in Article 3B, the Summit set out the implementation of the Article as one of the major exercises to press for smooth ratification of the Treaty.²⁰ The heads of government thus "invited the Commission and the Council to undertake urgent work on procedural and practical steps to implement the principle of subsidiarity and to report to the European Council in Edinburgh" and urged the Commission to "justify, in the recitals of future proposals, the relevance of its initiative with regard to the principle of subsidiarity."²¹

¹⁷ *OJEP*, No. 3-419, 10.6.1992, pp. 118-119.

¹⁸ "Conférence de press conjoint de MM. Deus Pinheiro et Jacques Delors à l'issue du conclave des ministres des affaires étrangères" (transcript), Luxembourg, 20.1.1992, p. 5.

¹⁹ A core member, beside Lamoureux, was Alain Van Solinge, a former Legal Service official, then at the Secretariat General, currently at the IGC Task Force in the Commission.

²⁰ The legal foundation of implementing subsidiarity before the completion of the Treaty's ratification was later to be questioned by the Italian government in the process running up to the Edinburgh Summit in December 1992.

²¹ "Conclusions of the Presidency: European Council in Lisbon 26-27 June 1992," p. 9.

§3. Tug-of-War Struggles between the Member States over Subsidiarity

The UK took the rotating presidency of the Council in July 1992. Following the Danish referendum and the Lisbon Summit, the most important task imposed upon the presidency was to find a solution with which to ensure smooth ratification of the new Treaty amongst the countries that had not yet completed it, including Denmark. Putting into practice the principle of subsidiarity, as well as democracy and openness, was considered to be a central component of the solution.

During the summer 1992, both the UK presidency and the Commission were elaborating plans on how to apply this common sense principle to the real politics of the Community. The presidency's first shot was fired on 27 August, based on which the Coreper started to discuss the matter weekly in September. The German government, keen to support its Läder, took a similar line with the UK government when it also submitted a paper which would have obliged the Commission to fully consult the member states in the light of subsidiarity prior to submission of any proposal. Both the UK and German governments pressed to make the subsidiarity test a pre-condition to approve any Commission proposal. This would enable the member states to reject a proposal solely on the ground that it were contrary to the principle of subsidiarity, without discussing its contents. It might well result in weakening the monopoly of the Commission's right of initiative.²²

This move by the UK and German governments prompted several other member states to defend the Commission's prerogative. On 10 October, the Benelux countries issued a joint memorandum by which they vigorously favoured preserving the Commission's prerogatives. With a separate memorandum to the Birmingham Summit on 16 October, the Greek delegation also supported the Commission's right of initiative, while favouring decentralisation of some Commission departments. At the end of the month, the Spanish government circulated a note which took a strongly pro-Commission point of view and which doubted the feasibility and desirability of the whole project of implementing subsidiarity.²³

²² Interviews. See also Endo (1994): chap. III -7.

²³ Ibid.

§4. The Internal Division of the Commission

Delors had to cross a tight rope, externally and internally. Whilst backed variously by Benelux, Greece and Spain, two of the big member states (Germany and the UK, the latter which held the Council presidency) were attempting to question the Commission's core prerogative: the right of initiative. The French government, too, had not been sympathetic towards the Delors Commission since the period preceding the Maastricht negotiations.

In response to this situation, the Commissioners themselves were divided between those who sensed the necessity to accommodate hostility from some member states and those who tried to defend the Commission's prerogative to the end.²⁴ In addition, the atmosphere with the College was far from one of cooperation with the President. Around that time, Delors's authority was seriously damaged by the criticisms of fellow Commissioners MacSharry and Andriessen over the GATT negotiations.

The areas that Delors had in mind for power relocation were the internal market and environment. Immediately after he let these be known, sharp criticisms were levelled at him from within and outside the Commission. One of the most ferocious was the previously loyal lieutenant of Delors, Karel van Miert. Temporarily in charge of the environment portfolio (following the resignation of Ripa di Meana in June 1992), van Miert made it clear to the President that he did not agree to the latter's retreat in the sphere.²⁵

On 9 October, Delors circulated to Commissioners a draft proposal on how to implement the principle of subsidiarity. He intended to submit it to the forthcoming European Council in Birmingham. However, his draft – based on work by the 'groupe subsidiarité' – was attacked by the College of Commissioners who saw part of the draft as undermining the Commission's hard-won prerogatives. He had to postpone publication of the proposal, and instead made an oral presentation on the subject at the Summit.²⁶ The Birmingham European Council loosely reconfirmed the necessity to implement the principle of subsidiarity, leaving the task for the forthcoming Summit in Edinburgh.²⁷

²⁴ Interviews.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Agence Europe*, 16-17.10.1992, p. 5.

After accommodating pro-federalist views within, the College approved the draft put forward by the President and communicated it to the Council on 27 October.²⁸ The communication conceded surprisingly little to the hard-line countries such as the UK and Germany. It declared right at the beginning that “action taken by the upper echelons of the body politic should be limited.” However, in terms of concrete solutions, the Commission:

- reiterated its proposal during the 1991 IGC, concerning the hierarchy of norms;
- stated that the narrower sense of subsidiarity – that is, the second paragraph of Article 3B of the Maastricht treaty²⁹ – should only be applied to the shared competences between the member states and the Community, thus keeping exclusive competences of the Community untouched;
- argued the case that “there must be no question of separating the issue of subsidiarity from the substance of the matter in hand.” This was intended to exclude the possibility that the Council would reject a proposal solely for the reason of subsidiarity prior to discussion of the proposal's contents, and therefore to preserve the Commission's right of initiative;
- left the future conflict resolution to the inter-institutional conference between the Commission, the Parliament and the Council.³⁰

§5. The Edinburgh Formula

Throughout November, tug-of-war struggles over the principle of

²⁸ “The principle of subsidiarity,” Communication of the Commission to the Council and the European Parliament, SEC (92) 1990 final, 27.10.1992.

²⁹ Article 3B of the Treaty on European Union states:

The Community shall act within the limits of the power conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

³⁰ Ibid.

subsidiarity continued. On 3, 6, 17 and 25 November, the UK presidency produced draft reports on implementation of subsidiarity. At the beginning, it sought a way in which to establish the restrictive list of exclusive competences of the Community, an option that was soon rejected by other member states. In many instances, it also attempted to restrict the actions at Community level as much as possible. For example, one paragraph of a draft referred that: "Where possible under the Treaty, Community action should be limited to encouraging cooperation between Member States."³¹ Another paragraph urged the Commission to put forward a menu of proposals, not one proposal. These two were cut out by the Commission allied with Italy, Spain and Belgium. Whilst Germany and Denmark were generally in favour of the UK's stance on subsidiarity, France supported by Spain criticised the UK government for not producing the report of the whole Coreper but solely of the presidency. Spain, in particular, made reservations on the whole project of implementing subsidiarity, put forward by the UK presidency. Delors and Italian Foreign Minister Emilio Colombo also complained that the UK presidency did not give serious consideration to the Commission's proposal on the implementation of subsidiarity. The Italian and Belgian delegations sharing concerns of the Commission pressed the UK presidency to clarify that the subsidiarity examination should not be separated from that of the proposals' contents.³²

A significant number of the UK proposals were modified in the run-up to the European Council in Edinburgh, whilst the presidency managed to preserve some original proposals on the grounds that Denmark needed them.

The Summit on 11-12 December 1992 finally hammered out a formula,³³ accommodating the various views of member states. Following the conclusions of the previous Lisbon Summit, the Edinburgh Summit required the Commission to attach a memo and explanatory notes to each proposal to justify the proposal in the light of the principle of subsidiarity. It also decided that the Commission

³¹ "Draft Report by the UK presidency on the implementation of subsidiarity," 16.10.1992.

³² For this paragraph, the author draws on interviews and Endo (1994): chap. III-7.

³³ See 'Overall Approach to the Application by the Council of the Subsidiarity Principle and Article 3b of the Treaty of European Union,' in Annex I to Part A of the "European Council of Edinburgh – 11-12 December 1992 – Presidency Conclusions," *Agence Europe*, No. 5878 bis, 13-14.12.1992.

should make a wider and more systematic use of the "green papers" before proposing legislation, in order to take into account the opinions of the member states, including the subsidiarity aspects of each proposal. The Summit also obliged the Commission to submit an annual report on the implementation of subsidiarity.

The criteria with which to judge the necessity of Community action could be regarded as more restrictive in the presidency conclusions than in the Commission's communication. They included, for instance, "the objectives of the proposed action cannot be sufficiently achieved by Member States' action and they can therefore be better achieved by action on the part of the Community."³⁴ This was further specified by three considerations:

- 1) the issue under consideration need to have 'transnational' aspects; and/or
- 2) actions by the Member States alone or lack of Community action would conflict with the requirements of the Treaty; and/or
- 3) there should exist clear benefits by reason of scale or effects.³⁵

However, a closer examination of the presidency conclusions would also tell us that they echoed in many ways the Commission's communication. Most importantly, the heads of government repeatedly referred to the importance of not upsetting the institutional balance in the Community. The Commission's right of initiative was kept intact. The European Council adopted the Commission's position that the question of who would judge the necessity of Community action in shared competences was primarily of a political, not judicial, nature. Thus at least primarily, the legislative or executive bodies would have to decide. *Following this logic as well as being in line with the Commission's proposal, the inter-institutional conference on the implementation of subsidiarity would discuss the need or intensity of a Community measure, in the case of a conflict arising. Lastly, the presidency conclusions did not exclude the possibility of judicial review by the Court of Justice, as the final arbitrator, as was advocated in the Commission's communication.*

The Commission, at the same time, announced it would withdraw three directives on the grounds that they were contrary to the principle of subsidiarity. It also promised to review some existing legislation in the light of

³⁴ Ibid., p. 2.

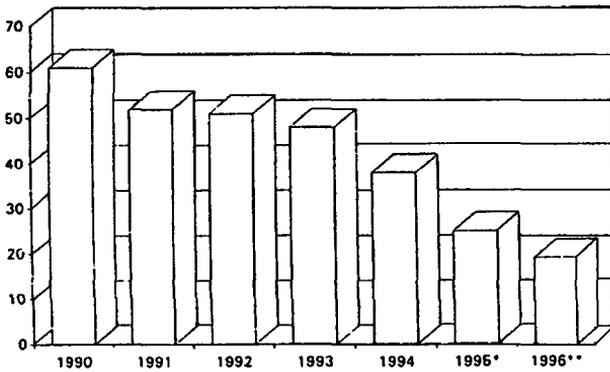
³⁵ Ibid.

subsidiarity.³⁶ This would be an issue in the following year. Yet, the Commission retained the single, most important power resource: the formal right of legislative initiation.³⁷

§6. More Retreat Than Defeat

Delors asked the fellow Commissioners to continue to take a low-key approach at the beginning of 1993, as a few important countries had yet to ratify the Maastricht Treaty (see in this regard Chapter Eleven). The quantity of legislative proposals in 1992 had reduced sharply (less than half) from the peak of 1990, and would further decrease in 1993.³⁸

Table 1: Number of proposals for new legislation referred to in the annual work programmes and adopted by the Commission since 1990



1990: 61; 1991: 52; 1993: 48; 1995: 25*; 1996: 19**

* situation as at 10.11.1995

** forecast (COM(95)512)

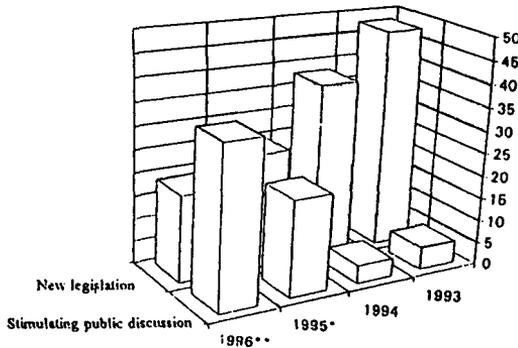
Source: Commission of the European Communities, "Better law-making: Commission Report to the European Council on the application of the subsidiarity and proportionality principles, on simplification and on consolidation," CSE(95)580, p.4.

³⁶ Ibid.

³⁷ The Edinburgh formula later became the basis of, and is almost identical to, a new Protocol annexed to the Treaty of Amsterdam, agreed in June 1997 and signed in October 1997.

³⁸ Commission of the European Communities, "Report to the European Council on the Application of the Principle of Subsidiarity," COM (94) 533 final, 25.11.1994, p. 4.

Table 2: Proposals for new legislation and initiatives for stimulating debate referred to in the annual work programmes and adopted by the Commission since 1993



* situation as at 10.11.1995

** forecast (COM(95)512)

Source: same as Table 1, p. 7.

In March 1993, Delors – in cooperation with Secretary General David Williamson – undertook a further action to implement the principle of subsidiarity. An internal note, circulated by Williamson, requested Commissioners and DGs to answer the following seven questions to justify each proposal in the light of subsidiarity:

- a) What are the aims of the proposed action in terms of the Community's obligations?
- b) Does the proposed measure fall within the Community's exclusive competence or is competence shared with the member states?
- c) What is the Community dimension of the problem?
- d) What is the most effective solution, given the means available to the Community and to the member states?
- e) What is the specific added value of the proposed Community action and the cost of failing to act?
- f) What means of action are available to the Community?
- g) Are uniform rules necessary, or would it be sufficient to adopt a directive laying down general objectives and leaving implementation to the member states?

The questions c) d) e) are related to the narrower sense of subsidiarity by asking the need for action by the Community, whilst f) g) on the principle of proportionality, inquiring about the intensity of action. Some proposals soon started to follow the request.³⁹

As the June Copenhagen Summit referred to subsidiarity only by expressing satisfaction with the progress in its implementation,⁴⁰ the discussion of the principle appeared on the wane. However, hard bargaining was under way between the Commission and some member states. Soon after the European Council, the French and British governments presented a joint paper for implementing subsidiarity (the so-called 'hit-list'), which listed 22 pieces of legislation which should be withdrawn or modified in accordance with subsidiarity.⁴¹ The UK government had originally planned to put forward 71.⁴² The German government, too, produced documents of a similar kind to the Anglo-French paper both in July and November 1993.

The Commission agreed in its communication to the European Council that it would review or withdraw 16 out of 22 proposals in the Anglo-French initiative.⁴³ Nevertheless, many of the proposals that Commission endorsed to review were in fact for simplification and recasting rather than scrapping.⁴⁴ The Brussels European Council in December 1993 effectively put an end to the discussion on subsidiarity by basically approving the Commission's presentation. It "took note of the Commission report," and expressed "satisfaction that the Commission was withdrawing a number of proposals and suggesting the repeal of certain existing legislative acts and simplification or recasting of others."⁴⁵ Delors, who shifted the discussion on subsidiarity from 1992 by stressing its negative aspect, emerged from an increasingly

³⁹ For example, see commissioner Abel Matutes' proposition on "Transports maritimes – Inspection et viste des natives," COM (93) 218, 12.5.1993.

⁴⁰ See for details Endo (1994): 570ff.

⁴¹ Interviews.

⁴² David Gardner, "Commission adopts a humble prodile," *Financial Times*, 21-21.6.1992, p. 2

⁴³ "Commission Report to the European Council on the Adaptation of Community Legislation to the Subsidiarity Principle," COM (93) 545 final, 24.11.1992.

⁴⁴ David Gardner, "More retreat than defeat on Euro-laws," *Financial Times*, 13.12.1993, p. 2.

⁴⁵ "European Council Brussels 10 and 11 December 1993: Presidency Conclusions," *Agence Europe*, 12.12.1993, p. 11.

unfavourable situation. The exercise after all ended up with “more retreat than defeat”⁴⁶ on the Commission’s prerogatives, although one cannot easily take one’s eyes off developments in a sphere where uncertainty still remains.⁴⁷

§7. Findings and Analysis

Delors was facing a mounting crisis, for which he was at least partially responsible. The member states’ governments had just completed a year-long hard bargaining over the Maastricht Treaty, leaving many of them wary of fresh integrative projects. Some of these governments clearly had problems in ratifying the Treaty, where they tended to emphasise its minimum implications for national sovereignty.⁴⁸ Just at that time, Delors moved to push for deepening integration on many fronts. Some of his initiatives such as the increase of the Community budget were a corollary of the prior agreements of the heads of government yet still provoked heated debates over the ever demanding European Commission. Moreover, other initiatives, such as the strengthening of the supranational executive, were certainly not what the heads of government asked at that time. These moves did not help countries like Denmark to ratify the Treaty.

Nevertheless, soon after the 1992 Danish referendum, Delors retreated from many of his expansive programmes, in particular from those having direct implications on national sovereignty. He went even further when he promised to return some competences to national authorities, notably in the fields of internal market and environment. In doing so, he attempted to avert criticism against the Commission from national capitals, although at the same time he attracted criticism from European federalists – including those within the Commission – on the grounds that he would undermine the hard-won ‘acquis communautaire’.

This retreat was performed under the banner of the principle of subsidiarity. The use of subsidiarity meant two things. One is that he allowed

⁴⁶ Gardner, *Financial Times*, op. cit., 13.12.1993.

⁴⁷ Delors, for instance, attacked the German government in 1994 for its plan to limit the EU law-making functions. See Lionel Barber, “Delors denounces Bonn plan to curb EU law-making,” *Financial Times*, 17.5.1991, p. 1. The German and British economic and finance ministers are leading a campaign to enhance Europe’s competitiveness by cutting red tapes under the name of subsidiarity.

⁴⁸ For the case of Denmark, see Worre (1995): 235-257.

governments in difficulty to interpret rather freely what the principle meant, thus helping smooth ratification of the treaty. The other however is that Delors left scope for Community action that could be justified as necessary and legitimate. By exploiting the ample room for interpretation, Delors thus laid down a barrage with the chameleon principle.

In due course, the Commission under his direct supervision produced a paper which laid the foundation of the Edinburgh formula to implement the principle. Eventually, the Commission amended 16 pieces of legislation. However, closer investigation shows that it ceded little in terms of its essential prerogatives. Delors thus came out of the difficult situation with the Commission's prerogatives almost intact.

If Delors had stuck to his original expansive programme, and if he had not led the reluctant College and Commission to adopt a low-key style, he would have risked the creation of long-lasting constraints upon him and the Commission. If he had persisted with the agenda of institutional reforms required from the prospect of enlargement, he might well have become a Hallstein figure, clashing with the core member states so directly as to possibly lose the Commission's prerogatives, let alone his long-term influence.⁴⁹ The retreat, therefore, helped him to retain his leadership potential.

It should be added that Delors, with the use of subsidiarity, not only preserved the essential power of the Commission but also declared that the Commission should concentrate only upon things deemed necessary and useful. In this context, Delors paved the way for the forthcoming initiative, focusing upon a common problem to which the Commission was likelier to make useful inputs: i.e. unemployment. This initiative, realised later in the form of the 1993 White Paper on growth, competitiveness and employment, merits another detailed study.⁵⁰

⁴⁹ On the 1965-66 crisis for at least part of which Hallstein's ever expansive leadership was responsible, see Newhouse (1968).

⁵⁰ See Endo (1998 forthcoming): chap. 9.

Bibliography

(Only books and articles cited as above)

- Cloos, J., Reinesch, G., Vignes, D., & Weyland, J. (1993). *Le Traité de Maastricht: Genèse, analyse, commentaires*. Bruxelles: Bruylant.
- Delors, J. (1991). The Principle of Subsidiarity: Contribution to the Debate. In Delors et al. *Subsidiarity: The Challenge of Change*. Maastricht: European Institute of Public Administration. (pp. 7-18).
- Endo, K. (1994). The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors. *Hokkaido Law Review*, XLIV (6), 553-652.
- Endo, K. (1995). La Presidenza della Commissione Europea. Vincoli e Risorse. *Rivista Italiana di Scienza Politica*, XXV (3), 441-486.
- Endo, K. (1998, in print). *The Presidency of the European Commission under Jacques Delors: The Politics of Shared Leadership*. Basingstoke: Macmillan.
- Millon-Delsol, C. (1992). *L'État subsidiaire. Ingérence et non-ingérence de l'État: le principe de subsidiarité aux fondements de l'histoire européenne*. Paris: Presses Universitaires de France.
- Newhouse, J. (1968). *Collision in Brussels*. London: Faber and Faber.
- Nugent, N. (1995). The Leadership Capacity of the European Commission. *Journal of European Public Policy*, 2(4), 603-623.
- Ross, G. (1995). *Jacques Delors and European Integration*. Cambridge: Polity Press.
- Wallace, H. (1994). The Council and the Commission on the Brink of Maastricht. *The Annals*, 531, 56-68.
- Wilke, M., & Wallace, H. (1990). *Subsidiarity: Approaches to Power-sharing in the European Community*. London: Royal Institute of International Affairs.
- Worre, T. (1995). First No, Then Yes: The Danish Referendum on the Maastricht Treaty 1992 and 1993. *Journal of Common Market Studies*, 33 (2), 235-257.

Quelques Commentaires sur le Colloque “Une Étude comparative sur la Décentralisation – les cas du Japon et de la France”

Ken ENDO*

Je vous remercie de me donner l'opportunité de faire quelques remarques sur la décentralisation, même si je suis politologue, et donc mauvais expert juridique sur le sujet.

Permettez-moi de remercier également MM. les profs. Debouy, Okada et Tajima, grâce à qui j'ai beaucoup appris sur les aspects juridiques de cette question, notamment à propos des mouvements de déconcentration mais aussi sur les mouvements d'opposition contre la décentralisation de ces dernières années.

I. Le problème de l'approche du sujet

Je voudrais faire trois remarques, plutôt polémiques: tout d'abord à propos de la méthode choisie pour analyser le sujet de la décentralisation; ensuite sur les conséquences de la construction européenne; et enfin, sur le problème de la corruption.

1) Une approche vraiment comparative ?

Il a été dit que ce colloque se situe avant tout dans une perspective comparative. Nous avons certes beaucoup appris sur les cas de la France et du Japon. Cependant, j'ai le sentiment que les interventions d'aujourd'hui ont été faites séparément, au détriment d'une approche plus globale qui aurait permis une meilleure comparaison entre ces deux pays (même s'il y avait quelques

*Maître de conférence à la Faculté de Droit de l'Université de Hokkaido

'cross-references').

2) *la nécessité de l'approche globale*

Des tentatives ont été déjà faites par différents experts, comme par exemple Rod Rhodes, professeur anglais spécialisé dans le domaine de la décentralisation. Ce dernier a proposé d'étudier cinq 'ressources' déterminantes des collectivités locales qui permettent de mieux comprendre leur influence sur l'État central:

- (a) les aspects constitutionnel-juridique,
- (b) les finances,
- (c) les acteurs / institutions,
- (d) l'information (et l'expérience)
- (e) la légitimité démocratique.¹

Je n'ai pas le temps de développer en détail chacune des ces ressources. Cependant il faut préciser que cette approche plus globale, dépassant le seul cadre juridico-constitutionnel, nous permettrait peut-être de faire des conclusions différentes.

Une étude plus approfondie des 'ressources' des collectivités locales, notamment de leurs 'ressources' institutionnelles et de leur expérience, permettrait de mieux comprendre la relation d'interdépendance entre l'État central et les collectivités locales.

Par exemple, laissez-moi considérer la question du 'cumul des mandats'- sujet déjà signalé par M. le prof. Okada. Le 'cumul des mandats' n'est-il pas le symbole de l'interdépendance État-collectivités locales? Cette pratique offre aux localités en France l'occasion d'exercer une influence sur l'État central, et donc, par conséquent constitue une ressource institutionnelle. Cela est d'autant plus vrai quand on prend l'exemple des maires de grandes communes qui exercent de hautes fonctions gouvernementales. On peut ajouter que cette interdépendance existe aussi dans le sens où l'État, pour administrer plus efficacement, doit se fier à l'analyse et l'expertise que font les collectivités locales de leur propre

¹ Pour le détail, voir R. A. W. Rhodes, *Control and Power in Central-Local Government Relations* (Farnborough, Hants: Gower, 1981), p.99 et suivantes.

situation politique, économique et sociale.

Bien évidemment, la France reste un État centralisé. En outre, le principe d'une République indivisible a été trop souligné, et en même temps, le 'succès' de la décentralisation a peut-être été un peu trop exagéré et médiatisé, comme quelques experts, par exemple Yves Mény, l'ont remarqué. En fait, le processus de la décentralisation a été commencé progressivement avant 1982, et les réformes du gouvernement socialiste ont largement consolidé les pratiques existantes, même s'il y avait quelques exceptions (notamment la réforme du statut des préfets). (En fait, les réformes de 1982 ont été en partie réalisées par la gauche pour renforcer son assise locale.)²

II. L'influence de l'Union européenne

1) l'existence d'une autorité supérieure comme une des différences principales entre le Japon et la France

S'il y a quelque chose qui distingue bien le cas de la France de celui du Japon, c'est l'existence d'une autorité supérieure, c'est-à-dire, celle de l'Union européenne, en France. Je crois que cet aspect mérite quelques remarques.

2) une source de finances

A la différence de la situation japonaise, les collectivités locales françaises bénéficient d'autres sources de finances que celles de l'État, même si le montant des sommes accordées reste très relatif.

3) l'interaction entre les acteurs européens et locaux

Dans le processus de la distribution des finances et de la formation des projets (de développement, socio-économique, etc.), les collectivités locales en France sont devenues des partenaires des institutions européennes, avec notamment la Commission européenne. Ce partenariat s'est établi

² Yves Mény, "Decentralisation in Socialist France: The Politics of Pragmatism." *West European Politics*, Vol.7, No.1 (1984), pp. 65-79.

progressivement (surtout) dans le cadre de programmes comme l'Integrated Mediterranean Programme et grâce aux fonds structurels de l'Union européenne.

Il est évident qu'au Japon, un tel partenariat n'existe pas, et la prise en compte de cette différence mérite d'être soulignée pour une meilleure comparaison.

III. La Corruption

La dernière remarque doit plutôt être prise comme une interrogation. Je me souviens des débats français sur l'effet de la décentralisation sur l'évolution de la corruption. En effet, la multiplication des centres de décision autonomes et la personnalisation des exécutifs des collectivités locales ont favorisé la corruption.³

Etant donné la situation actuelle au Japon et la fréquence relative des affaires de corruption, on peut légitimement se poser la question sur les conséquences d'un transfert massif des compétences et des ressources aux collectivités locales.

Par ces quelques réflexions, et par ma démarche volontairement polémique, j'espère avoir ouvert le débat et suscité des questions sur notre sujet. Merci.

³ Voir, par exemple, Yves Mény, "France: the end of the Republican ethic?" dans Donatella Della Porta et Yves Mény eds., *Democracy and Corruption in Europe* (London: Pinter, 1997), pp. 15-16.