Value Roots for Multi-level Governance and Intercultural Dialogue

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1. Local Governments in the Front Line of Human Rights

Manyfold globalisation processes going on across the planet are affecting all levels of governance, including local governments (communes, provinces, regions, lander) as providers of basic social services.

World complex interdependence is the human condition of present time. By saying «complex» we mean that not only states, but also social, economic, cultural, political realities inside states are immediately sensible and vulnerable each other. Needles to point out that the extent of vulnerability varies in the different contexts and that even the richest countries have become not self-sufficient.

Current governance crisis is a structural one, because it affects not only government capacities – in this case it would be a conjunctural crisis –, but also, and in depth, the very «form» of statehood as it has been shaped and realised in the last centuries: the state as a national-sovereign-armed-border legal entity.

Statehood crisis is accompanied by the crisis of democracy which is mainly due to the fact that crucial issues relating to the representative and participatory articulations of democratic practice continue to be addressed only with reference and within the «space» of nation-state. This happens notwithstanding of a political and economic reality in which huge and heavy decisions are taken outside and beyond that suffocating space.

World multilateralism and regional integration processes and institutions continue to be heavily conditioned by what I would call the barbarian syndrome of the easy war[1] in spite of a worldwide civil society claiming for their strengthening. In this schizophrenic moment of history, a few powerful leaderships, also in response to terrorist behaviours and economic failures,

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[1] A. Papisca, *Article 51 of the United Nations Charter: Exception or General Rule? The Nightmare of the Easy War*, in «Pace diritti umani/Peace human rights», no. 1, 2005, pp. 13-28.

are attempting to drive back to the Westphalian era the «new» international law that has been developing since the United Nations Charter (1945) on the assumption that the «recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world» (Universal Declaration of Human Rights, 1948). In short, it is under way the attempt to push back history and to rescue that baleful right to make war (*ius ad bellum*) that has been *de iure* deleted, once for all, by the UN Charter.

A Latin saying could suitably describe the situation: «*Quod Barbari non fecerunt, Barberini fecerunt*» («What Barbarians did not make, Barberini did make»), even by destroying portions of the Coliseum and other ancient monuments to build up their sumptuous Palazzi in Rome and around Rome.

In the presence of a situation that makes very difficult to achieve goals of satisfactory social, economic and territorial cohesion, appropriate instruments and forms of governance are needed in a «glocal» space where internal living realities, that is families, groups, labour, associations, firms, should be allowed, through their municipal and regional authorities, to have voice and play active roles along a *continuum* of processes that cross states boundaries and involve multilateral institutions.

Needless to remind that local governments are the venue of vital administrative and social services, incorporating economics, educational and landscape infrastructures as well as artistic and cultural heritage. In accordance with the Universal Declaration of Human Rights and the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UNGA Res. 53/144 of 9 December 1998), widley known as the *Magna Charta* of human rights defenders, local governments as «organs of society» share with states the «responsibility to protect» all those who live in their territories. Committed to defend life and pursue well being for all, local governments are entitled to claim active participation in the construction of a peaceful world order following Article 28 of the Universal Declaration: «Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can fully be realised».

The meaning of peace for local polities cannot but be multi-dimensional and comprehensive, that is including both social peace and international peace. Hence local governments can rightly claim to be formally recognised as fundamental human security and human development public stakeholders, then as institutions that directly contribute to the construction of positive peace.

To carry out tasks of comprehensive institutional peace-building from below up to the United Nations system, local authorities should be aware of the strength of «soft power» and of the skills that are required to use it in the most effective way. A strong resource of soft power for local governments is their commitment to build up «inclusive cities», that is to provide all those living in the local community equal opportunities for the enjoyment of all human rights (civil, political, economic, social, cultural) and political participation.

The very fact of taking over this global responsibility fits well in the inner nature of the local territorial polity as being genuine «territory», not artificial «border».

The current official doctrine on the «responsibility to protect» emphasises the international-interventionist role of states saying that they are in the front line of security and the United Nations in the second. It calls upon states and the international community to intervene in internal affairs even by using force though only as last resort and in strict compliance with principles and objectives of the UN Charter. Also to avoid abuses of such sound principle and bearing in mind that human rights protection and violation are «local» events – they took place in the street, in the village, in the cities, where daily life is going on –, it should be stressed that the matrix of the responsibility to protect lies with both the multidimensional concept of human security and the principle of local self-government more than with state sovereignty as emphasised by the official doctrine *in re*[2].

At the same time the international recognition of fundamental rights is disengaging territory from the border-sovereignty of states. This revolutionary process is taking place in parallel with the de-territorialisation of politics as a consequence of the above mentioned world processes of structural change. Local governments should take advantage from this dynamics in order to give visibility, as already pointed out, to their being

[2] International Commission on Intervention and State Sovereignty - ICISS, *The Responsibility to Protect*, Ottawa, 2001; UN General Assembly, Report of the Secretary General, *In a Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2005, 21 March 2005.

human territory, not marked by arms or borders.
Being in the front line of human rights, local government institutions are forced to deal directly with problems (for instance, migration flows), that belong to the political agenda of world order. At the same time they provide substantial effectiveness to the international law of human rights: we could rightly say, justiciability on the spot. Hence, as the primary (territorial) pole of subsidiarity, they benefit from a full legitimacy to participate in the functioning of a system of global governance which, to be good and capable, cannot but be multi-level, supra-national whenever possible, and democratic.

2. Thinking «Federalist» Without Saying It. MLG from Arithmetic Calculus to Moral Foundation

Multi-level governance (MLG), has become a popular topic in the academic establishment as well as in the political business.
In a view to be further developed in the EU institutional framework, MLG philosophy cannot but be considered an *aggiornamento* of the classical doctrine of federalism, for we enter the constitutional domain. Nowadays this is not a popular discourse in the EU high spheres and in the cabinets of some member states. As a matter of fact we do not dare even to say the word «federal»: needless to remind what happened for the «constitutional treaty» or the non «literal» inclusion of the articulated content of the EU Charter of Fundamental Rights in the Lisbon Treaty.
Newertheless a consolidate ground does exist to overcome this kind of humiliating determinism.
The European Union is already a system of multi-level governance with a supranational *noyeau dur* in a continuous evolution, hence a very interesting laboratory that benefits from the rich *acquis* provided by a *ius commune*, by an institutional achitecture that combines, in an original and evolutionary way, the twofold dimension of inter-governmentalism and supranationalism, by a large and varied range of democratic access channels in the decision-making processes, by the EU citizenship, by the practice of social dialogue and civil dialogue, by the increasingly political

relevance of the role of regional and local authorities: finally, an *acquis* that already benefits of appropriate methods and concrete means of government and makes realistic to enquiry on how to further improve both quality and efficiency of the system.

Taking into due consideration this wealth, the question to answer, as already advanced, is not «why» MLG, but «what» MLG for the EU. The «what» means «good», that is a MLG based on the strong paradigm of universal values and principles seth forth in the Lisbon Treaty and in the EU Charter of Fundamental Rights.

We should be aware of the perpetual challenge of «Europe leading by example», leading also in imagining new architectural schemes, indeed a virtuous conviction to a continuous addressing the challenge for «unity in diversity».

Looking ahead, we should further be aware that without a link to a specific moral-legal paradigm, MLG risks to be used as a neutral *passe-partout* or as a formula for only arithmetic distribution of competences, functions and powers between different tiers of government, often emphasising governmental institutions (the territorial pole of subsidiarity, vertical subsidiarity) whilst neglecting civil society organisations (the functional pole of subsidiarity, horizontal subsidiarity). Good (democratic) MLG is intended to balance the two dimensions allowing city society organisations, local communities and the private sector to have voice in the policying process at different levels.

MLG benefits of a lot of definitions, which are more or less similar in focussing both architectural and processual aspects. A significant example provided by Léonce Bekemans reads as follows: «If we focus on the general policy characteristics of multi-level governance, the changing relationships between actors situated at different territorial levels, but from the public and the private sectors, are put at the centre of the analysis. This implies frequent and complex interactions between government actors and the increasingly important dimension of non-state actors. In particular, multi-level governance crosses the traditionally separate domains of domestic and international politics: it highlights the increasingly fading distinction between these domains in the context of European integration and supranational, national, regional and local

governments are interrelated in territorially overarching networks»[3].

This definition summarises the overall blueprint referring to dynamics, actors, and space of MLG, briefly it describes the «why» and the «how».

It is still open the question «for what», I mean what marks MLG as a «good governance».

The Committee of the Regions' *White Paper on Multi-level Governance*[4] provides a convincing qualitative definition: «The CoR considers multi-level governance to mean coordinated action by he European Union, the member states and local and regional authorities, based on partnership and aimed at drawing up and implementing EU policies. It leads to responsibility being shared between the different tiers of government concerned and is underpinned by all sources of democratic legitimacy and the representative nature of the different players involved. By means of an integrated approach, it entails the joint participation of the different tiers of government in the formulation of Community policies and legislation, with the aid of various mechanisms (consultation, territorial impact analyses, etc.)».

The CoR further points out that «MLG dynamic process with a horizontal and vertical dimension does not in any way dilute political responsibility. On the contrary, if the mechanisms and instruments are appropriate and applied correctly, it helps to increase joint ownership and implementation. Consequently, MLG represents a political "action blueprint" rather than a legal instrument and cannot be understood solely through the lens of the division of powers [...]». The CoR White Paper emphasises the indissociability of subsidiarity and MLG: «[...] one indicates the responsibility of the different tiers of government, whilst the other emphasises their interaction».

My first comment is that MLG, being a «political action blueprint» cannot but be marked by a permanent teleological tension: in other words MLG is a goals-oriented domain which entails value choices, then moral foundation.

Subsidiarity is a key principle of good governance: economic, social, cultural, civil, political. Before being a political and legal principle, subsidiarity is a moral value because it refers directly to the human person's basic needs-inherent rights, that is to the life of the original and central subject of whatever system of

3 L. Bekemans, *Multi-level Governance and the EU in a Global Context: Some Introductory Reflections*, Brussels, Ateliers for the Committee of the Regions, October 2008, pp. 2-3.

4 Committee of the Regions, *White Paper on Multi-level Governance*, Brussels, June 2009, doc. CoR 89/2009.

governance. This is clearly stated by the Universal Declaration of Human Rights which proclaims that «recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world».

The encyclical *Caritas in Veritate* of Benedict XVI provides interesting moral, even anthropological arguments for the genuine foundation of the principle of subsidiarity. This is «an expression of inalienable human freedom [...] first and foremost a form of assistance to the human person via the autonomy of intermediate bodies [...] it fosters freedom and participation through assumption of responsibility». The principle «must remain closely linked to the principle of solidarity» for it «respects personal dignity by recognising in the person a subject who is always capable of giving something to others». Furthermore, subsidiarity «is able to take account both of the manifold articulation of plans – and therefore of the plurality of subjects – as well as of the coordination of those plans». Hence it is «particularly well-suited to managing globalisation and directing it towards authentic human development». A severe warning: «In order not to produce a dangerous universal power of a tyrannical nature, the governance of globalisation must be marked by subsidiarity, articulated into several layers and involving different levels that can work together. Globalisation certainly requires authority, insofar as it poses the problem of a global common good that needs to be pursued. This authority, however, must be organised in a subsidiary and stratified way, if it is not to infringe upon freedom and if it is to yeld effective results in practice».

We should be aware that if these ontologic and moral roots are not clearly specified, subsidiarity risks to share with MLG the same destiny of neutral *passe-partout*.

3. The Benchmarks

The benchmarks of (good) multi-level governance are human rights, democracy, the rule of law and subsidiarity, interconnected and mutually reinforcing.

As reminded above, the world legal field has undergone a

genetic mutation, from state-centric to human-centric. It is well known that this process is the outcome of a long historic movement marked by peoples suffering and reacting, intellectual endeavour, mass mobilisations, and political commitment that has brought democratic processes inside individual states. With the UN Charter and the Universal Declaration of Human Rights the «constitutional» rationale of the national legal systems has been extended to the world level, overreaching the legal-territorial border of state sovereignty. The human being (*la personne humaine*) has been recognised as subject, not as mere object, of international law.

The «new» international (pan-human) law that is developing since 1945-1948 as a coherent *corpus* of norms and provisions, complementing and updating the first part of the UN Charter, includes principles such as the universality of human rights, their interdependence and indivisibility, the proscription of war, the prohibition of the use of force for the settlement of international disputes, the universality of criminal justice, personal responsibility for war crimes, crimes against humanity and genocide.

It should be pointed out that the Universal Declaration of Human Rights enshrines principles of *ius cogens*, owing the highest degree of legal obligations *erga omnes*. In order to identify who are the *omnes* – the «all» legally equal – the very Universal Declaration provides the response while proclaiming itself «as a common standard of achievement for all peoples and all nations, to the end that *every individual* and *every organ of society*, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance [...]». The explicit reference is to a plurality of subjects. The same plurality is relevant also for the prohibition set forth in Article 30: «Nothing in this Declaration may be interpreted as implying for any *state, group or person* any rights to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein» (italics added).

The inclusive logic of the Universal Declaration is further elucidated by the UN Declaration of 9 December 1998, mentioned above. Also this important instrument refers

directly to individuals and «organs of society» stating that they have «the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms *at the national and international levels*» (Article 1, italics added). It should be recalled what we have already emphasised, that is that local governments are (public) «organs» of the society, not of the state, and this is perfectly consistent with the rationale of local autonomy (self-government). Moreover Article 7 of this modern *Magna Charta* proclaims that «eveyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance». The implicit metaphor is that of a large human rights «laboratory» in which individuals, groups and organs of society, in their capacity of human rights defenders, are formally entitled to imagine and disseminate new ideas, models and strategies for good governance. Local governments, the NGO «United Cities and Local Governments», the many transnational networks of local governments, the EU Committee of the Regions through its «Forward Studies Unit» and «Ateliers», as relevant actors in the global human rights yard, can actually appeal also to Article 7 quoted above in order to feel more free and courageous in shaping the architecture of multi-level governance inside and outside the EU system.

In this context it should be stressed that for the effective protection of human rights, the judiciary (courts, tribunals, sentences) is absolutely necessary, but to fully satisfy all vital needs aknowledged as «fundamental rights» and to meet the crucial challenge of social cohesion, public policies and positive actions are necessary as well. Key-principle is the inter-dependence and indivisibility of all human rights – economic, social, cultural, civil, political rights –, a principle which is consistent with the ontologic truth of the integrity of the human being: body and soul, spirit and flesh.

Article 25 of the Universal Declaration is explicit to this regard. It provides a manifesto of welfare for social cohesion, hence for good governance: «Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to

security in the event of unemployment, sickness, disability, widowshood, old age or other lack of livelihood in circumstances beyond his control». Compliance with this norm has the character of legal obligation, not only of moral duty or optional political choice, then implying the government of economy accordingly to the principles of social justice (distributive and redistributive). Article 25 should be read in connection with Article 28 which refers to «*social and international order*» as a fundamental rights. The meaning of these two norms is that rule of law and welfare as well as internal peace and international peace are the faces of the same coin and that social and territorial cohesion inside states is a fundamental part of the peaceful world order envisaged by the Universal Declaration.

«Human rights mainstreaming» has become a universal password to assess the formal and substantive quality of institutions, political strategies, educational projects, peace operations, development cooperation, humanitarian field missions.

In the EU system, besides specific references to fundamental rights in the Lisbon Treaty and in the EU Charter of Fundamental Rights, human rights mainstreaming is significantly advocated in documents such as the EU Guidelines on Human Rights (children, torture, death penalty, humanitarian law, human rights defenders), the EU annual Report on Human Rights issued by the EU Presidency in cooperation with the European Commission, the 2008 Report of the Council entitled *Mainstreaming Human Rights and Gender into European Security and Defence Policy*.

It should be reminded that human rights issues were addressed in the European system long before the 1990s, thanks to the enlightened case law of the Court of Justice of the European Communities and to the passionate advocacy of the European Parliament. Furthermore, we should not forget that human rights were included in the first draft of the European Constitution (Altiero Spinelli draft), endorsed in 1984 by the European Parliament, but not by the Council.

Since 1999, the human rights reports of the European Parliament have been accompanied by the annual EU Report, above mentioned. In the field of external relations, human rights, linked with education and civil society structures, have

high visibility in the framework of development cooperation with the ACP countries (Lomé and now Cotonou system). Since the early 1990s, a human rights clause has been included in treaties with third states establishing that implementation can be suspended if the concerned state does not comply with human rights and democratic principles.

The important role of the EU institutions in fostering the establishment and the functioning of the International Criminal Court should also be emphasised. The European Union is endowing itself with specialised machinery to deal with human rights. The European Parliament has the Committee on Civil Liberties, Justice and Home Affairs, the Committee on Petitions, the Subcommittee on Human Rights, the Committee on Foreign Affairs, and the Human Rights Unit at the Secretariat General.

The Council has a specialised standing human rights working group (COHOM). The High Representative of the EU for Foreign Affairs and Security Policy deals with human rights in external relations. Within the Commission, a Commissioner has a specific human rights portfolio, and the Directorate General for External Relations has a Directorate for multilateral relations and human rights and a Unit for human rights and democratisation. A European Agency for Fundamental Rights is functioning in Vienna. And of course, since the Maastricht Treaty there is the European *Médiateur* who, since its establishment, is carrying out its functions following an approach that is explicitly human rights-oriented. More recently, the consolidated practice of «social dialogue» has been complemented by the so-called «civil dialogue», with the aim of involving civil society organisations (OSC) in EU policymaking in a greater and more substantive way. In this context, a specialised «human rights network» is developing[5].

4. It Is Time for a New, Plural Citizenship

In the multi-level governance scheme based on the human rights paradigm, the concept and the practice of citizenship cannot but be revised and reconstructed[6].

Nowadays, owing to the very paradigm of universally recognised human rights, we are in the middle of a process of

5 For an up-to-date survey on EU policying *in re*, W. Benedek, W. Karl, A. Mihr, M. Nowak (eds), *European Yearbook on Human Rights*, Antwerp-Graz-Vienna, Intersentia, 2010.

6 A. Papisca, *Citizenship and Citizenships ad omnes includendos: A Human Rights Approach*, in L. Bekemans, M. Karasinska-Fendler, M. Mascia, A. Papisca, C.A. Stephanou, P.G. Xuereb (eds), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and Their Partners*, Venezia, Marsilio Editori, 2007, pp. 457-480; Id., *European Citizenship, Migration and Intercultural Dialogue: The EU Leading by Example*, in European Commission (ed.), *A Europe of Achievements in a Changing World. Visions of Leading Policymakers and Academics*, Brussels, European Commission, 2009.

cross-fertilisation of cultures and political visions. In this «universal yard», a rich variety of actors are playing significant roles. It should be stressed that the topic of international legality based on human rights and multilateralism has become familiar to the transnational world of civil society; not only far denouncing, with increasing competence and full legitimacy, dictatorships, hegemonies, illegal use of force (for instance the so-called preventive war), economics without social justice, realpolitik behaviours, but also far conceiving and proposing suitable policies and institutions, positive measures, and good practices to achieve goals of global (good) governance.

The passionate and creative reality of civil society organisations and movements acting across and beyond state borders demonstrate that civic and political roles, as part of active citizenship, are no longer limited to the intra-state space, and that a suitable «geometry» for democracy is really extending and building up.

According to international law of human rights, citizenship should be defined as the legal status of the human being (*statut juridique de la personne humaine en tant que telle*) in the space that is proper of that law. This enlarged constitutional space coincides with the common vital space of «all members of the human family» (Universal Declaration). The legal status of the human being does not stem from the anagraphical power of the state, it is not *octroyé* but simply «recognised», because the holder is an «original» subject of law, not the «national» or the «subject» of whatever state. All human beings, being formally recognised as born with dignity and equal rights (Universal Declaration), are by nature citizens of the planet earth. The primary or universal citizenship is a common citizenship. Anagraphical, national or European citizenships are secondary or complementary citizenships, as such they should be consistent with the original (universal) legal status of the human being.

A metaphor could serve our didactic purpose: citizenship is like a tree, whose trunk and roots are the juridical status of the human being, that is the universal citizenship (*la citoyenneté de la personne*), and the branches are national and sub-national citizenships. Citizenship is a plural conceptual and legal category.

National citizenship is traditionally theorised and taught as a matter of collective identification ad intro around the symbols

of national history and national statehood, and of exclusion *ad extra*, with respect to what does not fit within the national borders. It should be remembered that the paradigmatic French Declaration of 1789 referred to *les droits de l'homme et du citoyen*, which gave way to interpreting fundamental rights as a privilege for those who already are registered citizens *of* a particular state. Its implicit rationale is *ad alios excludendos*, and as such is contradictory to the immanent universality of human rights.

As already pointed out, before the advent of the international human rights law, citizenship was essentially characterised as being national, unilateral, *octroyée* by the state, and based on the *ius sanguinis* (right of blood) or/and on the *ius soli* (right of land), in a perspective of distinction-discrimination, in short *ad alios excludendos*.

Today, in the globalised world, we have entered the phase of *plenitudo iuris*, whose principles postulate the *plenitudo civitatis*, the civilisation of full citizenship. Human dignity is the central value of *plenitudo iuris*, implying equal dignity of all members of the human family.

The «new» citizenship is modelled *on* such a statute that is therefore fundamentally universal, *ad omnes includendos*, and it is articulated in the plural, in the sense that the universal dimension does not cancel particular citizenships but rather opens towards the experience of a richer identity. The universal citizenship is not *octroyée* and particular citizenships (the branches of the tree) must be regulated according to the respect of universal citizenship (the trunk and roots of the tree).

This implies that the *ius humanae dignitatis* parameter should prevail over the traditional parameter of the *ius sanguinis*, making the *ius soli* complementary compared to the *ius humanae dignitatis*, and functional for the harmonious exercise of identities. Even for the identity of individuals with universal citizenship, the expression «united in diversity» applies: in this case, «unity» means the ontic identity of the «human being», which is enriched and develops in different cultural and institutional contexts. Universal citizenship sums up and harmonises anagraphical citizenship, and the inclusive city is a place that favours this process, thus plural citizenship and the inclusive city postulate each other.

In the inclusive city, particularly through intercultural

dialogue, evolutionary dynamics of identity develop in a direction of a «transcendental civic identity», a superior identity that is authentically secular because it is universalistic, trans- and meta-territorial, and trans-cultural. This new identity is the *plenitudo iuris* that is interiorised by individuals, an identity that is open to sharing responsibilities in the inclusive city, in the inclusive European Union, and in the inclusive United Nations.

New citizenship in tandem with the impact of the necessary intercultural dialogue aimed at democratic inclusion can revitalise the public sphere in a perspective of multi-level and supranational governance. Thus this kind of political architecture is congruous with the need to guarantee universal citizenship rights in the enlarged space that belongs to all. And it is In fact the «phenomenology in the plural» of citizenship – dialogue and inclusion – that obliges institutions to redefine themselves according to *telos*, and therefore to open up and develop multiple channels of representation and democratic participation.

«EU citizenship» was formally established by the Maastricht Treaty in 1992, exactly 40 years after the first European Community Treaty. By the subsequent Amsterdam Treaty in 1997, human rights were proclaimed as part of the founding principles of the European Union. Finally, on 10 December 2000, in Nice, the Presidents of the European Parliament, of the Council and of the European Commission, jointly proclaimed the EU Charter of Fundamental Rights, which was prepared by the *ad hoc* European Convention. The Charter, now recognised as legally binding by the EU Treaty (Lisbon Treaty), is at the same time an achievement, because it makes the matter more coherent and systematic, and a starting point for further developments towards the full «constitutionalisation» of the EU system; in particular providing a suitable ground for a more correct foundation for EU citizenship.

There are suitable grounds for revising the present «EU citizenship» for which (as it is explicitly stated in the Treaty establishing the European Community – consolidated version –, Part Two, Citizenship of the Union, Articles 17-22), belonging to an EU member state constitutes a prerequisite. This means that «nationality» still remains the primary requirement and the overall philosophy is still *ad alios excludendos*.

In the present EU legal system, provisions regarding citizenship give way to a paradox: the «tree of citizenship» is enriched without overcoming discrimination and contradictions.
The least we can say is that the EU Charter of Fundamental Rights legitimates wondering why EU citizenship is not based directly on human rights as is any national democratic citizenship. Such a logical, natural foundation, while in principle not incompatible with the parameter of complementarity of national and European citizenship, would allow the latter to become physiological and consistent with the international law of human rights and the principle of non-discrimination, a well-known principle of *ius cogens*, or customary law. Furthermore the principle of interdependence and indivisibility of all human rights should make sense also in the EU legal system. This implies that the special rights that mark EU citizenship (in particular, freedom of movement, eligibility at the municipal level, right of petition, and diplomatic protection abroad) cannot be separated from the comprehensive set of all other fundamental rights (civil, political, economic, social and cultural), that is, from their natural womb.
No doubt the specific rights of present «EU citizenship» are justifiable in a concrete way, but this argument should not give way to discrimination between those who are citizens of a EU member state and those who regularly live in the EU territorial space without that «privilege». I think that advocating a correct and consistent foundation of EU citizenship with reference to the universal paradigm of «all human rights for all» cannot but become an important part of the active implementation of the present (though limited, privileged) European citizenship, a cause deserving great commitment, especially in the field of immigration.

5. Intercultural Dialogue and «Transcend Civic Identity» in a Context of Human Security

The topic of intercultural dialogue, in its natural global and transnational context, is strictly linked with the topic of citizenship as it is with the democratic practice. Sharing the human rights paradigm as the same axio-legal roots, democracy (national and transnational), citizenship and intercultural

dialogue are interlinked. There is also an instrumental function of that paradigm as a code of communication symbols, as a transcultural tool that facilitates moving from the potentially conflicting condition of multiculturalism to the dialogic stage of interculturalism. But dialogue could still be limited to only an exchange of information, a reciprocal exchange of images and stereotypes. This is certainly a prerequisite but not enough to achieve the principal aim that is: the inclusion of all in the political community to benefit from equal fundamental rights. The right answer to the question «intercultural dialogue for what?» is: dialogue for working together, to imagine and put into practice common projects for achieving goals of common good[7].

To be fructuous, dialogue among individuals and groups with different cultures should occur among equals; if not, the case will be another kind of interaction, for instance the deliberate homologations from one side or another. Equality in our case is the ontic equality of human beings as assumed and explicitly highlighted by the law and the orthodox doctrine of human rights. The «equals» are the original holders of universal citizenship. The dialogue we are interested in is one that should be carried out in the context of daily life. If we start from the human rights paradigm, dialogue should be carried out more than on abstract principles – education should play a major role to help internalise values. Above all, it is on how principles are translated into behaviour and policies, and what should be done together, as equal beings, in the same polity. As mentioned above, dialogue should be goal-oriented more than comparison-oriented. The strategic common goal is building up and developing the inclusive city as the result of the contributions of many cultures. The fertiliser of this democratic inclusion-building is once again the human rights paradigm.

Once more, we emphasise that the culture and strategy of inclusion has a direct relationship with both internal peace (social cohesion) and international peace. As already emphasised, these are the two faces of the same coin: the inclusive city is the ground of a peaceful and a just world.

In the light of its citizens' «transcended civic identity», Europe is urged «to transcend» the negative part of its historical «western world» identity, that is of hegemonic power, of

7 A. Papisca, *Droits de la personne et démocratie. Les cultures à la source de l'universel*, in European Commission (ed.), *Intercultural dialogue/Dialogue interculturel*, Brussels, European Commission, 2003.

«conquest», colonialism, world wars. To «transcend» for Europe means to redefine itself on the basis of the positive part of its historical identity, reflecting on the meaning of a universal European polity that promotes itself before the world as an inclusive space within its borders and as an actor of inclusion on a world scale.

In particular Europe is challenged to overcome the «utilitarian» (and «securitised») approach to immigration.

In the current context of multi-ethnic and multicultural conflicts that need new forms of political organisation of the world, it should be stressed once more – *opportune et inopportune* I would say – that citizenship should be considered as an evolutionary concept, as is the case for security and development, I mean in a multidimensional vein. Analogies are clear and convincing. Until recently, security was meant as «state», «national» and «military» security, aimed at pursuing the national interest, nowadays we speak of human security as primarily «people» security, a multidimensional concept including social, economic, and environmental aspects, as well as reference to a collective and supranational machinery. In the years following World War II, development was addressed as an economic concept for purposes of quantitative growth; today we say «human development» relating to a rich basket of both quantitative and qualitative indicators, relying on the principle of the centrality of the human being as emphasised by the United Nations Declaration on the Right to Development of 1986.

A common EU policy on immigration, balancing both economic and demographic needs and human rights obligations, should be conceived accordingly, as pointed out before, with interconnection between human security and human development.

6. Extending the Arena of Democratic Practice

The human rights discourse on democracy is at the same time elementary and strongly demanding. It could be summarised as follows. The source of democracy is «the people». A people is sovereign *in toto* because each of its members, as human beings with inherent rights internationally recognised, is sovereign *pro quota*. Fundamental rights should be protected

and realised where people live: local governments are closer to the source of sovereignty than the state.
The judiciary belongs to the state, but social services are provided primarily by local governments, then the state is obliged to endorse policies which facilitate and complement the front line-huge tasks of local authorities.
The nation-sovereign state has proven not to be sufficient to protect and nurture the physiologic elements of democracy. Whilst nobody would deny that nation-states have been the fertile kindergarten of democracy, current empirical evidence demonstrate that they are not capable to address in a suitable and democratic way the impact of interdependence, globalisation and transnationalisation.
The traditional inter-state system has been an exclusive club of «rulers for rulers». Now it is citizens, especially through their transnational organisations and movements, who are legitimately claming substantial participative roles at all levels of governance.
This trasnational political demand entails that the practice of democracy, in its twofold articulation of representation and participation, should be extended and deepened: upward, in terms of international and cosmopolitan democracy, and downward for more direct democracy.
For both quality and effectiveness of governance, it is urgent to recuperate genuine democracy, that is «all democracy» – political, social and economic democracy – but to achieve this strategic goal it is necessary to extend democratic practice in a suitable space, from the local community up to the institutional sanctuaries of international politics and economics. «All democracy» also means local, national, and international democracy.
By extending democratic practice beyond its historical geographic borders, the «local territory» becomes a new frontier to be duly represented also at the macro-level of multilateral sanctuaries. In such enlarged «constitutional» space of multi-level governance, local governments share with states and multilateral institutions the responsibility to enhance the democratic practice.
Democratising international institutions and politics in the true sense of democracy – that is more direct legitimacy of the relevant multilateral bodies, including the United Nations, and

more effective political participation in their functioning – has become the new frontier for any significant humancentric and peaceful development of governance. «One country, one vote» is the procedural translation of the old principle of equal sovereignty of states, it is not democracy we are talking about.

Human rights paradigm for multi-level governance necessarily affects both the organisational infrastructure and the substantive political agenda on all levels.

To be legitimate and sustainable a human rights political agenda should aim at producing social policies and positive actions, hence it should constantly refer to the principle of interdependence and indivisibility of all human rights to be implemented in the light of the comprehensive and interconnected strategies of «human development» and «human security». Both strategies are anchored to the human rights paradigm, both hold the human being as the central subject. In this multi-dimensional context which well fits in with the multi-level dimension of governance, emphasis is put on the access of individuals and groups to welfare and better quality of life.

In order to be effective in pursuing goals of security in the daily life of citizens, local governments should have more suitable channels to participate in the decision-making processes on the international plan. They can rightly claim to be formally recognised as human security and human development public stakeholders.

Local and regional governments are already active in carrying out several initiatives to effectively play this role within a multi-level architecture of governance, following the example of the Council of Europe and of the European Union where regional and local governments have a consolidated formal representation, respectively the Congress of Regional and Local Authorities and the Committee of the Regions.

From a legal point of view, a very interesting phenomenology regards the adoption at local level of legal instruments which refer directly to the international law of human rights and establish specialised infrastructures in cooperation with civil society organisations, schools and universities.

The Italian case is amazing and (still) unique also from a cultural and political point of view. In 1991, municipalities and provinces were allowed by a national bill to exercise a

larger degree of autonomy in revising their statutes. The result was that thousands of (new) statutes include the so-called «peace human rights norm» that reads as follows: «The Commune X (the Province X), in conformity with the Constitution principles that repudiate war as a means to resolve international disputes, and with the principles of international law on human rights, recognises peace as a fundamental rights of the human being and of peoples. To this purpose it pledges to take initiatives and cooperate with civil society organisations, schools and universities». In several statutes explicit mention is made of the Universal Declaration, the International Convention on Children Rights, the EU Charter of Fundamental Rights. Owing to this «norm» many communes and provinces (and regions) have established councillors and departments dealing specifically with human rights, peace education, development (decentralised) cooperation, and international solidarity. This field is actively coordinated by the «National Network of Local Governments for Peace and Human Rights», a legal association of public institutions which currently include more than 700 communes, provinces and regions, representing over half of the Italian population.

On the international-transnational level many associations and networks of local governments institutions and authorities, such as the Human Rights Cities, the Intercultural Cities, Mayors for Peace are striving for human rights, peace and human development. An ambitious instrument is the European Charter for the Safeguarding of Human Rights in the City (St. Denis, 2000). Human rights mainstreaming is fertilising the legal systems of urban settlements: a meaningful example is provided by the Montréal Charter of Rights and Responsibilities, which was endorsed by that City Council in 2005. The growing political movement of «City Diplomacy», strongly supported by «United Cities and Local Governments», is working to make more visible the political role of local governments as an essential – I would even say providential – help to states and multilateral institutions in the framework of a peaceful and democratic multi-level governance. In this context, an explicit link of human rights with local self-government in the multi-level governance perspective is enshrined in the *Hague Agenda on City Diplomacy*, a

declaration-action programme that was endorsed at the end of the First World Congress on City Diplomacy (The Hague, 13 June 2008)[8].

7. Epilogue: Taking Advantage from New Opportunities

The establishment of the European Grouping of Territorial Cooperation (EGTC), with legal personality in the EU system (Regulation CE no. 1082/2006) is an opportunity that ought to be seized to affirm the peaceful involvement and support of local governments in the multi-level governance architecture. The opportunity of this revolutionary provision should be seized to include in the agreements and statutes of the EGTCs specific reference to the international law of human rights and to the EU Charter of Fundamental Rights, highlighting the principle of interdependence and indivisibility of all fundamental rights as the most appropriate for social and territorial cohesion. Needless to emphasise that the EGTC provides suitable ground to experiment plural inclusive citizenship. Hopefully the establishment of a human rights infrastructure, for instance, in the form of an EGTC Ombudsperson, should be envisaged as well[9].

A major objective could be the progressive enlargement of this European experience by extending, whenever possible, membership of the EGTC to local governments and public agencies in third countries. In parallel within the United Nations, a process towards the establishment of «international» groupings of territorial cooperation in the name of the principle of local autonomy-self government-human rights and democracy could be carried out. In this perspective and in analogy with the EU Committee of the Regions it should be pursued the establishment of a Committee of Territorial Cooperation (or a Committee of Local Governments) within the UN system with formal advisory functions.

Needless to point out that the EU system is not sheltered from the worldwide turmoil. Its functioning, even its architectural structure, is increasingly conditioned by external-international variables. Achieving the European «single voice» in the world system has become a key element also for the internal strengthening of the EU.

[8] A. Musch, Ch. van der Valk, A. Sizoo, K. Tajbakhsh (eds), *City Diplomacy. The Role of Local Governments in Conflict Prevention, Peace-building, Post-conflict Reconstruction*, The Hague, VNG International, 2008; A. Papisca, *International Law and Human Rights as a Legal Basis for the International Involvement of Local Governments*, *ibidem*, pp. 27-46.

[9] A. Papisca, *L'avvento del Gruppo europeo di cooperazione territoriale, GECT. Nuovi orizzonti per la multi-level governance democratica*, in Id. (ed.), *Il Gruppo europeo di cooperazione territoriale. Nuove sfide allo spazio dell'Unione Europea*, Venezia, Marsilio Editori, 2009, pp. 11-33.

At present, the Committee of the Regions is the international-supranational body that owns a high degree of formal and substantive authority and a large range of competences in the EU system as well as increasing visibility in the international scenario.

The «regionalism» represented and carried out by the CoR in the EU institutional system is a «bottom-up regionalism» that balances and excels the primitive «top-down (charitable) regionalism» carried out by the European Community. Briefly it is a high profile «political regionalism», having constitutional implications for the future of the EU system.

The production of opinions that increasingly refer to sensitive issues, like those dealing with human rights, plural citizenship, enlargement, environment, multiculturalism and intercultural dialogue, social and territorial cohesion, strengthens the «political» relevance of the CoR role for the extension of local self-government as a contribution to democratic multi-level governance.

It is important to exploit these positional features as resources of power to carry out and consolidate roles within the EU system and in the system of world politics. The CoR Committee for External Relations has a lot to do in this direction.

The liberation of «territoriality» from the determinism of the ties with the state «sovereignty *ad alios excludendos*» is the new frontier *ad omnes includendos*.