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# **Rule of Law**

## **versus**

# **Reason of State**

for a Federalist and Democratic  
Rule of Law and Human Rights  
against the Reason of State



Conference organized by  
Nonviolent Radical Party Transnational and Transparty  
No Peace Without Justice  
Hands off Cain

EUROPEAN PARLIAMENT  
EUROPEAN COMMISSION  
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in the original language.



## PRESENTATION

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On February 18 and 19, 2014, the Conference "Rule of Law versus Reason of State" was held at the European Parliament and European Commission, as an initiative of the *Nonviolent Radical Party Transnational and Transparty, No Peace Without Justice and Hands off Cain*.

Fifty years after the surge of "Real Communism", the systemic use of the *Reason of State* has turned about 150 out of the 193 Nation States into "Real Democracies". At the same time, the military industrial complex has developed an undisputed and tremendous technological power, which is as much structural as it is out of control; just as Ike Eisenhower professed when he denounced the power of the *congressional military industrial complex* as the biggest threat to the world and the United States in particular. We know of those technologies today thanks to the revelations by some heroic conscientious objectors, with Edward Snowden as the most emblematic example.

This double and lethal threat to "Democracies" - transformed almost everywhere into "Real Democracies" - is directed against the formal positive legal norms and thus against the Rule of Law and Human Rights, and against the "Right to Truth", which is the objective of an initiative we wish to bring to the United Nations and which we envision as: the *"Human Right to Know"* what the State does in the name of Law and legality, and on behalf of the citizens in whose name it rules.

To this end we held a first Conference in Brussels on February 18 and 19, 2014, as a means to start and formalize a profound global Reform of the historically schizophrenic - and seemingly established - relationship between the de facto power of the "Real Democracies" and the existing positive law system based on the UN Human Rights Treaties and Conventions. This Conference has marked the first step of a campaign that will continue with a second Brussels Conference, through which we wish to construct an alternative to violence and the degeneration of the "Real Democracies", with the promotion of democratic and federal States abiding to the Rule of Law.

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## Endorsements and Supporters to the First Brussels Conference

Marou **Amadou**, Minister of Justice and Spokesperson of the Government of Niger

Bakhtiar **Amin**, former Minister of Human Rights of Iraq

Rita **Bernardini**, Secretary of *Radicali Italiani*, former Member of the Italian Chamber of Deputies

Fausto **Bertinotti**, President of the Foundation *Cercare Ancora*, former President of the Italian Chamber of Deputies

Emma **Bonino**, Minister of Foreign Affairs of Italy

Gianfranco **Borrelli**, Professor of History of Political Doctrines at the University Federico II of Naples

Marino **Busdachin**, Secretary General of the *Unrepresented Nations and People's Organization*

Mauro **Bussani**, Professor of Comparative Law at the University of Trieste, Scientific Director of the International Association of Legal Sciences (IALS-UNESCO), Adjunct-Professor at the Faculty of Law at the University of Macau, R.A.S. of the R.P.C.

Anna Maria **Cancellieri**, Minister of Justice of Italy

Marco **Cappato**, Treasurer of the *Luca Coscioni Association for the Freedom of Scientific Research*, Council Member of the Municipality of Milan, former Member of the European Parliament

Paulo **Casaca**, former Member of the European Parliament for Portugal

Giuseppe **Cassini**, former Italian Ambassador to Lebanon

Oksana **Chelysheva**, Journalist at the *Russian Chechen Information Agency*

Sergio **D'Elia**, Secretary of *Hands Off Cain*, former Member of the Italian Chamber of Deputies

Benedetto **Della Vedova**, Member of the Italian Senate, former Member of the European Parliament for Italy

Francesco **Di Donato**, Professor of Political Sciences at the Parthenope University of Naples

Giacomo **Di Federico**, Senior Lecturer of European Union Law at the University of Bologna

Giuseppe **Di Federico**, Emeritus Professor of Law at the University of Bologna

Elio **Di Rupo**, Prime Minister of Belgium

Andrew **Duff**, Member of the European Parliament for the United Kingdom (ALDE)

Penelope **Faulkner**, Vice President of *Que Mê: Action for Democracy in Vietnam*, Member of the General Council of the *Nonviolent Radical Party Transnational and Transparty*

Maria Rosaria **Ferrarese**, Professor of Social Sciences at the University of Cagliari

Niccolò **Figà-Talamanca**, Secretary General of *No Peace Without Justice*

Khaled **Fouad Allam**, Professor of Sociology of the Muslim World at the University of Trieste

Filomena **Gallo**, Secretary of *Luca Coscioni Association for Freedom of Scientific Research*

José Maria **Garcia Marin**, Professor in the History of Law and Institutions at the University Pablo de Olavide in Seville

Roberto **Giachetti**, Vice President of the Italian Chamber of Deputies

Nathalie **Gilson**, Deputy Mayor at the Municipality of Ixelles (Brussels) for urbanism and environment

Sandro **Gozi**, Member of the Italian Chamber of Deputies, Vice President of the Parliamentary Assembly of the Council of Europe

Frank **Kargbo**, Minister of Justice of Sierra Leone

Joël **Kotek**, Professor of Political Sciences at the University of Brussels (ULB) and the Institute of Political Studies of Paris

Bernard **Kouchner**, former Minister of Foreign Affairs of France, co-founder of *Médecins Sans Frontières (Doctors Without Borders)*

Morissanda **Kouyate**, Executive Director of the *Inter-African Committee on Traditional Practices* (IAC)

Bartosz **Kramek**, Member of the Board of Administration of the *Open Dialog Foundation*

Kok **Ksor**, President of the *Montagnard Foundation Inc.*, Member of the General Council of the Nonviolent Radical Party Transnational and Transparty

Birgitta **Jónsdóttir**, Member of the Icelandic Parliament, former President of the *Pirate Party*

Sophie **in 't Veld**, Member of the European Parliament for The Netherlands (ALDE)

Philip F. **Iya**, Professor of Law and Faculty Director at the North West University of South Africa

Mairead **Maguire**, 1976 Nobel Peace Prize laureate

Pietro **Marcenaro**, former Member of the Italian Senate, former President of the Human Rights Committee at the Italian Senate, former President of the Political Commission for Democracy of the Council of Europe

Agostino **Marchetto**, Archbishop of the Catholic Church

Claudio **Martelli**, former Minister of Justice of Italy

Louis **Michel**, Member of the European Parliament for Belgium (ALDE), Co-President of the Delegation to the ACP-EU Parliamentary Assembly, former Minister of Foreign Affairs of Belgium, former Member of the European Commission

Giorgio **Pagano**, Secretary of *Esperanto Radikala Asocio*

Marco **Pannella**, President of the Senate of the Nonviolent Radical Party Transnational and Transparty, former Member of the European Parliament, former Member of the Italian Chamber of Deputies

Marco **Perduca**, Vice President of the Senate of the Nonviolent Radical Party Transnational and Transparty, former Member of the Italian Senate

Tonino **Picula**, Member of the European Parliament for Croatia (S&D)

Stephen **Plowden**, Applicant under the British Freedom of Information Act at the British Ministry of Foreign Affairs

Paolo **Prodi**, Professor of History at the University of Bologna

Vittorio **Prodi**, Member of the European Parliament for Italy (S&D)

Claudio **Radaelli**, Professor of Political Sciences at the University of Exeter

Sam **Rainsy**, Leader of the *Cambodian National Rescue Party*

Dilixiadi **Rexiti**, Spokesman of the *World Uyghur Congress*

Niccolò **Rinaldi**, Member of the European Parliament for Italy (ALDE), Vice-President of the ALDE Group

Cesare **Salvi**, Professor of Civil Law at the University of Perugia, former Member of the Italian Senate, former Minister of Labour of Italy

Marietje **Schaake**, Member of the European Parliament for The Netherlands (ALDE)

Josep **Soler**, President of the Spanish Institute for Financial Studies

Struan **Stevenson**, Member of the European Parliament for the United Kingdom (PPE), President of the Delegation for Relations with Iraq

Antonio **Tajani**, Vice President of the European Commission, European Commissioner for Industry and Entrepreneurship

Giulio Maria **Terzi di Sant'Agata**, former Minister of Foreign Affairs of Italy, former Italian ambassador to the United States of America

Owen **Thomas**, Doctoral Researcher at the University of Exeter

Saumura **Tioulong**, Member of the Cambodian National Assembly for the *Cambodia National Rescue Party*

Michel **Troper**, Professor in Public Law and Political Sciences at the University of Paris X

Vo **Van Ai**, President of *Que Mê: Action for Democracy in Vietnam*, Member of the General Council of the *Nonviolent Radical Party Transnational and Transparty*

Guy **Verhofstadt**, Member of the European Parliament for Belgium (ALDE), Leader of the ALDE Group, former Prime Minister of Belgium

Otto **von Pfersmann**, Professor in Law at the Sorbonne University in Paris

Renate **Weber**, Member of the European Parliament for Romania (ALDE)

Elisabetta **Zamparutti**, Treasurer of *Hands off Cain*, former Member of the Italian Chamber of Deputies

Yves Charles **Zarka**, Professor of Philosophy at the Sorbonne University in Paris



## MARCO PERDUCA

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Vice President of the Senate of the Nonviolent Radical Party Transnational and Transparty, Former Member of the Italian Senate

Good evening and welcome to this conference, "*Reason of State versus Rule of Law*", which will be held this afternoon at the European Parliament and tomorrow morning at the European Commission.

I wish to welcome all of those who have joined us from Europe, but also from outside Europe. I invite Mr Rinaldi, Vice President of the Group of the Alliance of Liberals and Democrats for Europe (ALDE) to join us in the Presidency.

My name is Marco Perduca and I am Vice President of the Senate of the Nonviolent Radical Party Transnational and Transparty, one of the organizing parties of this conference, together with No Peace Without Justice, Hands off Cain and the Group of the Alliance of Liberals and Democrats for Europe in the European Parliament.

This conference, which will be held over the course of two sessions, will focus on the specific themes you have received in the presentation and in the invitation letter. It will address the developments, as well as the most recent regressions, in international relations and international politics. In particular, we will discuss how in recent years, in little over a decade - as we identify the war in Iraq as a starting point for a regression towards a policy that I might call *Ancien Régime* -, the Reason of State, the *Raison d'État*, the *national interest*, have taken over from the international obligations the international community, understood as the gathering of its Member States, should have at its foundation; or rather, has at its foundation on the basis of the norms that have been codified over the course of the past fifty years by the international community itself through various Covenants and Treaties. These are obligations the international community should surely abide by if all articles of the United Nations Charter were to be respected.

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This is the core issue of this conference, which will then be studied in different sessions focused on some of the most egregious examples. Certainly the manner, in which at the beginning of 2003 the war in Iraq was decided upon, represents one of these finest moments.

Without further ado, first of all we welcome to the Presidency: Niccolò Rinaldi; Struan Stevenson MEP of the European People's Party (EPP); Marco Pannella, President of the Senate of the Non-violent Radical Party Transnational and Transparty and up until the very last legislature always elected to the European Parliament; Matteo Angioli, member of the General Council of the Radical Party and one of the main coordinators for this conference. A conference which, as I have said, will address the issues related to the Reason of State, to the Rule of Law, to the promotion and protection of human rights, to the codification of a new right which we retain essential: the Right to Know, to be informed of the way, as well as of the merits, in which decisions are being taken by our Governors. That said I now give the floor to Niccolò Rinaldi for his welcoming speech.

## **NICCOLÒ RINALDI**

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Member of the European Parliament for Italy (ALDE),  
Vice-President of the ALDE Group

Dear friends, this, in reality, is the ante-chamber of democracy. The theme we are discussing this afternoon is never easy to address. It is not easy with regard to the instruments of participative democracy, not with regard to the information, and often it is not easy for Members of Parliaments, let alone citizens.

I am most grateful to Marco Pannella, to the companion Pannella, and to Marco Perduca, who opened the session, to have organized this session in the European Parliament during the last months of this legislature, because in these past five years such a delicate, complicated and, by its very essence, obscure theme has never been discussed.

It is important to understand what we are talking about. The relation between war on the one hand, and truth on the other, is a very difficult one. We, Westerners, are truly the children of the same experience lived by the Greek, as we can learn from Aeschylus, a soldier, who fought at Marathon and wrote a beautiful tragedy, *The Persians*, telling on the event as the official powers would never have.

The same was the experience of Sophocles who fought in Samos, and of the Athenian general Demosthenes, who took part in the battle of Chaeronea. The entire *Anabasi* by Xenophon recounts the tale of a long war, of a long military expedition. Also the *Anabasi* told of things the official power might not have been keen on telling. This is the tradition we inherited. It is a tradition in which we fought others and where we fought among ourselves, but in the end there is always the need to uncover the truth and to tell it, each of us in our own way.

Things have changed a bit in recent times. Let us remember that we have, in the time span of about half a century, almost redesigned one of the great vocations of the West: war. If over the course of 2000 years, Europe has fought around thirteen times

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more wars than a giant like China, and while until the forties of the twentieth century - World War II excluded - there was a persistent possibility of four victims for every 100.000 European citizens due to reasons of war, all this seems to be almost forgotten since the end of the Second World War. Today, only 0,3 per every 100.000 European citizens risks to loose their live in a military war.

And not only. We possess developed tools that are true instruments for peace and international cooperation. Others may use them better than we do. Consider, for example, Latin America with the Nuclear Non-Proliferation Treaty: it represents the first continent that is entirely free of nuclear weapons. The same United Nations Non-Proliferation Treaty limits in fact the number of nuclear powers on our planet to eight, including the five members of the Security Council, as well as India, Pakistan and Israel. There is also North Korea, which has opted out of the Treaty.

How is all of this possible? Probably - and this will then be part of this afternoon's debate - thanks to the emergence of a more democratic society, in which decisions are being taken with greater transparency, as well as with the need to address certain issues with a sense of responsibility, and to take responsibility.

Despite this, the lies continue when necessary. One has to lie - and it is not that hard to do it - to the citizens, to the media, and at times also to the administrations of the same State. In an evermore exposed world, where everything has become more public - which are instruments of democracy that have probably been essential to the drastic decline of the level of war activity on our continent -, a pretext is invoked for lying, called the Reason of State. What can one not say? In other words, can we say everything with respect to our enemies regarding decision-making mechanisms, or are there limits?

Remember Machiavelli. Machiavelli defined the Reason of State with the following words: "The prince must not deviate from what is good, if that is possible, but he should know how to do evil, if that is necessary." I hope the interpreters can translate the concept of Niccolò Machiavelli to "enter into evil when neces-

sary". Those are exactly his words. He must not deviate from the good, but, if necessary, he "needs to know how to do evil".

To do so, further in *The Prince*, Machiavelli speaks of the necessity of having double standards, double layers. He says that the prince, at a certain point, needs to leave his religion, friendships, political alliances, the pact he made with his citizens, behind, if that is what is necessary for the good of the State.

I believe what Machiavelli said to be right, and I believe he said it in favour of the collective good, but this Reason of State has then been violated often, because in reality Machiavelli's ultimate goal, the collective good, has been altered and is now only discretely invoked.

There are, of course, some instruments that can be used to try to expose the lies, and these instruments are manifold. One of these is the Internet, which can obviously help us a lot. The fact that we can count, though not always, on independent and courageous journalists and media is important. It allows us to return to the core elements of democratic participation: a public opinion that can be fooled, but not too much and not for too long.

Let us consider the importance of opening archives; of the role archives have in that which we talk of and of how much archives remain largely closed on everything. On the murder of the Rosselli brothers, to cite one case, the French archives remain closed to historians, apparently because there was a certain level of complicity from some parts of the French authorities' apparatus in Paris in the thirties, when the crime took place. They remain closed. Neither Chirac nor Mitterrand wanted to render them accessible.

I believe that in the end our job is precisely to recognize the existence of this difficult reality - not easy, but really hard - with respect to which we must seek to reconcile these double standards the international community on certain issues, and some Governments in particular, have started to use more and more frequently to escape the instruments of *democratic accountability*, or democratic responsibility as we could say in Italian.

We should therefore try to reconcile this almost schizophrenic world defined by Machiavelli, in which the prince does not take into account his friends, religion, the State apparatus, in order to achieve his own ends.

However, this is an exercise in which politics alone does not suffice. It takes some sort of Holy Alliance of the forces of knowledge. We need technology. Once again, the Internet can be useful. We definitely need those *media* that are available for this type of work. We need university research conducted without fear and in a very open-minded way where necessary. And of course, we need politicians with the determination to open up and air this dark room of our power and our democracy.

Marco said that what we claim in the end is the Right to Know. The Right to Know is sacrosanct, but since Aeschylus it has been interpreted and told in many different ways, depending on the various and more or less arbitrary interpretations. This - and it is obviously not the first time for the battles of the Radical companions - is but a new challenge: to try to move forward, to move the frontier of rights in ever more ambitious ways.

As Vice-President of the Alliance of Liberals and Democrats for Europe, I can assure you that at the end of this legislature, perhaps nothing is more urgent, nothing is more subject to some sort of ethical imperative than confronting exactly this theme.

## **STRUAN STEVENSON**

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Member of the European Parliament for the United Kingdom (PPE), President of the Delegation for Relations with Iraq

Thank you very much Mr Chairman, and thank you for your invitation today; it is always a pleasure to share a platform with Mr Pannella, who is an old friend since many years, we have been in Parliament together.

As the Chairman said, I am currently President of the Delegation for Relations with Iraq in the European Parliament, and have been in that position for the past five years.

I have watched with dismay the deterioration of the situation in Iraq. When I was in Baghdad two years ago, they had four hours of electricity a day, very few of the population had access to clean running water; the sewage infrastructure was broken down; poverty is rife; unemployment, particularly among the growing population of the young people, runs at eighteen per cent; and security is a disaster, violence is on going. Last year over nine and a half thousand people were killed. It was the bloodiest year since the insurgency in the mid two thousands. The situation is deteriorating to such an extent that oil production is estimated to have dropped back to the same level it was at during the time of Saddam Hussein. It is estimated that around eight hundred million dollars is being siphoned illegally out of the country every week. These are the figures I was given when I was in Iraq last November. Eight hundred million dollars a week: the oil revenue of the people of Iraq is being stolen from them.

Now, in protest to the corruption, to the arbitrary arrests, to the increased number of mass executions that are taking place... People now are being executed in groups of twelve; nothing has been seen like that in the world since the days of the Nazi occupation of Eastern Europe.

This is the situation now. The legacy of the democracy and freedom George W. Bush and Tony Blair brought to the belea-

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guered people of Iraq: mass executions; arbitrary arrests; a politicised judicial system; very few witnesses to the trials, if any; and then people sentenced to death, and their families informed after they have been executed without ever having the chance to see these people.

The situation is appalling. Eighteen months ago, the people started protesting in al-Anbar province and in five of the other governorates of Iraq. Large protests were taking place on a weekly basis. And in Fallujah and Ramadi in particular, they were warned by Nouri al-Maliki to *"stop protesting or there will be an ocean of blood between my Government and your protest movements"*.

Then, during the closing weeks of last year, we saw how the Iraqi military was launched against the people of al-Anbar province, against the cities of Fallujah and Ramadi, under the pretext that this was a fight against terrorism. These were Al-Qaida, Daesh; terrorists had taken over these cities. There is no doubt at all that with the infiltration of refugees from Syria, with the on going violence and civil war in Syria, that of course there will be some terrorists that have infiltrated into those areas, but to claim that this is a war against terror and then to have the Americans supplying the weapons to Nouri al-Maliki, which he can use to literally mount a program of genocide against his own people...

I read a press release today, saying that Americans are now renting apache helicopters for billions of dollars. Not to sell, but to rent these gunships to al-Maliki, so he can wage this war against terror. Well, every time I see a photograph of a hospital in Fallujah, or a school in Ramadi that has just been shelled or bombed by American missiles and American rockets, and see the children that have just been injured in those attacks, I ask myself are these Al-Qaida? Are these Daesh?

These are innocent civilians. This is now genocide or a campaign against the Sunni population. Now, I am not going to start taking sides because many Shi'a have suffered at the hands of this despotic regime. Nouri al-Maliki lost the last election by two seats, but for his puppet masters in Tehran it was essential that he



built a Government, a coalition, and be put back in power. And the Americans colluded with that. The Americans denied the democratic right to the people who actually won the elections - al-Iraqiya - to take over the Government. And they signed the Erbil agreement, whereby Nouri al-Maliki, in front of the American ambassador, guaranteed that he would hand over control of the intelligence, the defence ministry, and the security ministry to representatives and ministers from the opposition parties. He has never done so; he has been in total breach of the Erbil agreement, the coalition agreement. He has maintained all of that power within his own office, making him one of the most powerful autocratic oppressors in the Middle East; controlled all the while by the mullahs in Tehran who we know are one of the most dangerous regimes in the world.

So this is the legacy; this is the « mission accomplished » that was announced by George W. Bush; this is the legacy we have given to the people of Iraq. Still to this day they only have limited access to electricity, fresh water, functioning sewage systems and the security system... The security set-up is worse than ever and I want to complete this presentation saying something about Camp Ashraf and Camp Liberty, because in this house we have passed repeated resolutions, sometimes-unanimous resolutions, about these two refugee camps.

On the first of September last year, a massacre took place in camp Ashraf. Fifty-two refugees, unarmed civilians, were murdered by their Iraqi military. They entered that camp: military figures and SWAT uniforms, carrying American weapons... In the films I've seen, which were shot by the people who were being fired at, during the course of that massacre the Iraqi military was clearly conducting its affairs under training it had received at the hands of the Americans while the Americans were still occupying Iraq.

These were Iraqi military SWAT teams. They handcuffed many of these people and executed them by shooting them in the back of the head. They went into the hospital in camp Ashraf and executed the wounded that were lying on hospital beds. Fifty-two

people were killed; seven hostages were taken - six of them women - and have not been heard of since. The Iraqi Government says, we know nothing about this. This is not us. We are completely innocent of all this. We cannot help trace where any of these hostages have gone because we did not kidnap them. We did not take part in this assault.

This, ladies and gentlemen, is not only a lie; this is an outrage. Last week, an Iraqi General went to Camp Liberty, where three thousand of the MEK refugees are now housed on the outskirts of Baghdad, and he told them « *oh by the way, we have disposed of the fifty-two bodies* ».

They cannot deny this; they cannot say they do not have any control over this as the military in Iraq had taken possession of the fifty-two bodies. They have disposed of them despite UNAMI [*United Nations Assistance Mission for Iraq*] demanding access to these bodies in order to carry out full autopsies to discover what weapons had been used in their murder, and in order for the bodies to be returned to their friends and families to have a dignified Islamic burial. But they have been disposed of, and when the Iraqi General was asked where they had been buried, he refused to tell them. It is a secret burial and a mass grave.

This again is reminiscent of things that happened during the Nazi atrocities in Europe, in the Second World War. This is the kind of legacy we are suffering today in Iraq. Now, the people guilty of these crimes should be indicted and brought before the International Criminal Court. We are failing as Europeans when we fail to take action; we fail to follow up when we ask for an independent inquiry into the massacre in camp Ashraf and we fail to do anything about it. We never followed it through. When we allow the Americans to go on providing weapons to give al-Maliki the means of waging a genocide campaign against the population of al-Anbar and other provinces in Iraq, this is an outrage.

It is time the UN, the USA, and the EU woke up to what we have done to Iraq, and brought freedom, democracy, human rights, and women's rights back to these beleaguered people.

## **GUY VERHOFSTADT**

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Member of the European Parliament for Belgium (ALDE), Leader of the ALDE Group, Former Prime Minister of Belgium

I am honoured to be invited again by 'I Radicali' to open one of your conferences. Last time, a couple of weeks ago, it was about the freedom of science. This time it is about the *Reason of the State* (*le Raison d'État*) and the *Right to Know*. Again two very important and fundamental topics, because they deal with the relationship between the individual and the State. They touch upon the core of what being liberal and having a liberal conviction is all about. It is about the restraint the State should show in everyday life. It is about personal freedom. It is in fact about being a little bit of an anarchist. Or in case of the *Radicali*: of being a big anarchist.

It is essential to our ideas I think: this constant battle and resistance between the individual and the structures of power; like a never-ending fight between David and Goliath. The textbook example of the Reason of State is of course the Dreyfus Affair. The Jewish army officer Alfred Dreyfus was convicted to lifelong imprisonment after he had been accused for being a spy for the Germans. However, the truth was that Dreyfus was completely innocent of any crime of offence. All historians recognize this today.

But the French army and French officials produced piles of false documents and fake statements to incriminate Alfred Dreyfus. In the best tradition of Stalinist show trials, the French State tried to force Dreyfus into confessing his guilt. Even a gun was put at his disposal, in the hope he would commit suicide. The specific reasons why Dreyfus was falsely accused are still unknown today. There are as many hypotheses as there are historians. What is certain is that a general and widespread anti-Semite feeling played an important role. But we remember the Dreyfus affair especially because it is the total and utter arbitrary rule of the State, triumphing over the Rule of Law. When her husband was taken

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into arrest, the police threatened Dreyfus' wife that she should keep it a secret. "One word," they said, "one single word and it will be a European war!" Personal liberties sacrificed on the altar of national security. It sounds all too familiar to us today.

Last year, it was a rough awakening when the NSA scandal broke loose thanks to Edward Snowden. We were shown that the power of the State is not a bad dream from the distant past, but that it is in fact the reality of our postmodern information age. Governments apparently had unlimited access to our lives; to our mailboxes, our profiles on social media... You name it. The powers that be justified this by referring to the public interest. By pointing out that there is a fight against terrorism and international crime going on. This is a clear example of the *Reason of the State* trampling with the *Rule of Law*. It is Government interference at its worst: large scaled, omnipresent and deeply rooted in our personal lives. It is above all an unacceptable practice that cannot be reverted easily, from one day to the other.

We have to sweat it out of our system. And even then, success is far from guaranteed. It will take years, if not decades, of continued efforts with everybody pulling in the same direction in order to undo this wrong. It involves dismantling large parts of the security apparatus in order to regain our civil liberties.

The same goes for a problem you will be discussing extensively today: the war in Iraq and more specifically the reasons for which the *coalition of the willing* engaged in this war. A war based on incorrect information, on false pretences. The parallel with the Dreyfus affair is easy to make. Many countries were led into a war aimed at taking away *Weapons of Mass Destruction* that never existed. It is bad enough when a Government hides information from the public that has a Right to Know. But making up false information, misleading public opinion is playing in a whole different league. 'The Right to Know' and the 'Right to the Truth' are essential in a democracy.

The run-up to the Iraq War was therefore in the first place an assault on democracy itself. It was no less than a regression in the

history of democracy by making the public opinion less informed instead of more informed.

Both the NSA scandal and the war in Iraq are a consequence of our incapacity of dealing with the attacks of 9/11. Brutal attacks, that is for sure. Barbarous acts against our civilization and our way of life. But we dealt with them in the wrong way. By letting fear take the upper hand; by promptly losing our trust in the *Rule of Law* and by turning to easily to the *Reason of the State*. By abandoning the *Right to Know*. It is ironic, almost cynical, to see how quickly we let go of the very same values we were attacked for in the West. We let go of our rational and positivist approach. We stopped being true to the legacy of the enlightenment and to the Rule of Law.

Today, it is almost 350 years since *Habeas Corpus* was issued. It was an amendment to the *Magna Charta* and declared that an individual has the right to his or her own body; that he or she has the Right to Self-determination; a right that cannot simply be taken away by the State. A right that only the Rule of Law can take away, under very specific circumstances and for a limited period of time only. It was one of the biggest leaps forward mankind ever took. A milestone in human history. Sometimes it seems that we have not learned much since that day. When you consider prisons like the ones in *Abu Ghraib* or *Guantanamo Bay*, the human race does not seem to have learned a whole lot. In such cases, progress shows itself an un-teachable student.

Therefore, it is crucial that we keep the debate alive, as you are doing here today, and remind ourselves that the Rule of Law is not self-evident. That it was hard fought for in the past and that we still have to fight for it today. Or at least support the people that fight for it today. The people that just like Emile Zola take up their pen and write a glaring "J'accuse".

That is why I would like to conclude by congratulating you all, *I Radicali*, for organizing this wonderful conference, relevant and pertinent as always. I wish you a lot of success. Thank you.



## **MATTEO ANGIOLI**

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Member of the General Council of the Nonviolent Radical Party Transnational and Transparty

Thank you for your speech. May I ask you to briefly recall - I remember when you spoke about it in the meeting of the ALDE - the very short discussion that was held in the Council between France and the United Kingdom before the Iraq War broke out? Thank you.

## **GUY VERHOFSTADT**

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Member of the European Parliament for Belgium (ALDE), Leader of the ALDE Group, Former Prime Minister of Belgium

It is a very short story because the discussion in the European Council about the Iraq War lasted, I think, about forty-five seconds or maybe sixty seconds. In the European Council - I think it was in Seville or Barcelona as I remember the place where the Spanish President met with the European Union delegates - we asked to have a debate about it because the declaration by the Americans of war in Iraq was imminent and we said that maybe it is necessary for Europe to discuss the topic and Chirac immediately said: *"I don't know if it is necessary to do so because we have a different point of opinion, we don't agree, isn't it true that we don't agree Tony?"*. And Tony Blair came in and said *"yes, we don't agree so is not necessary to do it"*; and that was the end of the discussion on the Iraq War at the European level. So, it took 60 seconds in total to discuss that topic and this was the proof of the fact that a real foreign policy on European level doesn't exist and meanwhile I'm very sure that it doesn't exist here today if I look at what is happening in Syria, the lack of clarity of the international community, and certainly Europe, to do something - certainly two years ago after the beginning of the war - it is still a crude truth.

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## **JOSEP SOLER**

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President of the Spanish Institute for Financial Studies

Dear radical and liberal friends, just a brief message to send you our Catalan and Spanish support to your initiative, to a conference to discuss the need to preserve the Rule of Law, human rights, and specifically the Right of Knowledge and the Right of Truth. Immersed in this major economical and social crisis, our Governments end up obscuring reality; this is what is happening in many European countries, in our case Governments have managed to hide the international situation, the dramatic situation and the huge setbacks in our democratic society.



## **MARCO PANNELLA**

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President of the Senate of the Nonviolent Radical Party  
Transnational and Transparty, Former Member of the  
European Parliament, Former Member of the Italian  
Chamber of Deputies

I do not believe there has ever been a conference under such disastrous circumstances - but not disastrous in itself - as this one. Much of Belgium's Royal Family is in Italy at the moment for dynastic and State commitments. As you know, in Italy a new Government is currently being formed. The Italian Minister of Justice, Annamaria Cancellieri, and other friends that are part of the Italian Government have not been able to make it here because in these days the Ministers have been advised not to leave, if possible, Rome or at least Italy. They are in fact on call for the possible handing over of their office, for the transition from one Minister to another. We should also point out that, at the same time, there are other European Union meetings, and we have to admit that for a minute we have even asked ourselves whether or not we could confirm this conference, given the situation in which we find ourselves.

I repeat: the Prime Minister of the host country is out of the country, in Rome to be exact, and our Ministers and politicians are being held hostage in Rome for other issues. Since the Radicals usually are not part of the Government of our country, with the exceptions that confirm the rule, we find ourselves here simply to take note of the fact that we are what we are, also because we do not have institutional commitments of any kind. Moreover, we have one of our companions here with us, one of our most valuable historical companions, Kok Ksor, who came as he always does, not from Vietnam but from the United States. His is a story of resistance, which shows us the resilience of the *Montagnard* people.

But let us return to us here. In the reality of the "real democracy", which has taken over from democracy in most parts of the world; where the Reason of State is once again openly practiced,

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is once again the prevailing rule, as it was fifty or sixty years ago when we believed to have conquered a different condition.

We have with us not only Kok Ksor and his people, which continues to be oppressed and to whom any freedom and right is denied, but, next to him, we also have our Cambodian companion, a *leader*: Saumura Tiulong. What we are risking in Cambodia with Sam Rainsy and her, with the struggle they are heading and with the great democratic success they obtained in a country (that is hardly democratic), we have now dozens of parliamentarians sharing our position. Saumura, I should have come your way to accompany Sam Rainsy. We thought that, in returning to his homeland, Sam Rainsy would have been arrested. Instead, it was not democracy, but the King who arrived, granting him a pardon. The arrest, which had been prepared - as if Hun Sen would have passed on the occasion -, did not take place, and thanks to the King's pardon the struggle has been possible in a perhaps unpredictable way with respect to the previous years, even though there are still companions being murdered.

This dive into "real democracy" would not exist... As there would be no situation in which the noble *Montagnard* people have been substantially reduced by half over the course of two generations. The "wise men" are no more, and yet they continue this wonderful struggle. We thus have Cambodia and Vietnam, and we have the consequences of the "real democracy" in the rest of the world, where instead of ensuring democracy, the Reason of State is being assured and freedom is being denied.

Fortunately there are, for example, the *Freedom of Information Acts*. In this regard I am happy that our friend Stephen Plowden, whom I salute, is here with us. Stephen Plowden has used the *Information Act* in the United Kingdom. It is becoming very clear that it is not possible, for many reasons, for the British Government, her Majesty's Government, to provide the information which by law should be public and rendered available. This showcase is possible when there are people like Plowden in a country. Thank you Stephen, because you are also saving democratic hope and truth.

As you can see, we chose the images of Ernesto Rossi, Altiero Spinelli and Ike Eisenhower. Why Ike Eisenhower? Because he, among other things, has left something in the lexicon and in the concept of all languages; something he expressed at the maximum of his authority: *"We need to be extra careful. The threat to our State and to the entire world, where we seek to defend freedom, is linked to the power and excessive power of the military industrial complex."*

This formula has spread through all languages, although Ike wanted to say something even more complete: *"We too, as the United States, are first in line at this front for democracy and peace, because of the military industrial congressional complex"*. I have to say that this *"congressional"* is hard to find, and even harder to hear it be evoked, but it is the reality with which we must deal.

So, thank you to those who are living their life struggling for freedom and human rights in their own country, and who are forced to live in prisons, at the risk of being murdered or being involved in battles we hoped ceased to be necessary for the affirmation of the law.

I hoped to see the Dalai Lama here, thinking of what happened to Altiero Spinelli, to the *Ventotene Manifesto*, with that choice to struggle. There were two of them in the fascist prison, while most of Europe was occupied by the Nazis, subjected to an array that is not emphasized enough in history: the Von Ribbentrop-Molotov Pact. And in that Europe, in that situation, this book has been conceived: an opposition manifesto to the nationalist destinations for each of the States.

We salute the fact that the Dalai Lama and Rebiya Kadeer, two of our companions, have taken an epochal position. They declared, the Dalai Lama in particular, in many detailed interviews: *"We do not seek national independence. Our position - Rebiya Kadeer Stated before the IV World Uyghur Congress in Tokyo, in which Marco Perduca took part - lies not in national independence, but in the struggle for more democracy and more freedom*

*for the Han, for the Chinese people. And we legitimately hope we will not have to fight against discrimination with regard to the increased rights of the Han people, the Chinese people."*

How often did you hear this on the news? It is a very strong position. I believe the Unrepresented Nations and Peoples Organization (UNPO) should meet very soon, because it is an absolutely revolutionary announcement. We fight for democracy and for the freedom also of the people whose State is oppressing us. We do not have any privilege as the victims of totalitarian violence, we are those who dedicate our and the life of others to the defence of rights and freedom, first of all for those who oppress us.

Allow me. I do not know whether it is predictable, but I believe it necessary to affirm in this place, in this Parliamentary building, in which, "under real democracy", we find the descendants of those who said: *pas d'ennemis à droite*, no enemies on the right. The problem was the Third - illiberal - International, then the Cominform and the Ribbentrop-Molotov Pacts. This is our task. I hope that the Italian State or others nominate - although the deadline has already expired for this year - the Dalai Lama and Rebiya Kadeer as true and well-deserved Nobel Laureates, for peace, democracy and freedom; because what I have just told you is an extraordinary event, which no State has allowed to become such.

With us today another companion very dear to us, Bakhtiar Amin. He was the former Minister for Human Rights in his country. The fact that we meet here is, I think, proof that today there is "real democracy" also in Europe. This means that we may still celebrate other future positive events in this palace. Thanks to Bakhtiar, and thanks - you know it, which is why you are Radicals - to Kok, Saumura and the others. It is necessary to thank them, because we would not have survived without them, since we never belonged to the kind of right that was very privileged by the communist comrades of that time. Alas, Fausto Bertinotti was not in power, nor was Ignazio Silone, and there was none of our companions.

Thank you for being here. I have talked too long. Now, if my colleagues do not molest me, I would like to announce you that

we will present two of the five speeches academics, law scientists, have entrusted to our conference.

I must be old and senile, but I am also tough and from Abruzzo, and I assure you that these scientific speeches moved me. At the idea that you may listen to them now, I am moved again. They are speeches of an extraordinary humbleness and strength, but the last thing one can say is that they are modest. For as long as they are willing to come and to accept our invites, we will welcome them. They are professionals that normally, and rightly so, have rates to participate in conferences; rates they may then dedicate to social profit and not necessarily to their own.

Well, all of them have agreed to contribute free of charge. I have to say that this moved me, but also because I believe to understand something of the word that is such and not mere blabber. I think I understand something about the words that will last and win over time.

Well, now we give the floor to Vice President Tajani, who, in the midst of everything that was happening, took immediate action to facilitate our conference here today and tomorrow.

The secret of nonviolence is to carry out ones own work, rather than showing ones muscles, thus transferring the power of ones own passion to the opponent. The secret is to give the maximum contribution because they then may, thanks to our nonviolent struggles, respect their own legality, not ours, because they may respect their own law, even when it is not ours. We have learned by experience that, when this happens, power changes and, in respecting its own (often insufficient) legality, it often also succeeds in reforming it. Thank you.



## **FAUSTO BERTINOTTI**

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President of the Foundation Cercare Ancora, Former  
President of the Italian Chamber of Deputies

Thank you for your invitation. Thank you especially to Marco Pannella and to the Nonviolent Radical Party because they offer a space for research and critical consideration to people like me, who live in a country where such opportunities are often absent. I am delighted to be here also because, within the field of human rights and democracy, what is being presented seems a very important and current research path to me: the conflict between rights, beginning from human rights, and the *Reason of State*.

On one of the main topics, war, Mr Stevenson pronounced words, especially on the war in Iraq, upon which I shouldn't return because they would be redundant. I would instead like to respond to the arguments brought forward by Mr Rinaldi, Mr Verhofstadt and Mr Pannella. I would like to suggest a track that could create an interesting dialogue. It would be interesting to initiate a dialogue between the labour movement, a culture where I come from and I continue to operate in, and the coalition between the labour movement and the Marxist legacy, with their more interesting and up to date liberal activities and mind-sets.

There is a field in which the liberal component has definitely more to say about the tradition I come from, a tradition that has often suppressed any critique towards the *Reason of State*, conferring it thus the status of a component internal to the revolution's motive. It was a misunderstanding that caused damage, firstly to the people that suffered from it directly, and then to this field in respect of the subjectivities, cultures and politics.

It is well known that the conflict between *Reason of State* and Rule of Law is an inherited one. The conflict was born within the authoritarian regimes and passed on to the liberal constitutional regimes, notwithstanding their enormous victory in limiting sovereign power by distributing it to the people through the Rule of Law. The conflict was then passed on from these liberal construc-

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tions to the democratic constitutional regimes, which attempted to invent a construction in which the Rule of Law could be combined with the Welfare State, in order to enable the possibility of according equal value, through mutual enrichment, to individual and social rights.

The *Reason of State* underwent such changes also after World War II, after the so-called victory of the democratic forces over Nazi-fascism in Western Europe. This Europe was the fortunate playing field for the creation of democracy and socio-democratic compromise. I am not going to refer to the successful thirty years that economists often talk about, as they would require further critical deliberation.

However, as was said before, this black hole has perpetuated. A vacuum was subtracted from the Rule of Law and the Welfare State; a black hole substantially motivated - although "motivated" is a big word in this case, as it was not motivated, or rather only appeared to be or to be subjected to motivation - by the necessity to fight the opponent when he becomes the enemy, or when, in your opinion, he can be considered such, and might thus be a threat to your own existence.

Although it was never officially declared during the Cold War, this is the main motivation behind the attempts by the States' apparatus, influential cultures, widespread practices and policy makers to hide this great black hole, even when the breach in question was rather clear be it on the foreign policy level - the case of Iraq reads like a manual from this point of view -, as on the internal policy level.

When we look only at the last few years and the war against terrorism, we can clearly discern the emergence of elements aimed at imposing strong limits to the Rule of Law in the concrete exercise and development of legislation.

What I would like to discuss with you today is this widening black hole, almost constituting an actual dark field, enabled by the constant progress in the technological and scientific means of communication and information; with the result that the struggle between true and false has produced the lie as the official truth of the State.



I also talk from personal experience: I remember a revolutionary communist militant, who I held and hold in high esteem and who, nevertheless, when discussing about the fact whether it is better to choose between the revolution and the truth, answered: "*Revolution is the truth*", thereby opposing the Gramsci's classic formula that truth is revolutionary.

In fact, States have often transformed lies into the truth of the State, as to cover the gaps in which this social vacuum had been dispersed. There are persons present here today that have occupied themselves of these black holes in our country with much greater intensity and radicalism - I say so without flattery - than me.

At the bottom of the hole, in general, one thinks of the prisons, with a mechanism aimed at hiding the excluded: the detainees and immigrants, and their dramatic stories. At the top, we think of and we have seen war.

This dimension, and this is the point I wish to make and to propose for discussion, to Marco in particular, is about to make a big leap. It is not becoming less alarming, but more pervasive and sophisticated. It is becoming less dramatic as a black hole, but its diffusion like some sort of dark plaque is alarming, spreading the Reason of State over many fields in a world characterized by the notion "post": post-modern, post-democratic, post-political. I was reading a very interesting book the other day, called *Post Humanism*. I believe we are facing something we need to confront, because I think we are witnessing a qualitative leap forward in the dimensions of this black hole.

Personally, I am inclined to take on the thesis that this is the result of the marriage between two untold reasons: the Reason of State and economic reason.

What used to be produced by the State as a state of necessity - I need to fight my enemy because he threatens my existence and, bear patience with me, I need to be able to do so also by subtracting my power from democratic control and scrutiny; it is an unquestionable choice, so much so that I can use routine lies to justify my actions - is being induced today by the increasingly intru-

sive nature of the economy in the social, civil and institutional relations of the States, to the extent that it has created a unique school of thought, according to which the choice is inevitable.

As war does not even need an ethical motivation to demonstrate that it is a just war, it is simply inevitable; thus economics dictate that it is no longer necessary to appeal to the canon of justice and consensual validation of the choices, because these are inevitable.

I agree with you Marco: we do not just have real democracy. We also have the real Europe, namely the construction through these new forms of financial capitalism - not of capitalism *tout court*, but of global financial capitalism - of a melting pot, of a State construction which is gradually losing its autonomy and even its democratic legitimacy, to that the elections are often reduced to serial activities privy of choices based on knowledge and information.

In fact, a condition is thus created in which, in the words of Carl Schmitt, the state of exception becomes the rule. The real Europe sees oligarchy gain control through the interpenetration of the Reason of State with economic reason. The one and the other exclude democracy from the game and build a neo-authoritarian fence on the foundation of the state of necessity.

If there is some merit to this very superficial analysis - and I apologize for the crudeness -, the question is precisely that with which Marco Pannella has concluded the first part of his speech: so how do we bring the law, human rights, the Rule of Law and democracy back into the field?

I think we need to know at least how to identify the resources. As you identify them on a global scale - without fear for the numeric confrontation, for the quantitative element -, you refer to an experience, speaking of a human and political quality, and to those who ask you how many there are, you respond: "Let us see in ten years". I think we need to deal with the problem in Europe in the same way.

The resources must be sought outside the fence. They need be sought anthropologically in Camus' revolting man; in the shapes of civic resistance, starting from the nonviolent ones, to get to those forms of oppression that are being produced. We need to find the solution in the new revolutionary products of civilization and democracy that are being generated in civil society against the neo-authoritarian oligarchic States; and, more in general, in relying on the barbarians without barbarism, namely those standing outside the fence.

Machiavelli was cited at the beginning. I would humbly like to remind us that there is also the Machiavelli 'of turmoil'; namely the one believing that, when a civilization is coming to its end, turmoil is the resource from which democracy can be reconstructed.

Thank you for your attention.

## **MARCO PANNELLA**

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President of the Senate of the Nonviolent Radical Party  
Transnational and Transparty, Former Member of the  
European Parliament, Former Member of the Italian  
Chamber of Deputies

I take this opportunity to say that, as I already mentioned, the concepts Italy and Europe change according to different points of view. I am happy that the Vice President of this Europe is here to show us, though there was no need to prove it, how naturally people from his and our background find and understand each other.

I should go on to say that the issue is even more clear and fortunate today. We constantly repeat that, in the official Europe, Altiero Spinelli's strength lay in the Christian world, in the Christian-Democrat world. Sure, it is something else, but it was also the Europe of the liberal resistance, under the conditions of that time.

Now we need to acknowledge a new situation, bearing these names and faces. I do not believe that the inclusion of Ike Eisenhower is a nuisance to your history. Thanks to the friendship you carry towards those who find themselves waging battles often very different from yours, but which are converging.

Thank you for coming.

## **ANTONIO TAJANI**

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Vice President of the European Commission, European Commissioner for Industry and Entrepreneurship

Thank you, dear Marco. You know how much esteem I hold for you and how much I admire your commitment with which you have always fought your battles without ever asking for positions of power, without becoming Minister and, thus, without ever having had the possibility to manage things at such a level. And yet you have been and you still are one of the major protagonists, not only in Italian politics, but also in European politics. I must give you credit for this, because it is not an easy feat.

I briefly want to address the issue we are discussing today with a vision, which is the vision of my upbringing, a Christian vision, but not a Christian-democrat one. I do not say this with controversial intentions. I am not a Christian-democrat and I have never been one. It is a fact of chronicle, but I was educated by a Christian family and one of the first things I remember, something my mother taught me, is that no one had the right to take the life of another. My mother used to tell me why everyone in our family had always taken a strong stance against the death penalty.

It is no coincidence that I am a member of Hands Off Cain, and that I have fought the death penalty ever since I was a journalist at *Il Giornale*. At the time D'Elia was some sort of *factotum* for Hands Off Cain.

Let me start right from the theme of the death penalty, that is, the right of every citizen, of every man and woman, to live without arrogating anyone with the right to take that life away from them. For the religious believer, the Holy Father has given life and the Holy Father takes it away; for the non-believer, man is born and will die of natural causes.

I believe this is the issue at hand. Perhaps the theme of today's debate should not be "the Reason of State versus the Rule of Law", but "the Reason of State is the Rule of Law"; because in the ideal State the organization of the State, namely an organization

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put to the service of others, should guarantee the presence of the Rule of Law, something which, unfortunately, does not happen at the national level, nor at the global level.

The episodes are tantamount. Bertinotti has recalled some, but there are so many. Just think of the unnatural agreement between the Nazis and the Communists to carve up Europe, of the attack both of them launched against the Jewish people. Let us also think of all those who oppose the Jewish people today, claiming they should not be in Europe nor in Israel, and make it a mystery as to where they should be staying.

This is a struggle that has not been easy for Marco Pannella, but the right to survival of the State of Israel has been one of his battles, as is his idea for letting it join the European Union; and idea that I share and that, if it ever were to happen, would be a just thing.

Another major event has characterized Europe's choices, wrong choices in my opinion, choices I did not agree to: the attack against Libya. Europe bombed Libya, or rather; some European States decided to attack Libya because of its dictatorial regime, because of Gaddafi. Certainly, Gaddafi was not a prototype of a democratic Head of State, but the way in which he was deposed by Europe, in the name of democracy, is not acceptable.

We went and bombed Libya, causing thousands of deaths, in response, I believe, to the call of a few liberals in the front row, behind whom hundreds of thousands of people who were part of different tribes were fighting among themselves. Only those who do not know Libya's history can ignore the fact that Libya does not exist. There are Tripoli and Cyrenaica. Cyrenaica ruled under the monarchy, and the power moved to Tripoli under Gaddafi's Government. The revolt against Gaddafi started in Cyrenaica. Europe, or at least part of Europe, decided to attack Libya based on the conviction that an Arab spring was about to come about also in Libya.

What happened? There have been many deaths; a situation of instability in Mali, with everything that has happened; a series of negative impact results; and the success, not of the liberals, but of

the fundamentalists who hid behind them, as they have hid themselves, unfortunately, during many episodes of the Arab spring, that was however different in other countries.

Today we find ourselves in a near civil war situation without having resolved anything. In the name of what? An alleged action in favour of democracy. Was it really so? I do not know, but it does not seem to me that we, as Europeans, have obtained great positive results, not in the war against terrorism, not in terms of energy supply - if that was the scope -, nor in terms of stability for the continent. When the French found themselves forced, after having bombed Libya, to send their troops to die in Mali and in the Central African Republic, an imbalance has been created in the whole area.

This most certainly is an episode on which we must reflect.

Honestly, exactly from the point of view of natural law, as I am opposed to the death penalty, I am also opposed to public lynching, even of the worst man ever to be in Government. The way Gaddafi was treated is a violation of any human right. If one wanted, he should have sent him to jail and kept him there. Saddam Hussein should have been processed differently, but it was already decided that he was guilty. I do not wish to enter into the merits of just or unjust wars, but striking a dictator and killing him because he was a dictator, does not seem just to me. If one has committed crimes he should be sent to prison and remain there, or he should be exiled. A penalty is to be decided, but I do not see why Gaddafi had to be exposed to public ridicule, after having been beaten up in the name of vengeance. It is absolutely unacceptable.

I would like to pass onto another topic, as I see the Ambassador Terzi di Sant'Agata. I dealt with the issue, not because a military spirit moves me, but because I saw within the incident of the two Italian marines detained in India a situation that violates human rights. In this case the violation was due to a national Reason of State, if not parties' interests: the two marines needed to be held because elections were around the corner. First there were elections in the State of Kerala and now in all India. While waiting to

see what happens, everything is being postponed, with the hypothesis that the two marines will be accused. However, regardless of their responsibility in the matter, their rights must be guaranteed. A fair trial, or what should be a fair trial, must verify their acts.

They were working on an Italian ship, thus on European territory, outside of international waters, and it remains uncertain up until now what they are being charged for; after two years there is no indictment. They are talking about applying piracy and anti-terrorism laws, when they were fighting against it. They were on an official mission. Such an indictment could possibly lead to the death penalty, when it is unclear whether they committed murder. There is no principle by which the penalty applied is greater than the crime itself. At the most, assuming they are guilty (although we do not know it), the offense can be of manslaughter. Is the death penalty and expected penalty for manslaughter? It is something that goes beyond any rational thinking.

Some errors must have taken place. I do not know. I read the accusations made by Ambassador Terzi. Maybe the Italians called upon some Reason of State, in breach of the Rule of Law. I read the interview and the motivation for the Ambassador's resignation from the Ministry of Foreign Affairs. The complaints affirm that the Reason of State was followed and that the Rule of Law was violated, also by the Italian Government. Most certainly something went wrong, since the Rule of Law definitely did not prevail in this situation.

Another example that affected the Italians in particular - it is merely an example of the many circumstances that sadly enough take place in this world - are the events around Aung San Suu Kyi, who I had the pleasure to meet and know during my last visit to Burma. I talked with her about not only human rights, but also about environmental protection. She is a very brilliant woman. She does not need to become a saint, but she has certainly fought some courageous battles. She is a Burmese Gandhi, who defended the right to democracy and the Rule of Law against a military dictatorship.



In the world, unfortunately, we experience many of such things. Maybe the United Nations could play a stronger role; all international organizations should.

In defence of the European Commission and the Community Institutions, I need to say that we do indeed often operate as a bureaucratic system, and we therefore not fully comply with our political role. However in respect of some battles, for example in the case of the two marines, the European Union has taken a stronger stance against death penalty and on the issue of fundamental rights enshrined by the United Nations.

President Barroso told me, and declared publicly, that when it comes to death penalty there is no negotiation to be taken. It is not a subject open to discussion, but a firm message. The European Commission, as the European Union, in all its institutional offices, has always fought against the death penalty.

I often hear critiques against the European Union, which definitely needs to improve, but we also must say that it is the only region where the death penalty does not exist. Judicial reforms need to be done and the situation within the prisons is shameful. You know what I think about justice. Sometimes justice becomes injustice, with biblical times for the administration of justice and the uncovering of the truth.

In Italy we have almost overturned the principle of Roman law *in dubio pro reo*, to the point that a person is first guilty and must demonstrate his innocence afterwards, regardless of the type of crime committed. A warrant is sufficient for a final conviction.

Also this is a topic upon we should discuss with larger serenity. The problem of justice is not the political problem of a single person (and we understand each other). I do not mention it because I am member of that party, but in Italy the problem of justice encompasses a larger dimension. If you think that only the civil justice department, with its slowness, causes damages for two points of gross domestic product in a country of 60 million people, then there is good reason to intervene on the judicial system.

Furthermore we need more respect. If a person has committed a crime, or is only accused for having committed a crime, he does not have to be treated with disdain and beaten up. If a person stays in prison, he stays in prison; he serves the sentence or waits for trial. He must be neither abused nor treated without respect for his dignity.

The detainee is a human being as well. He made a mistake and therefore serves his sentence; however I do not understand why he should be mortified, insulted and not respected as a person. Everyone has the right to redeem himself. How many people have experienced a difficult moment, and after having made some mistakes became positive protagonists?

From a cultural point of view, this Europe should stand by its own values. Europe must improve towards such direction. It cannot merely be about banks. As Bertinotti said, I do not believe in a financial Europe and I demonstrated it, by fighting different battles to bring industrial politics back to the centre of European economic policy. I believe that the social market economy, as stated within our Treaty, is our objective.

The entire market serves to do social politics. Not an uncontrolled liberalism, but a free movement of goods and services must primarily serve to create citizens' wealth, and not to enrich the businessmen or to increase the banks' power. It must support social politics. This is the Europe we should work on.

Europe is also a set of ideals. It is the combination of our traditions, also contrasting traditions, and activities. Marco is certainly a cultural son of Voltaire. I am a little less. But, if the Benedictine monks would have not existed, Voltaire could have not written what he wrote and thought what he thought.

There is a thread running through it all: without the French Revolution, Europe would have not developed. However, the centrality of the person always becomes a fundamental element. Maybe we should do more, campaign more, since the Treaty constantly refers to the role of human rights, to their defence within the Union, but also to the promotion of human rights beyond the borders

of the European Union. The Treaty invites thus all institutions to become pro-active players. On all the major international events, we should increasingly fight for the protection of human rights.

This is one of the many political and moral activities that Europe must undertake. If we think of Europe merely as the zone of the Euro, then Europe does not exist. Besides citizens' feelings towards the Euro, be they right or wrong, Europe is more. It is the cradle of justice. Even considering all the mistakes we have done, justice was born here. Europe is the motherland of philosophy, Christianity and the French Revolution. All of these characteristics stand in opposition to a vision merely related to finance and banks. For some time there was a sort of 'drunk condition', when everything seemed to be concentrated on money. It was wrong. We have seen the crisis' consequences.

In today's debate I can see a step forward not necessarily towards the rediscovery of values, but rather towards the continuation of the fight for certain values, those same values that founded our societies but that we must not blindly impose on others. We cannot think that a non-European citizen must in any case be obliged to follow our rules, but we must defend fundamental rights, such as the right to life.

I share the campaigns Emma Bonino carried out in defence of women around the world, including Afghanistan. Those are rights that have nothing to do with religion, be it Christianity or Islam. There are conditions that violate the dignity of an individual, regardless of its religious beliefs, or be it religious or atheist.

I think this should be a moment for consciousness' awakening. It sounds as an elitist discourse, but it must and cannot be an elitist discourse. Some of Marco's battles are battles related to values. If Europe is not also about values, it does not serve anything. Economy, industry and other things are without a doubt fundamental, but if principles of value do not exist, it becomes worthless. When we talk about Rule of Law, what does Rule of Law actually mean? It is a principle, a mode of understanding society related to certain values.

I believe it is still worth to dream, because you need dreams to realise big changes. Sometimes, at the beginning, the dream appears as insanity. Everybody says: "You are crazy"; if you go further: "It is impossible to realise"; then if you go a little more further: "It is difficult". When you manage to accomplish it by three quarters, it is already a big achievement.

Having said so, I think Europe must continue to push ahead. A Europe characterised by too much bureaucracy certainly is not up to this kind of progress, but it also depends on figures like us, political figures, to not lose enthusiasm.

For this reason I was very glad to accept Marco's invitation to contribute to the organization of this event. It seems, from the various speeches, that we talked about issues that are often not addressed and that may make us rediscover the pride in being citizens of Europe, called to build a different Europe, a less bureaucratic Europe and we hope - it may seem like rhetoric, but I do not think it is - a better Europe.

Thank you.

## **LOUIS MICHEL**

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Member of the European Parliament for Belgium (ALDE), Co-President of the Delegation to the ACP-EU Parliamentary Assembly, Former Minister of Foreign Affairs of Belgium, Former Member of the European Commission

Ladies and Gentlemen the Ministers, Ladies and Gentlemen Members of Parliament, Ladies and Gentlemen from the academic world and dear Mr Pannella; he does not know it but he is a man I have always admired, from a very long time ago, but I never told you and I take this opportunity to say it.

I am obviously really happy to be here with you to talk about a very serious topic, given that it interferes directly with the right of life as the first of human rights, and also with the respect of human dignity. So I warmly thank the Nonviolent Radical Party Transnational and Transparty for giving me the opportunity to take the floor at this round table.

Ladies and gentlemen, the situation in Iraq is more than alarming; it is intolerable. The appeal made by Ban Ki-moon and the UN High Commissioner of Human Rights, Navi Pillay, by Amnesty International and the NGO Hands Off Cain, and by many other organizations, for a moratorium on the death penalty in Iraq has unfortunately remained unanswered. The situation is getting worse every day, amassing an increasing number of group executions by hanging every year. At least 169 Iraqis have been executed in 2013, and since the beginning of 2014, there already have been around 40 executions. Iraq is the third country in the world on the ranking of detainees' executions, following China and Iran. At the eve of the legislative elections in April 2014, the mass executions, the lacunar Iraqi judiciary system, unemployment, the lack of services and religious are all ingredients that threaten the entire region.

So, Ladies and Gentlemen, the necessity to abolish death penalty is - for me as a humanist and Universalist - obvious beyond any

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doubt. A man killing another man equals the reprisal of death by death. It's a shame for mankind; it is the negation of the humanity present in every human being. Every human being possesses a sense of humanity, no matter how depraved he may be. If we could only convince ourselves of this premise, I believe we would have made a huge leap forward.

Since the century of enlightenment, man created something that never existed in the past: a social organization based on reason, a community of free individuals that are capable of thinking and express themselves freely, and are capable of expressing the cardinal human virtue of tolerance as well as what I would call "*the most beautiful expression of tolerance: the notion of forgiveness*". I think it is very important to immerse ourselves in this notion. The battle of all humanists is a moral struggle, a fight against bloody archaisms humanity must combat, at all costs, first and foremost with itself. There is a very beautiful sentence by Victor Hugo who spoke at the Constituent Assembly in 1848, and I quote: "*The death penalty is the special and eternal symbol of barbarism*". When we speak of visionaries and universalism it is important to remember he said this in 1848.

According to Amnesty International, over the course of the past ten years, considerable progress has been made on the road to the abolishment of the death penalty in all regions of the world, I think it is important to be slightly optimistic: more than 140 countries have either abolished the death penalty or decided not to execute it anymore; among these legal or de facto abolitionists 36 States of the African Union, of which 16 Sub-Saharan States.

I believe we must truly applaud the leadership efforts of the African Commission for Human Rights which, through the adoption of its Resolutions of 2008 and 2009, aims at turning the African Union into a death penalty free zone. In December 2010, the Third Resolution of the United Nations on a Moratorium on the Death Penalty was adopted with an overwhelming vote of 109 countries in favour, 41 against and 35 abstaining; indicating a clear global majority advocating for the abolishment of the death penalty.

Nowadays, two third of the States in the world have abolished the death penalty by law or in practice. Each society has a specific relationship with the death penalty; China, Iran, Iraq, and the United States, just to mention the main countries to keep executing. Luckily, voices are raised in non-abolitionist countries, saying the death penalty is neither moralistic, nor intimidating or discouraging, but that it is on the contrary an offence to justice, to a human justice that by definition can make mistakes and that in itself carries the germs of all social poisons such as inequality and racism.

In fact, no social injustice is more cruel than inequality in justice. When this inequality is continued also in who gets sentenced to the death penalty, this injustice is simply intolerable. One cannot but revolt against the capital execution of minors, mentally ill persons, persons sentenced because of their ethnic or religious belongings, or even adulterers and homosexuals.

We must cling to our beliefs, our hopes, our dreams.

In China, the new wave of Confucianism is against the death penalty. In the United States, despite the fact that death penalties remain unjust and tragic - I am thinking of the execution of Troy Davis -, the death penalty is now limited to the State of Texas and some southern States. In the Islamic States, on the twenty-two Member States of the Arabic league, only Djibouti is abolitionist, but certain others are nonetheless on the road towards a moratorium or on the road to the abolishment. Turkey, as a candidate for membership of the European Union and an ever more recognized regional actor, has without a doubt a role to play, as Robert Valdater has highlighted: Sharia allows for executions but does not oblige them.

The dropping number of retentionist States can be explained by the multiplication of international rules on the basic rights of the human being, which keep on narrowinscope g the application for the death penalty. I would like to mention a few examples: I think of the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, the African Charter for Human and Peoples' Rights, the European Convention on Human Rights and its Protocol on the abolishment of the death penalty, and the Rome Statute establishing the International Criminal Court.

But, my dear friends, the abolishment of the death penalty is first and foremost an act of political courage, an act of conscience, a personal commitment, a moral choice; it is the decision to move from a justice that kills to a justice that refuses to kill, a reconciling justice, a justice willing to believe in mankind. I am not naïve, but as a humanist I refuse to be pessimistic vis-à-vis mankind. I am optimistic with regard to man's nature. It is an existential question for mankind. There have always been, and there will yet be, atrocious crimes, crimes against humanity and terrorist attacks. ,

The abolishment of the death penalty is the victory of democracy on totalitarianism; it is the primacy of freedom over obscurantism; it is the victory of the magical alchemy of reason, intelligence and the heart; it is the refusal of disregard for human rights; it is the refusal to let that part of bestiality in us - a part that exists in all of us - take the upper hand; and, at the same time, it is the recognition of the fact that all human beings suffer the risk of the same duality inside them: nobody can escape the risk of his human nature.

The suppression of the death penalty is a condition for democracy, but it is not enough; it is not a guarantee for the impartiality of justice or a guarantee ensuring fair trial, the respect of the presumption of innocence, competent lawyers not subjected to pressure or threats, or even decent prisons.

A State subject to the Rule of Law, what I call a "just State", is the opposite of a State claiming the right to dispose of its citizens even by taking their lives and worse, up to the point of refusing a human being, for whatever crime, to re-integrate into society once the debt to that society has been paid. In a democracy, no man or woman, no base of power can avail himself of the right to take another persons' life. In a democracy, the death penalty is not only inhuman, but simply unacceptable whatever the circumstances.



The values at the basis of the European Constitution cannot justify that we play with human lives or that we accept a justice that kills. That is why in 2010, the European Union pleaded for the adoption of a universal moratorium by the year 2015, as the first step on the road to global abolition.

We are moving forward in that sense in Europe, thanks to the work of the council of Europe. Byelorussia is the only country that has maintained the death sentence. The death sentence is not a way of getting rid of political crimes and terrorism, as they like to believe in Iraq. Those who believe it are mistaking. Terrorism is founded on ideology, on the terrorist that was executed, hailed and immortalized as a martyr and hero to his surroundings; the death penalty nourishes the infernal spiral of violence. The same goes for ousted dictators. The execution of Saddam Hussein has shown a spirit of revenge, an answer to barbarism by barbarism, favouring the cycle of on going in Iraq, depriving the world of a fair trial with respect for the law and establishing responsibilities.

I do not wish to hide from you that the images we have seen from the execution of Saddam Hussein hurt me deeply, because I felt that this decision had been made by my camp, the camp of democracy, the camp of justice and freedom, and I was thus profoundly hurt. These images had, in my opinion, a terrible impact on the humanist cause.

Justice that kills is in fact counter justice, it is a trap for democracy, and it is the triumph of passion over reason and the victory of those who cling to fear and vengeance rather than to human and universal values.

Human sentences are never certain, judiciary mistakes can come from a problem of admissibility of proof, of the jury, of lack of investigation methods in Iraq, of lacunas in judicial systems, and of confessions obtained through the torture of simultaneous executions. These are all violations of international law for which Iraq's Prime Minister, Nouri al-Maliki, will have to answer before the Iraqi people and the international community.

As Maximilien De Robespierre said: Why should we deprive ourselves of the means to repair? Why not extend our hand to the poor, the innocent and the repentant? Why take away from mankind the possibility of reclaiming self-esteem?

The Iraqi State should take to the example of Iraqi Kurdistan, which already respects a moratorium on the death penalty.

As Member of the European Parliament, I would like to say that, as Europeans, we like giving moral lessons to the whole world. But I need to say that in Europe itself, in our Europe, which is, I would say, the motherland of Human Rights, the motherland of the values belonging to the Rule of Law, we are not beyond reproach! Let us take Hungary for instance; it was not that long ago that we noticed that someone who had won the elections was literally practicing "tyranny by majority". Mr Orban, who is the Head of a European State, did not hesitate to use his parliamentary majority to modify the Constitution, to change laws, to jeopardize the independence of the judiciary, the independence of the army, the independence and neutrality of the media. I am merely citing this example to remind us that we too, in Europe, even in the Europe we know and in our Institutions, we are not safe from democratic abuse, and I think we should remain extremely vigilant.

So, there it is! What I wanted to say is that we are obviously proud to belong to a world without borders, but as humanists and universalists, we must continue our struggle for a universal ethics based on the sacred - and I stress "sacred" - premise of the protection of every human being.

Perhaps you do not know, but I am the Rapporteur on the assessment of the application of the Charter of Fundamental Rights in Europe. In this report, for which I believe a majority in favour exists, at least at the Commission, I suggested, still with regard to what I was saying about Europe, the creation of what we call the "Copenhagen mechanism", which would allow a group of wise men, not politicians, to evaluate State by State, European State by European State, the degree of respect for the Charter on Human Rights. Well, you should know that, today, we have encountered

great difficulties to find a majority to defend this idea. States do not want to be subjected to a State by State evaluation of their respect for fundamental rights. I believe this is obviously a very grave issue. We are in Europe; there is a Treaty, and there are values that truly embody our principles. So, I have to tell you that I will continue my struggle, but I find it flabbergasting and I really wish we could push for this idea. It is important the States submit to this evaluation.

I carried out an exercise, because I am also a politician and I know how to put the pressure on. I carried out an exercise, which I cannot do institutionally, and I will publish a State-by-State evaluation, in which I will also criticize my own country - yes, my own country as well - as it does not entirely respect fundamental rights as it should with regard to immigration, migrant's issues, etc.! I do not find it normal we encounter such difficulties at the European level to adopt a mechanism to assess States on their respect for fundamental rights in Europe. It is absolutely astonishing!

All this to say that we have a lot to do. I found a fabulous quote by Victor Hugo, which sums up my thought well: *"It is not sufficient to be the Republic, you have to be freedom. It is not sufficient to be democratic, you have to be humanity. A people should be a man and a man should be a soul. We will fight this fight without relinquish, with force and determination."*

This is really what I mean. It does not suffice to say that we are democratic; we have to go beyond democracy. It does not suffice to say we have a parliamentary majority to be democratic: parliamentary democracy, parliamentary arithmetics is a necessary condition but is not a sufficient condition.

We judge the quality of a democracy by the way in which the majority treats the minority. These are the European values, this was what I wanted to share with you and I was obviously very glad to be invited amongst you. And I just want to tell you that I find myself completely on your wavelength, and I humbly try to bring my conviction to this debate.

Thank you for giving me the floor.



## **GIULIO MARIA TERZI DI SANT'AGATA**

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Former Minister of Foreign Affairs of Italy, Former Italian ambassador to the United States of America

Thank you very much to Marco Perduca for this introduction. I would also like to congratulate Marco Pannella, who is not here, but listening to us from another room. Thank you for the perseverance and coherence with which you have pushed, are pushing and will continue to push the campaign for the Right to Truth. I have witnessed his coherence on this specific theme over the course of many years, but it seems to be even more alive, strong and pugnacious since the military attack in Iraq in 2003, with all its consequences.

My compliments also to the Nonviolent Radical Party, Transnational and Transparty, for bringing all these eminent personalities we have heard from today, and will hear from tomorrow, together.

I believe there are two fundamental principles to improve the quality and efficiency of our work at the international level, and to make a qualitative leap forward with regard to the values on which the international community is based.

The first one cannot but be a Right to Truth, intended as the public's access to information provided by the State. This is fundamental for the affirmation of the Rule of Law within international relations.

The second principle regards a modern conception of the national interest, a conception that actually stands in stark opposition to a Reason of State characterised by domination and power. A modern conception of the Reason of State must necessarily include human rights and the rights of freedom and democracy.

Almost twenty years ago, before the conflict in Iraq, Henry Kissinger added a note - visionary in my opinion - to his masterpiece *Diplomacy*. He noted that the United States would be most unfaithful to their founding values, if they did not fight for the universal implementation of liberty.

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Kissinger said that there is no doubt that us Westerners must support democratic, and not repressive, Governments, and that therefore we must be ready to pay the price to fulfil our moral convictions. However, the difficulty lies in determining the price and the relationship of these moral convictions with other key priorities, including those of national security and geopolitical interests. The first step on the road to wisdom, Kissinger argued, is to recognize the fact that you need to strike a balance between moral imperatives and Realpolitik.

Can we truly say that the discussions on Iraq in 2003 were oriented towards the achievement of such equilibrium? Can we say that the strategies adopted for the transformation of a regime, that operated against its citizens and neighbours with repression, totalitarianism and violence, into a sustainable and peaceful democracy were appropriate; or that these same strategies had been discussed and approved by public opinion, or by Parliament at least?

Did we perhaps ride the emotional wave of 9/11 and everything that followed, with the fear for global terrorism and the fear for weapons of mass destruction? Did we not rely on insecure and unreliable intelligence, rather than on strong and convincing intelligence proof?

Many answers to such questions have already been provided. Ten years have passed. There have been many efforts to help Iraq in proceeding on the bumpy road of democracy and Rule of Law. For this reason we are awaiting the conclusions, not yet available, of the Chilcot Report. The report should provide - also through the method of public confrontation, defined 'Maxwellisation' - new and important insights. The work will certainly have significant value. It will not only affect the political balance - if we want to define it as such - in the Middle East, but it will also influence those conflicts that have become chronic ethnic and religious conflicts.

As Sir John highlighted in his letter of July 15 of last year to Prime Minister Cameron, his report must reflect the "magnitude" of the issues under examination and of the lessons that must be

learned. The incapacity to find the arms of mass destruction in Iraq and to correctly determine the threat posed by Saddam Hussein, still causes uncertainty in the actions we are currently taking in Syria. This non-determination, which emerged in 2003, appears again in the nuclear negotiations with Iran. Hence public information, which is conscious of the absolute value of truth for the security of our countries, is imperative.

When we look at the Chilcot Commission and the Iraq War - and given that the United States, together with the UK, was the principal stakeholder in the intervention in Iraq - it is worth paying attention to some explanations offered by President Bush. If you analyse Bush's memories at the White House - "*Decision Points*" - it is apparent that one third of the book deals with Iraq. The narrative of the former US President also concentrates on the evolution following the 2003 military attack, on the surge and diplomatic action. It particularly focuses on the discussions for the attack's preparation, his Government's deliberations, the political repercussions within the US, the difficulties with allied countries and the failure in obtaining a second Resolution, which would have granted explicit authorisation for the use of violence after Resolution 1441 remained obscure and ambiguous on this aspect.

In the same category of issues addressed by Bush in *Decision Points*, there is also the opportunity to establish, in the same form of how Ambassador Jerry Bremer guided the launch of the Coalition Provisional Authority, the creation of an Iraqi Governing Council, together with the demobilization of the entire security and military system of the country, the so-called *de-baathification*.

Bush admits openly: "*I should have insisted more on debating Jerry Bremer's orders and the de-baathification program, which lacerated the Sunni communities more than I expected, particularly in the Baath apparatus, including the intermediate level of the teachers, thus including the educational system and therefore the participation of the young generation in the new Iraq*". Many Sunni interpreted this as a clear signal that their communities would not play any role in the new Iraq. This is Bush's confession.

On the weapons of mass destruction, the former President expresses not too dissimilar deliberations: *"When Saddam did not use the weapons of mass destruction against our troops, I was relieved. When we discovered there were no deposits, I was surprised, and when the entire summer passed by without finding any weapon of mass destruction, I was worried"*.

Bush reminds the various explanations brought forward by the intelligence. For example by expert David Kay in October 2003, who before Congress *"affirmed the irrefutable evidence that Saddam Hussein had lied to the world, had violated Resolution 1441 and that the programs for producing weapons of mass destruction had been carried out for more than two decades, with the involvement of millions of people and billions of dollars. These weapons were kept secret through deception operations that continued also after the end of Iraqi Freedom operation"*. Bush concludes: *"No one was more shocked and irritated by the fact that we did not find these weapons"*.

But it was exactly the issue of weapons of mass destruction that sprung the ultimatum and the Western intervention with the motivation that Resolution 1441 of the Security Council had been violated. A specific situation was created: the States from the 'coalition of the willing' believed in the necessity to take action because the Non Proliferation Treaty and United Nations Resolutions had been clearly violated. Saddam had to face the consequences contemplated in Chapter VII of the United Nations.

This mechanism of the affirmation of international law has been applied also in other cases, however, without the need to appeal to the use of force. In these cases they merely relied on measures of deterrence, made more credible by the Iraqi "precedent", besides the fact that this precedent had been based - as I previously stated - on an assumption revealed to be unfounded. Gaddafi, for example, ceased his activities for a clandestine nuclear program precisely under the pressure of the invasion of Iraq; while Iran, in 2003, opened up its doors, unsuccessfully, to initiate



dialogues with the Western powers in order to avoid sanctions and risks of attack.

We know the events that followed, culminating in the discovery of the clandestine programs of uranium enrichment at Fordow, in September 2008. The same North Korea persisted in its erratic behaviour, causing ulterior measures by the international community. Not to speak of Syria, which we hope is finally beginning to deliver and destroy its chemical arsenal under the deterrent pressure of a possible use of force.

Such complex history highlights the reasons why the Iraqi case must be clarified and why the Chilcot Commission must have a specific role. A role that supersedes even the mere, yet necessary, clarification of responsibilities, as it would allow the confrontation with the difficult question of weapons of mass destruction with major clarity and without omissions and misunderstandings.

However, I believe there are three further areas upon which the Chilcot Inquiry can elucidate, helping us to learn more lessons. The future of Iraq remains anchored in promises of democracy and respect for human rights. Italian national interest also focuses on this. We therefore need to remember first and foremost that in 2003, the Italian Parliament requested the Government to truly work for a free Iraq, for the exile of Saddam Hussein to a third country, and for a transitional Government. Marco Pannella and the Nonviolent Radical Party conceived this initiative and courageously followed it through. Saddam and Tarek Aziz should have withstood the judgment of the International Criminal Court, rather than the verdict of an Iraqi tribunal immersed in a climate of sectarianism and revenge.

The Chilcot Inquiry should tell us why such promising diplomatic action, initiated by Marco Pannella and the Radical Party, did not succeed.

A second point has to do with the Iraqi Government's attitude towards religious and political minorities and the violent internal conflict, which results in thousands of deaths and wounded every year. The conflict is exacerbating once again, demonstrating that

the American surge of 2007-2008 only mitigated it. The attack did not remove the deep political roots of the conflict. In the Anbar province the Sunni's sense of exclusion remains intact, the same feeling that former President Bush perfectly grasped in his memories.

The Sunni are affected by the "Shiite's predominance" and by the excessive Iranian influence in security and Government matters. This situation promotes the spill over of the Syrian crisis into Iraq and increases the sectarian confrontation within the country. Terrorist groups such as ISIS and Al-Qaeda are taking considerable advantage from the situation.

When, for example, Vice-President al-Hashimi was convicted two years ago for various crimes, in a trial evidently tainted by political shades, some factions invoked the need of a Truth and Reconciliation Commission, as has happened after other civil wars. However, it was never mentioned again. It would be interesting to understand from the analysis of documents by the Iraqi Inquiry if such path was even ever considered. It would certainly be the most natural plan if the effort to bring internal peace and establish the Rule of Law were genuine.

Lastly, the regime change in Iraq put various groups and minorities at risk, when they were relatively protected under Saddam. In the past years, particularly the Christians have been subject to a disastrous climate of violence and attacks that seriously jeopardises their existence as a traditional and important part of the country's confessional mosaic.

This drama touches the European conscience because our roots can be found in the Christian-Jewish culture, and the Iraqi Christians are being attacked because of their belief and religion. We have seen what happened on Christmas Eve: systematic attacks on the capital's churches.

If this is true for religious minorities, it is also true for the political minorities. As was stated previously, what is happening to the mujahidin of the Iranian people is horrible. Shiite militias at Camp Ashraf massacred them in Camp Ashraf on the first of September,

and they are still under attack at Camp Liberty. And until now there has been no serious intervention on behalf of the United Nations or the Iraqi Government. The USA and EU are politically and morally involved in protecting the Iranian dissidents of Camp Liberty. The European countries have committed themselves to granting them asylum. It is of the utmost urgency that this happens for the three thousand people of Camp Liberty, and that they may leave Iraq safely. We must remember that they are protected individuals by the United Nations and the USA, and that they absolutely need to be evacuated from such a dangerous situation for their survival.

In other words, it is necessary that the principle of responsibility and protection is affirmed, without engaging in adventurous or dangerous interventions. It is a principle that advocates for the fundamental freedoms, the Rule of Law, the rights of the individual and of the minorities; an important heritage of Europe and the West. It must always be "available" when we affirm the value of life and security, also for all the minorities that are threatened and oppressed.



## **BAKHTIAR AMIN**

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Former Minister of Human Rights of Iraq

Thank you Marco. Good afternoon, distinguished assembly and friends. It is an honour and privilege to address you. I would like to thank warmly all my friends from the Radical Party, Marco Pannella, Emma Bonino, Marco Perduca and all other friends here and in particular *No Peace Without Justice* with Mr Niccolò Figà-Talamanca and also Mr Matteo Angioli here.

I see many friendly faces that I have known for many many years; real combatants for democracy, freedom and justice. Friends of hard and difficult times in our struggle for democracy and human rights in our part of the world, not just in Iraq and Kurdistan but in the entire Middle East and beyond. I have been with you all along this struggle. This struggle continues for both of us and together.

Iraq is a part of the Middle East; a Middle East that represents about 7% of the world's population, with about 370 million inhabitants, which will become probably 700 millions by 2050. Right now we represent about 40% of all violence in the world. Unfortunately, Iraq is a big part of that picture when it comes to violence. The Middle East produced 47% of the world's totalitarian regimes according to all indexes of good governance, freedoms and rights prior to the Arab Spring. The power and national resources are in the hands of few. 30% of the population of the Middle East lives below the poverty line: 100 million unemployed, 90 million illiterates and 12 million street children. There are about twenty million uprooted people in this region. We all are witnessing the daily misery and the catastrophic situation of the Syrian refugees and displaced persons. Also my country, Iraq, produces many refugees and IDPs, and receives them. We have several millions of Iraqi refugees scattered over the world and hundreds of thousands of IDPs. The Kurdish part of Iraq has received most of the refugees from neighbouring countries and IDPs. The Kurdistan Regional Government (KRG) has received

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about 250,000 Syrian refugees, 12000 Kurdish refugees from Turkey, about 3000 Iranian Kurds, about 200,000 IDPs of Arab origin, about 26,000 Christians from various parts of Iraq who have moved into the KRG area, and recently about 15,000 families from the crisis in Anbar province.

This is a huge burden upon the KRG - in terms of the number of IDPs and refugees - for its very limited resources, even if it tries its best to assist these people in need. Iraq has seen many waves of refugees in its history, and in particular during its republican history that has been the bloodiest period of the second half of the 20th century.

Also in terms of the number of capital executions in Iraq, which several previous speakers spoke of; four Kurdish officers and four communists were executed during the monarchy time (from 1921-1958), but most of the executions took place in the republican time and, while I am not a monarchist, this is a fact and a reality that we have been through. I am probably the only minister who did not sign the re-enactment of the death penalty in Iraq. I fought against executions in Iraq when I was in exile and fought for the universal moratorium.

Unfortunately, Iraq has been facing a terrible period of dictatorship, genocide and terror. Horrendous crimes have been committed in this country throughout decades of dictatorship and by terrorists. The people in general and in particular families of the victims are in favour of punishing mass murderers with the death penalty. Moreover, Islam allows for the death penalty against killers. Iraq is a Muslim country. In regard of this reality we need a serious societal discussion with our clergies and our Islamic institutions and scholars, as well as with our Governments. I think there is a need to bring out this discussion, which is also of religious belief, among Europeans, so that they too can take part in the discussions in our part of the world. You in Europe were thinking differently after the Second World War, but now, you have changed. It is a matter of education, the type of society and regime that you live in and also the time and the nature of crimes.

I am not a theologian and do not justify it, but we have to understand the level of developments in various societies. In Islamic countries murderers are punished by murder, and also Islam is saying that killing a human being equals to the killing of humanity as a whole. Certainly, there is room for discussion on this subject and for interpretation of religion and religious laws. In regard of this issue in Iraq, I heard many statements here and elsewhere, and I am familiar with this debate. A lot needs to be done to convince both the people and rulers in the Islamic world with regard to capital executions, and in this regard I hope our societies and humanity will develop and adopt a universal moratorium and stop these practices as soon as possible.

I fought against the Reason of State for many many years in exile. The international community was totaly silent when we as Kurds and Iraqis were gassed by Saddam Hussein's regime; when 4500 Kurdish villages and 32 towns and districts were bulldozed and erased from the map; when we were ethnically cleansed in my home city Kirkuk; when hundreds of thousands of Kurds and other communities were deported; when 182,000 Kurds disappeared in Anfal Campaigns; 8000 Barzanis and over 10,000 Feyli Kurds disappeared and 5,000 were people killed and 10.000 thousand others wounded by chemicals in Halabja within minutes; when 250 other Kurdish villages were gassed by chemical and biological weapons, with the cancerogenic aflatoxin, which is a biological weapon, with mustard gas, VX, Tabun and Sarin and other chemicals, which were used against civilian populations in thirty one mountain tops and valleys.

Many still suffer the long-term effects of these weapons on their health and environment. Moreover, Iraq has a record in terms of land mines, with 25% of the world's land mines. The Kurdistan region alone has 15% of the world's landmines, which has killed and maimed 15000 people up to now. In addition hundreds of thousands of people were buried in mass graves during the suppression of the uprising in the South in 1991; the drainage of Arab Marshlands has caused a terrible ecocide; Shia spiritual leaders

and many opposition leaders were killed; all Iraqi communities suffered from the brutality of Saddam Hussein's dictatorial regime.

In those days no institutions, no Governments in Europe and in America intervened, but chose to be silent, except for the Scandinavian countries and some NGOs in the world. Only a few MPs from the European Parliament, our Radical friends and No Peace Without Justice; people like Mr Kouchner, Madam Mitterrand, Mr Sakharov, and some friends within US Congress raised their voices in solidarity with our people.

I was working as an advisor to Madam Mitterrand and I brought her to visit the victims of chemical weapons and of these cruel and outrages crimes. She helped us to bring about one thousand Iraqi Kurdish refugees, who were living in refugee camps in Turkey, to France with the help of French Government, which was also silent like many other Governments. You all probably remember what many were saying at the time of gassing us by chemicals: most of them were repeating what the Iraqi regime was saying, that these were baseless allegations and propaganda and no Arab or Muslim countries protested. Also the regional and international organizations - including the UN and its Human Rights commission, when I brought up the case of the Genocide of the Kurds in Halabja and Anfal Campaigns in Iraqi Kurdistan, before the Commission in 1988-1989 and later in in 1990s - refused to condemn the Iraqi regime or investigate these flagrant and serious violations of the Geneva Conventions and international law. Many countries, including the United States, maintained a position of silence, indifference or distortion of the truth. We at the International Alliance for Justice<sup>1</sup>, with Mrs Kathryn Cameron Porter, President of the Human Rights Alliance, later managed to pass Resolutions within the US Congress, both in the House and the Senate,

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<sup>1</sup> International Alliance for Justice, a network of 275 NGOs from over 120 countries worked to bring Saddam Hussein and his associates before an International *ad hoc* Tribunal for their crimes of genocide, crimes against humanity and crimes of War.



calling for the creation of an international *ad hoc* tribunal for Saddam Hussein and his regime's crimes of genocide, crimes against humanity and war crimes. Some countries changed their position and supported the Iraqi opposition. Also at the European Parliament, the International Alliance for Justice succeeded to pass a Resolution promoted by our Radical friends, Greens and some liberals. At the time the Radical MEPs, headed by Mr Olivier Dupuis, and the Co-Chair of the European Greens, Madam Monica Frassoni, helped us to pass a resolution at the European Parliament condemning Saddam Hussein's regime for committing atrocity crimes and asked for the creation of an *ad hoc* tribunal for this regime's heinous crimes. We were lobbying the international community for the creation of an *ad hoc* Tribunal for Iraq long before the creation of Tribunals of The Hague and Arusha, and for the Former Yugoslavia and Rwanda, but unfortunately the international community was divided, including within the UN Security Council, and there was a total silence; Arab and Muslim countries were more silent than Europeans: the majority did not have civil society organizations that could talk about it, nor did their media tell of these crimes; no one spoke of our refugees and displaced persons and their situation, and most of the countries (such as the countries in Europe and North America) did not accept our refugees. I'm glad that today there is a debate about human rights in my country and beyond. In the past I have said in this Parliament: please invest in people, in democrats and in democracies and I repeat it also today. Please do not invest in theocrats and autocrats in the Middle East and elsewhere; invest in the youth and women of our countries and in democratic forces, in civil societies; and support Iraq in its pursuit of democracy and help it overcome the terror by reconciling it internally and with its neighbouring countries.

Unfortunately, Europe has not done enough in supporting my region in its struggle for democracy, human rights and peace. In the field of justice, we need international mechanisms to deal with these atrocity crimes, in particular in post conflict time. The UN

did not have a "Rapid Justice Response" mechanism to deal with issues such as genocide, crimes against humanity, crimes of war. We faced this enormous problem and challenge in the aftermath of Saddam Hussein regime's fall in Iraq.

In 1991, with Mrs Mitterrand, when we went to see the UN Security Council Ambassadors and the Secretary General in New York, we tried to introduce a clause in the memorandum of understanding between the US generals and the Iraqi Generals on war crimes and atrocity crimes while they were discussing in the Safwan tent, but we failed. Then later on, we asked for the creation of an *ad hoc* tribunal for Iraq, this was long before the creation of ICC, but again the international community failed to bring justice to the victims of Saddam's regime.

I fought for the creation of the ICC. I was part of the initial campaign and I contributed to the efforts. I am part of the campaign for "Justice Rapid Response", which is very much needed in post conflict situations. The Radicals and No Peace Without Justice played a vanguard role in both campaigns; for the creation of the ICC and the Rapid Justice Response Mechanism. I urge Europe and the international community to do more in these regards.

But unfortunately, the UN Security Council remains divided on many humanitarian issues, human rights and justice issues worldwide, as they were at the time of the crimes against my people. In our case, in the beginning America and Britain favoured a Palace Coup or a military coup; China because of Tibetans, Russia because of Chechens, and France were totally indifferent towards our issues; today these countries are yet again divided on the case of Syria, for various reasons, while the people are suffering enormously at the hands of the regime and Jihadi and terrorist groups. The international community is also paralysed and incapable of putting an end to this tragedy, which has its effects in Iraq and in the other neighbouring countries. In the case of Iraq, the battle ground within Syria is very similar. Iraq was a Ba'ath party ruled country as a Ba'ath party rules Syria today. In both countries Ba'athists have historically committed serious atrocities and they

are still in my country and in Syria committing serious human rights violations: minority rights violations, genocide, crimes against humanity and crimes of war. As in Iraq, crimes committed in Syria were not brought before international justice.

I described Iraq as a museum of crimes during Saddam Hussein's time; today, I would say this museum has spread out and expanded to our entire region, and you can statistically ascertain that there are more violations. Unfortunately, for us to live in violence has become almost a destiny in the broader Middle East. Unfortunately, most of these crimes committed in our region are not accounted for and its perpetrators are not brought before any justice, neither nationally nor internationally. Also sadly, we failed to embrace and manage ethnic, religious and political diversity and the pluralistic nature of our societies.

I would suggest that Europe and the international community pay attention to the issue of diversity and that the European Parliament organizes an important conference in this regard. In conclusion, I hope that the EU and the international community assist the Kurdistan Regional Government in supporting Syrian refugees and Iraqi IDPs, and assist Iraqi refugees in Europe and beyond. Moreover, I ask the European Parliament to recognise Saddam Hussein regime's genocide against the Kurds and Iraqis in a particular Resolution in accordance with the Iraqi High Tribunal's verdicts in this regard. In addition I ask to support Iraq in its fight against terrorism, in its efforts of national reconciliation, in the improvement of its human rights record and in the work of its civil society organizations.

Thank you very much for your attention.





## **GIUSEPPE CASSINI**

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Former Italian ambassador to Lebanon

I very much appreciated Hon. Rinaldi's remarks on Machiavelli, when he highlighted how a key-rule for political behaviour can be discerned from *The Prince*: "Lying may be allowed, but only for the common good". This brought the memories of Bush, *Decision Points*, to mind, as mentioned by Ambassador Terzi. In reading Bush's autobiography, it is understandable how the President was totally confident that what he was doing - by invading Iraq - was for the greater common good, and not only for the US, but for democracy as a whole.

I have had the confirmation of such confidence during a meeting with Donald Rumsfeld a little while ago. Few have read his memories, also due to the fact that they have not been translated into Italian. They are eight hundred pages, but only the last three hundred are interesting. You will remember a cryptic sentence Rumsfeld said in the tumultuous months leading up to the war in Iraq, and which he himself has turned into the title for his memories, *Known and Unknown*: "There are things we know to know, others we know not to. But there are also things we don't know not to know".

The issue of the "common good" is a problem we need to analyse better. What surprised me most during my meeting with Rumsfeld was his firm conviction - with regard to Iraq - that there were no better solutions than the one he and Cheney devised, and Bush carried out obediently.

The preparations for the invasion of Iraq already started in 2001, and since I was in Beirut at the moment, I was very interested in the Iraqi situation. In general, who stands in Lebanon has the opportunity to learn everything of what is happening in the other countries, rather than what is occurring within Lebanon itself. Recounting that period in a recently published e-book, I calculated the number of lies (and I will get back to this point: lies) invented by the Bush administration to justify the war: forty-nine. It would take too long to illustrate them all, we would be held up in here all night. Instead, I promise you to conclude in about five minutes.

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I will therefore tell you only one, one lie only, because it took place partially in Beirut.

A certain Imad Hage, an entrepreneur with double Lebanese-American nationality, was contacted in Beirut by the chief Foreign Affairs of the Iraq secret service, Hassan el-Obeidi, who told him: *"I know you have relations in the Pentagon, high-up people like Richard Perle. I want you to present them with a truly important proposal by my rais, Saddam Hussein"*.

It seems incredible that "parallel diplomacy" arrived at the point of moving itself in this manner. And yet this was the case. During these frenetic days in which, by the way, Pannella was seeking solutions to safeguard the peace, Saddam Hussein made a proposal of the last chance, which I will briefly describe.

Saddam, through Imade Hage, asked the Americans if they were open to negotiating; and I quote: *"Baghdad is willing to negotiate on everything. If it is about oil, we can offer the US priority on all the oil concessions. If instead it is about the peace process in Palestine, we will support all American plans. If the issue regards lethal arms you believe us to possess, you can send the inspectors to verify. The important thing will be however how you will manage the news that these weapons do no longer exist. Lastly, if it is regime change you are after, we can agree on free elections within the next two years"*.

You know the real reason behind Saddam Hussein's reluctance to allow inspections in the deposits of the presidential palace. Not only did the regime no longer possess weapons of mass destruction, but after years of embargos and sanctions, little of its conventional weapons remained. Saddam could not admit to this publicly, for the risk of being eliminated by his own people given that the regime had been spending the resources of the defence budget on folly expenses and corruption for years. Thus Saddam found himself forced to choose between the certainty of being ousted by his own, or the possibility of being bombed by the Americans as in 1991, but with the slight hope of clinging on to his power. This was his dilemma, and it is very curious indeed that no one has explained this to the American people, convinced as they were that Baghdad truly represented a deadly threat.

The message from the Iraqi missionary, el-Obeidi, were so revolutionary that Imad Hage decided to go to Baghdad to control its authenticity. The Head of the secret service, the famous Habbush el-Tikriti, received him and confirmed everything. And so Imad left for Washington, went to the Pentagon and met with Richard Perle, who sustains he passed the head turning information on to the highest levels of the Pentagon. And that is the last we heard of it.

Or better yet, there was a reaction; and this why I feel I should speak of lies. The days following the encounter, the White House (probably Vice-President Cheney) ordered the CIQ to forge a letter signed by the Head of the Iraqi secret service el-Tikriti, sent to his *rais* on July 1<sup>st</sup>, 2001, two months before 9/11. The letter read: *"To the President of the Republic Saddam Hussein, God bless you. The Egyptian Mohammed Atta has arrived, guest at the house of Abu Nidal ad al-Dora under our supervision. We have prepared a working program of three days for him and his team. He showed himself firmly committed to guide the team in charge of the attacks on the objectives we have agreed to destory [namely the Twin Towers and the Pentagon]"*.

This forged letter reminds me of a similar case, the Ems telegram through which Bismarck made a crucial step forward in the scenario of war against France, which broke loose in 1870. The Ems telegram was not a false telegram, but it contained a minor modification that transformed it into an hour clock bomb, destined to trick Napoleon III into the trap. To initiate a blitzkrieg, Bismarck needed only one small fraudulent operation. In the case of the Bush administration, there were dozens of fraudulent operations.

Considering the shared responsibility by the Blair Government in the decision of invading Iraq, I believe the Chilcot Inquiry Commission must conclude with important results, among which the integral transcript of Blair's testimony before the Inquiry. It is very important to report on what Blair has stated in his declarations: *"I would make the same decision again. I assume all the responsibilities of that decision"*. Assuming all responsibility cannot merely have political consequences, but also judicial ones.



The same applies to the Americans. In these cases the biggest obstacle lies in the "*forgive and forget*" policy Obama installed as soon as he took office at the White House with the famous 16 words: "*I also have a belief that we need to look forward as opposed to look backward*". Understandable, if not justifiable, words for two reasons: one is that, in the midst of the economic frenzy marking the beginning of his mandate, Obama was in dire need of the opposition's support on his way out of the crisis. The fact that he did not obtain this aspired bipartisan consensus is not his fault, but rather due to the extremism of the Republican Party.

But there was an even worse motive. Because of his ideas, and especially because of the colour of his skin, Obama knew he was the most threatened - in physical terms - President in American history. Opening inquiries against those responsible for the war in Iraq meant opening Pandora's box. Behind Rumsfeld and Cheney lingered the grave responsibility of the CIA, of Paul Bremer, of all those who took decisions that were not only wrong in political terms, but also illegal and contrary to the Constitution. As the archbishop of Canterbury said during his sermon in the Cathedral: "*What you are about to do is illegal, illegitimate, and immoral*".

I would like to conclude by reminding that in these days Madrid is debating the implementation of a Spanish law on universal jurisdiction, the law that allowed the British judges to block Pinochet in London for months of infamous semi-detention. I understand that such law comes with thousands of obstacles, not only legal and political, but I think that one of the themes we should highlight today and tomorrow is exactly the principle of universal jurisdiction and how we can advance it.

Also Syria is on this conference's agenda. I have personally known Bashar Assad, and I dare say that, if there truly were a functioning universal jurisdiction, maybe the young Syrian *rais* would not have walked into the trap set by Damascus' gerontocracy, which has made him an accomplice of the killings attributed to the old regime.

Thank you.

## OTTO VON PFERSMANN

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Professor in Law at the Sorbonne University in Paris

Ladies and Gentlemen, I am very happy to participate in this conference, though I deeply regret not being able to be in Brussels with you.

As asked by the organizers, I will speak in French. I could do it in other languages, of course, but as I do not know the prevalent nationality of the audience, I have gladly accepted this request.

My intervention will be focused on the role of the *Etat de Droit* in contemporary democracy. I will try to explain that very often there is a certain confusion between the *Etat de Droit* and democracy; that the idea of *Etat de Droit* generates a number of conceptual problems that are often overlooked or forgotten, and that it is nevertheless possible to build a concept of Rule of Law that is fairly consistent and functional for the purpose of legal arguments and analysis, although its actual realization creates a number of problems.

The idea, the words and the concept of *Etat de Droit* itself arise in a very peculiar historical context. It was developed during the first German constitutionalism, in the second half of the nineteenth century, when there were significant conflicts within the executive branch, which remained the emanation of the monarch tied to his privileges and strongly opposed to the demands for the development of democratic instruments for the legislative process.

In this particular ambiguous context, where the perspectives in the evolution of the legal system were very confused, some German lawyers tried to introduce the idea that *the State should submit itself to the Law*. And thus born strange concept of the *Rechtsstaat* was born: "*Etat de Droit*" or the State subject to the Law.

From the political point of view, its applications are quite concrete. These authors, and others who continued to sustain these theories, claimed the introduction of the judicial review for administrative acts, which emanated from the executive branch headed

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by the monarch. This review was aimed at comparing the administrative acts with the Law, which derived from people's representatives (even if the vote was far from being democratic). They also demanded the introduction, the strengthening, the clarification and the development of citizens' rights towards the executive. We can most certainly assume that in the end this idea resulted in the constitutional review of laws or, more recently, in the review of the acts at the supranational level, in the framework of the European integration or, more broadly, in the context of various forms of international integration.

Nevertheless, the conceptual problem remains unsolved and we will discuss about it further on. The *Etat de Droit* is often compared to the expression of "*Rule of Law*", which appears much earlier in the British political and legal theory. The general idea of the Rule of Law is that, instead of men, the Law should rule. In ancient history, with Aristotle or Tacitus, we can find more examples of the idea that Government's decisions should not be the mere result of the monarch's fantasy or of anyone who by chance detains a certain power, but should be subject to rules established in advance and applied in the most consistent way.

This concept of Rule of Law creates some problems, because it expresses the idea that the State is, at the same time, something legally relevant, but other than the Law. Therefore, the State can be submitted to the Law, precisely because it would be separated from it. However, here we see a strange contradiction, in the sense that we think of a legal object - the law consisting of a set of rules - and of something else, which would be the State, which could submit itself to that legal object.

But if we think more consistently, a legal concept of the State, in turn, can obviously foresee a legal object, that is a complex set of rules. Otherwise, it would consist in facts to which rules could potentially be applied. But, in this way, the State continues to be thought of in opposition to the Law.

If we want to give a concrete, accurate and constructive idea of *Etat de Droit*, we should first of all dissolve the dualism between

State and Law. The State is nothing but a legal system and, more precisely, a relatively centralized kind of legal system, which has a certain degree of autonomy within the framework of International Law. Therefore, inevitably, any State shall be an *Etat de Droit*, since the State is a system of legal rules, and the expression *Etat de Droit* means "legal system".

However, there is strong objection against the use of this expression by the advocates of the idea that the *Etat de Droit* as a justification for the most heinous legal systems is unacceptable. Indeed, any system, as violent and disrespectful of freedom as it is, should be considered by conceptual necessity as an *Etat "de Droit"*. Obviously, this objection highlights the fact that, in the absence of other elements, the expression "*Etat de Droit*" provides no information, if only he who invokes it grants a particular value to the Law. Therefore, the concept of "*Etat de Droit*" which can be used for the theory and the doctrinal analysis can only result from a differentiation between different classes of "State".

It is very important to understand that the idea of *Etat de Droit* was first conceived not as legal idea, but as a political one, according to which legal systems can - and possibly should - incorporate certain requirements. Therefore, the *Etat de Droit* will result in the transposition of these political requirements in legal rules. What are these requirements? It is important to carry out a number of distinctions, starting from the traditional one between the "*Etat de Droit*" from the point of view of its actual meaning and "*Etat de Droit*" formally speaking.

"*Etat de Droit*" in its actual meaning is a quite elusive concept, that can be filled in with any content: it can be considered as a State that respects human rights, or a democratic State, or a State which has some forms of review, or a State that encompasses all these features at the same time. Thus, "*Etat de Droit*" in the actual sense can be identified with any political extra-legal claim.

This interpretation has two disadvantages. First, if we want to distinguish a democracy from an undemocratic State, or a State that respects fundamental rights from one that does not, it seems

preferable to explicitly say "democratic State" or "democracy respecting fundamental rights" (which is hardly the same thing). Secondly, aiming for a State with some substantial features quickly becomes inflationary. If "*Etat de Droit*" is simply the whole spectrum of all the beautiful things that we expect from a modern State, such as democracy, respect for fundamental rights, separation of powers, constitutional justice and so on, then the concept itself will not have any further explicatory power.

Therefore I will focus on the "*Etat de Droit*" in the formal sense, on its structural character, distinguishing certain forms of legal organizations from others. In other words, we can imagine a State which is neither democratic nor respectful of fundamental rights, but which can have these features, although most likely democracy and respect of human rights flow into with them for reasons we will see further on.

While these ideas have been developed from the political perspective of the nineteenth century, we need to translate them into legal terms now. The fundamental idea behind the *Etat de Droit* is undoubtedly the deontic comprehensive determination of human behaviour. The deontic determination of an action is the identification of its modality: required, prohibited or permitted. "To Rule by Law" or "to submit the State to the Law" are confusing expressions to claim that no action lies outside of such determination and that acts creating obligations for citizens are at the same time submitted to citizens themselves. It follows the requirement of the deontic determination of the procedures that regulate or control the implementation of acts. Somehow, the gradual decrease in the deontic indeterminacy not only of human actions, but also of human actions aimed to impose obligations, is considered as an intrinsic feature of the Law. Not only the procedures for enactment of these acts should be determined, but also the procedures aimed at judging whether these acts have been correctly applied, and so on. If we translate this idea into structural elements of the legal system, we obtain four stages: *the restriction of discretionary power, transformation of conflicts into legally organized litiga-*

tions, maximum extension of control of compliance, maximum access to maximum control, which I will now develop and outline.

The idea of a limitation of the discretionary power is, in fact, the main claim in the original theories of the *Etat de Droit*, and states that the decision-making bodies should not exercise their power in a discretionary way, but according to predetermined rules. Their decisions would be subject to a determined framework, and the more defined is the framework, the more predictable are the decisions for citizens, and the better citizens can understand the legal framework.

We see very clearly that such an idea is also subject to certain restrictions, because its resulting development is radical and could therefore lead to the perfectly unworkable idea of a strict determination of all behaviour of all bodies in all possible situations. However, this will be naturally opposed by any practical realization of any form of political work and decision-making, because it would mean that the normative system has already predetermined all possible actions of all beneficiaries. Obviously, it is not truly feasible and is not what the advocates of the *Etat de Droit* could reasonably sustain.

Undoubtedly, we are talking about a "certain" restriction of the discretionary power, but of course this raises the question of what would be a good measure for such restriction. The theory of the *Etat de Droit* cannot provide any answer. It is necessary to define the possible solutions in advance, but the extent of such definition depends on the framework of the existing positive Law. The second idea is the transformation of conflicts into legally organized litigation. As a concrete example: in some federal States the central Government could exercise a form of execution against the federal States, if they make decisions against certain principles of the central State. In other words, the execution would be a legal instrument, which allows the immediate use of force and therefore could lead to conflicts.

The third idea is the maximum extension of control of compliance.

Suppose we have a framework in which the bodies, under relatively precise and determined rules, may enact legal acts through a process involving the constitutional, the legislative, the regulatory and the individual level. At every level, there will be the need to verify that each act meets the requirements for its production, both in terms of validity (have all formal procedural requirements been met?) and - this is the essential point - in terms of its content.

In the absence of compliance control, we actually end up with a situation where what is imperatively called "hierarchy of rules" would be fully overturned. In other words, the most recent act would prevail over the rules that settle the conditions of enactment and the content of such act. If we want to prevent this, the only solution is the introduction of additional bodies, with the power to verify and, if needed, redress the acts.

Here we touch both the most tangible ideal and, at the same time, the insurmountable limit of the need of control. Assume we have control of legality, of constitutionality and supranational control of an act. We can always ask the question to what extent the act produced by the supervisory bodies, in turn, meets the requirements for the organization, content, results and implementation of control. The problem has only been shifted. Of course we could introduce a new monitoring body that controls the supervisory body, but it would have two consequences. First, it would add a new form of complexity and, again, it would shift the problem. The body that controls the supervisory body will produce, in turn, an act that should comply with the requirements of the control bodies, and so on endlessly. The stage where the idea of "*Etat de Droit*", actual and formal, becomes clearer and more tangible, closest to the ideals of the contemporary legal doctrine, is also the moment where the idea becomes unachievable, since there will always be a body that will decide as a body of last resort and upon which there will be no further control.

Is this a reason to waiver this claim? I do not think so. There are some theorists of law and especially my friend Michel Troper and the realist school of interpretation, that say that this is a pure

illusion, since the interpreter is always stronger than the author of the text to be interpreted, or that the interpreter is always stronger than the one that sets the rules for the interpreter, because the interpreter also interprets the rules of interpretation.

From a strictly legal point of view, this analysis seems too negative and partially inaccurate. If, in the order of events, we still observe that some decisions will stand out ultimately, even if they are far away from the texts they are supposed to comply with, as part of a legal discussion the question hardly arises in those terms. It is necessary to analyse the consistency between acts, although, in reality, a non-compliant act ultimately prevails and stands out.

If we make a distinction between the strictly empirical analysis of the reality of power relations - which is the legitimate domain of the empirical sciences and, in particular, political science and political sociology - the jurist's task is to identify and analyse rules and conformity between acts of different regulatory levels, taking into account the fact that the legal system is necessarily organized in such a way that it cannot ensure the ultimate compliance of its own acts, for the reasons just discussed.

In this situation, it seems to me that one of the conditions to get close to the ideal of the formal or "compliant" *Etat de Droit* consists in strengthening legal science. Without a developed legal science, meeting the requirements of accuracy, objectivity, scientificity, the ideal of the *Etat de Droit* is illusory. Without the ability of jurists to analyse the meaning of the rules, it is not possible to decide on their compliance with the rules that organize their process and content.

The value of the *Etat de Droit* will depend on the legal system, considered from the political point of view. The *Etat de Droit* in a democracy requires a certain democratic fervour. The democratic ideal requires certain awareness, a certain degree of vigilance in terms of political demands argued according to the highest standards of political philosophy. But apart from that, and in a complementary manner, this ideal implies that the democrats are committed to transfer their needs in positive Law and, even at this



stage, it would still be something quite useless if the Law did not fit in the needs of a formal *Etat de Droit*, on the one hand, and of a research for knowledge and analysis, on the other hand. It is certainly true, as claimed by the organizers of this conference, that there will always be some distortion between the idea of democracy and its realization, as between the idea of the *Etat de Droit* and its implementation. But it depends largely on the commitment of each and the other, not only for political beliefs (we know very well that we can commit ourselves to quite opposite perspectives while remaining democrats, and the choice of these perspectives is not my problem here), but it also depends on the development of legal science, unfortunately underestimated.

While we are now facing an increasing complexity of the Law, at the same time we are facing the decreasing support for the institution of University. Besides recognising the positive Law of the Member States, of the European Union and the International positive Law, there is a need to support jurists' theoretical developments; otherwise it is not possible to produce doctrines able to understand complex situations. In this sense, I certainly remain optimistic, but my message would be a scientific policy message, because there is no democracy and there is no democratic *Etat de Droit* without scientific policy and without the commitment of jurists to the most accurate knowledge.

Thank you very much.

## **SAUMURA TIOULONG**

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Member of the Cambodian National Assembly for the  
Cambodia National Rescue Party

Thank you Marco. Thank you also to the second Marco for the organization of this conference on such very interesting topics. I am really glad to have been invited for another particular reason; the Vice President of the European Commission, Mr Antonio Tajani, told us that it was not forbidden to dream, to the contrary, he encouraged us to do so! Therefore, tonight, I am happy to recount the dream of a Cambodian democrat fighting for freedom in her country. I have a dream!

Firstly, I dream that the European Commission, of which Mr Antonio Tajani is the Vice President - and I ask you, Marco, as well as Niccolò whom I salute, to tell him what I am about to say - opens its eyes to the incredible State terrorism in Cambodia! Just an example: our army kills the workers on strike, because they demand an increase in salaries of 160 dollars per month! So, I have the dream that the European Commission notices that! And that it does not use bombing as it did it in Libya, not an invasion as it did in Iraq; I dream that the European Commission uses non-violent and pacific means provided for in the different agreements between Cambodia and the European Union, and that we plan special custom privileges for Cambodia, provided that Cambodia respects democratic rules and the Rule of Law, as professor Von Pfersmann excellently put it some moments ago. Nobody fell asleep! I noticed that everybody listened carefully, so you know what I am talking about!

Secondly, I have a dream that the European Commission encourages our dictators, in Cambodia, to listen and positively respond to the aspirations of the Cambodian people. The Cambodian people aspire to the Right to Know, because we do not have media freedom in Cambodia. The Cambodian people aspire to the freedom of opinion, expression and protest; all freedoms that are sus-

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ended in this moment. The Cambodian people aspire to the right to freely choose its leaders.

Do not tell me that I am asking too much! We are at the European Parliament, not in a communist State. And I dream that the European Commission finally uses the cooperation agreements and asks for their full compliance; and I appeal to the defenders of democracy in Europe, to the European Commission to demonstrate European values - those values we talked about all this afternoon - to the Cambodian Government.

I dream the European Commission realizes that there is a real spiritual revolution in Cambodia, because finally there is a united democratic opposition, which shows the way to non-violence. We recommend the use of nonviolent means, we recommend the set up and the development of a state of mind similar to Nelson Mandela's promise: no revenge, no lynching as the Vice President of the European Commission, Antonio Tajani, said, but to the contrary, a process of reconciliation and of pardon, exactly as Vice President Tajani said this morning.

And finally, my last point, I dream the European Commission, and the European Union in general, acts, maybe, as a mediator.

Marco, you initiated campaigns for the exile of Saddam Hussein, you have been initiating campaigns for al-Assad, for Libya; so why not start, why won't you launch a campaign for reconciliation, to rekindle trust between the Cambodian people that suffered too much, that is too traumatized by decades of extreme violence as demonstrated by the events of the last few days.

Voilà! This is my appeal to my friends of the Radical Party, to my Liberal friends in the European Parliament. After all, on January 16<sup>th</sup> of this year, the European Parliament almost unanimously adopted a Resolution calling for all the elements I have just mentioned, and unfortunately it appears the European Commission fails to realize that it is a Resolution from the European Parliament. And on March, 13, a delegation of the Cambodian Government will travel to Brussels to negotiate with the European Commission: my dream, Mr Vice President Tajani, is that the Europe-

an Commission takes advantage of this meeting with this Cambodian delegation to speak about the European values!

Thank you Marco! Thank you Niccolò! Thank you Marco!  
Thank you Matteo! Thanks to all of you to have allowed me to dream, here, at the heart of the European Parliament!

And "*Arrivederci!*"

## **NICCOLÒ RINALDI**

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Member of the European Parliament for Italy (ALDE),  
Vice-President of the ALDE Group

There is one point on which we have been engaging with our Cambodian friends and the Radical Party. What is very interesting in the case of Cambodia is the disappointing approach of the other European Institutions. I must say that we have never pretended to ignore this phenomenon during plenary sessions. It is before the eyes of everyone how corruption and violence, the opposites of good governance, are illegal since many decades.

We have committed ourselves to stability, but there is a lack of interest in many European countries that do not consider Cambodia a priority at the political level. There are two or three European countries that are quite active in Cambodia. The others leave the main European action to those two or three countries. At the Commission level, the implementation of all these programs has never been subjected to some sort of democratic conditionality, but to a social impact assessment and the impact in terms of strengthening the authorities in a way that satisfies the European Union authority.

For us - and we have discussed a lot on this -, what is happening in Cambodia is very important, but particularly with respect to the contradictory approach of the European Institutions. It is clear that we suffer of what Guy Verhofstadt said at the beginning of the conference, namely the lack of a real and mature democracy with one voice. If in Cambodia the Reason of State is not the problem to achieve democracy, we have seen in other countries that the problem is always there, a problem we invoke in favour of stability and tranquillity in our relations, so as not to move and not to show the European Union's true values.

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## **Kok KSOR**

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President of the Montagnard Foundation Inc., Member of the General Council of the Nonviolent Radical Party Transnational and Transparty

Thank you Marco. I am glad to be with a lot of friends here, especially my oldest one [Marco Pannella, red.]. I've been seeing you for a while, and also Marco Perduca, Marco Cappato and many others.

I am so glad to be here today, and I want to thank you so much for inviting me to be here today, to discuss about the Rule of Law versus the Reason of State.

It is the argument of what has really happened in the Central Highlands of Vietnam, because the Vietnamese Government is using the army, the police, and everything against the civilians; against who is demonstrating and asking the Government to change, to help, to do something other to better the living conditions of the indigenous Degar people in the Central Highlands, but they use the army to surround the villagers and arrest them, to put them in prison.

So, this is very similar to the Iraqi problem. The Iraqi problem is that, because of the terrorists, many other countries supported Iraq to fight, like the US supported Iraq to fight terrorism. And in Vietnam, the people ignore, the international community ignores, also most of the Government ignores the human rights of the people in Vietnam, because of the expansion of China. They want to stop the expansion of China. But they forget that Vietnam is expansionist too. They forgot about it. If they want to stop one expansionist, they have to stop the other too. Not just one, and allow the other one to do something. That is why it is difficult to talk with Vietnam, to ask them to abide by the law, because the more they violate the law, the more the people aided them and the more money they have. And they use that money to deploy the armed forces to arrest the civilian who is demonstrating peacefully, asking for their right to coexist with Vietnam, just like our people, the

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indigenous people of the Central Highlands, the Degar people. The French call us "the Montagnard". We got that name because the first ones who colonized our land were not the Vietnamese, but the French. The French are the ones who colonized our land.

Vietnam uses the monetary aid received from other countries to deploy the armed forces and hurt the other people in the country. As we all know, the Government is established because of the people. Without the people, there is no Government at all. The Government is supposed to use the army to protect the people, but not to harm the people. And thus what they do is wrong. Because they are strong, nobody says anything to them, and they do what whatever they want. And this is the problem in Vietnam.

Us, the Montagnard people, we demonstrate peacefully, asking Vietnam to recognize our rights as a human being and to equally treat our people like Vietnamese people. But just right now, until now, it is about 39 years already... Our people report back to me from the Central Highlands: right now we have no voice, we cannot say anything to the Vietnamese people. Not only to the Government, but to the Vietnamese people. If our people plant a banana tree by their house, and the banana is growing, the Vietnamese come and cut that banana any time they want. And then the Government said to our people: you cannot say a word; you cannot say anything about what the Vietnamese people do to you people. So how can we live that way? If we have a motorcycle, they will go and pick up the motorcycle, and we have no voice to say something, we have no right to say something to stop them from doing that. Because that is what the Government is doing to our people. Many people lost their property. They planted corn they could not use for themselves. The Vietnamese go on and took it from them.

This is worse than killing, because you see them do something and you have nothing, you have no right to say anything to them to stop it. It is better to die than to live that way. That is how our people think. But because of our faith in God, because of our trust in the Lord, we have to accept this situation; we have to suffer, so that the other people can have a life. That is why I am here today.

Like taught by the Christian Church; our people are Christians and many of them become Christian. And they are accused for being Christian.

But the Christian cannot overthrow the Government. How can they overthrow the Government when they get together and try to worship and they are not allowed to? They worry about the indigenous people. There are only a few of them there. How could we take over 87 million Vietnamese with armed forces and navy and air force and everything like that? There is no way we can do that. Instead of worrying about China and their two islands there, worry about us! They say it is for reasons of national security. That is why they do that to us. They don't want to allow us to do this or to do that. I don't think that is right. What can we do to them? Nothing.

Many of the countries that go over to Vietnam, they say no word to the Vietnamese Government to stop that. So we do not have anyone to depend on now. That is why our people have only one to depend on now, God in who we trust. But that too, the Vietnamese want to change our way of worshipping. They do not allow us to have Church; they do not allow us to worship the way we want. The Government created, established and built a church for us, to worship the Government church and first of all worship their party leaders. The party and the leader ask for our respect, but they are not God. How can we worship them? There are many things they do to us.

Therefore, in Vietnam, our indigenous people have no more hope. We lost our hope over there. There is no one thinking about us, saying anything or trying to stop it. Therefore we said we have no more hope. But we have one strand of hope. It is our Lord God.

And secondly there is the hope that the world will do something before it is too late, as has been the way for Cambodia. Vietnam is not enough. They kill and destroy our people, took our land and rights and everything in Central Highlands, but it is not enough. They would cross the border over to Cambodia, and try to destroy our people who live in the Northeastern part of Cambodia. That is the province of Ratanakiri, Mondulkiri and Stung Treng.



That is why they organize triangle business. It is a project. They want to destroy our people there. There is no Vietnamese living in that area, there are no Cambodians living in that area, there are no Laos living in that area. Why do they engage in triangle business, the triangle project, over there? They try to destroy our people. Especially Wong Hang, the plantation owner, robber plantation owner - many of the banks in the world owe money to Wong Hang - they cross the border and destroy our land in Ratana Kiri, and that means we have to move our people out of the land. We have no rights.

But I am so glad, I am so happy that the people of Cambodia right now have realized that what is going on over there is wrong. They stood up; they stand up for their rights. That is why I now really support the party of Sam Rainsy. They are, and their party is, democratic. They recognized the right of the people, the need of the people. That is why I am here. Last year, on the occasion of the New Year of Cambodia in April, Sam Rainsy came to our community in the US, talked with them and everything like that. And him and me, Sam Rainsy and myself, agreed and signed an agreement for what will be the life of our people in the future. Because he has recognized that our people is the indigenous people of Cambodia, who live in the regions and the provinces I mentioned before.

That is why I am really supporting him. I wish that Vietnam would do the same thing, like Sam Rainsy's party. But, unless Sam Rainsy's party will win, and that will happen, if not for our people there, there is no hope again. That is why I am asking all of our friends here, the Radical Party, the European Union, the United States, the United Nations, and the rest of the world, to support this party: the CRNP, Cambodia National Rescue Party; to change the Government of Cambodia. Because the old Government, they are all joining up with Vietnam to hurt our people. When our people cross the border, they turn them back; they arrest them and sell them back to Vietnam. Many of our people got hurt. So this is the only way to save our race. If not, there is no more hope for our people.

I really want to ask any people who can do their best to support change in the Government of Cambodia. And I hope also that if the Cambodian Government changes, there will be a little chance to change Vietnam too. Without changing Cambodia there is no way to change Vietnam. But if Cambodia changes, then maybe from that position, from that point, the world can push for change in Vietnam too. That is the only hope I have.

Thank you very much for listening to me.



## **MATTEO ANGIOLI**

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Member of the General Council of the Nonviolent Radical Party Transnational and Transparty

We will now project a video<sup>2</sup> on the Radical Party campaign "*Free Iraq, only alternative to the war*", launched at the beginning of 2003. When we decided to prepare this film, and considered its content, we realized that the most important part of our initiative regarded the House of Commons in the United Kingdom. The main focus of our political activity has in fact been directed towards the British Parliament in the first place, and shifted towards the Chilcot Inquiry later on. It is no detail that it was Gordon Brown, under popular pressure, to request this Inquiry in 2009. Apparently, and according to the latest indiscretions, after nearly five years of work Chilcot should deliver his findings by mid-year. In fact it seems a compromise has been reached between John Chilcot, the President of the Commission, and Jeremy Heywood on behalf of the British Government as the Secretary of Cameron's Cabinet. It is therefore a compromise between the Government and the Inquiry.

To get an idea of the complexity of this compromise, we are pleased to have Stephen Plowden and Owen Thomas with us today. Stephen Plowden is a London citizen, who has launched a personal initiative almost four years ago, in which he engaged with the Foreign Office, the British Ministry of Foreign Affairs. On the basis of the *Freedom of Information Act*, Stephen has asked the publication of some documents, and some notes of exchanges between Bush and Blair in the months leading up to the war in particular. Owen Thomas is a researcher at the University of Exeter who, among other things, specifically deals with the work of the Chilcot Inquiry.

The video<sup>2</sup> summarizes ten years of the Radical campaign we launched in 2003, or better, in December 2002, when the seven

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<sup>2</sup> The video is available online at: [www.radioradicale.it/scheda/419500](http://www.radioradicale.it/scheda/419500)

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Radical Members of the European Parliament - I perfectly remember that evening and the problem of our position on Iraq with respect to the Anglo-American alliance - gathered in Emma Bonino's office in Strasbourg. That night, and over the course of the following days, the idea of exile to avert the conflict was adopted as the official position of the Radical Party.

The campaign has subsequently shifted to a research focussed on the Chilcot Inquiry, starting from the first documents that were leaked in the United States and the United Kingdom in 2005. These documents effectively revealed Blair's role: the man who tried in every way not to avoid the war, but to simply delay it in order to obtain better conditions, in diplomatic terms, to unleash this indescribable conflict. Enjoy the video.

## **OWEN THOMAS**

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Doctoral Researcher at the University of Exeter

For the last few years I have been conducting research on the public inquiries commissioned in the UK to examine aspects of the British Government's decision to go to war with Iraq in 2003. Today I will talk about The Iraq Inquiry, the most recent, and final, public inquiry.

Since early in its proceedings the Inquiry has faced difficulty because the State has kept certain evidence secret. The Government claims that certain disclosures would not be in the public interest because the benefit of disclosure is outweighed by the burden, that burden is the likely harm of disclosure to the public interest. At the end of 2013, the Chairman of the Inquiry wrote to inform the Prime Minister that the Inquiry could not complete its report until a satisfactory agreement could be reached between the Inquiry and the Cabinet Office on the disclosure of "difficult documents".<sup>3</sup> The Inquiry wish to publish some 200 records of Cabinet-level discussions, 25 notes from Tony Blair to George Bush and 130 records on conversations between either Tony Blair or Gordon Brown and George Bush.

What I argue now is that the problems with delaying disclosure or the Right to Know in the inquiries is caused by the peculiar manner in which laws and protocols balance publicity against security.

First a point of terminology. I will now talk about official secrecy and actual publicity. When I use the phrase actual publicity I mean an act of democratic openness or transparency, and act of the State unveiling itself to public scrutiny.

We can think about the Right to Know or publicity in two different ways. Firstly we can think about it in the conventional sense of an actual situation in which the State is exposed to the public

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<sup>3</sup> Letter from Sir John Chilcot to David Cameron, 4th November. The Iraq Inquiry. Accessed 2 December 2013.  
[www.iraqinquiry.org.uk/media/54976/2013-11-04\\_Chilcot\\_Cameron.pdf](http://www.iraqinquiry.org.uk/media/54976/2013-11-04_Chilcot_Cameron.pdf)

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gaze and public scrutiny. Most of the time, however, the State is not exposed in this way. Instead we rely on a second kind of publicity in which we *expect* those in public office to make decisions *as if* they were exposed to the public Right to Know. Let's call this 'hypothetical publicity'. In other words, we expect those in public office to only pursue those policies that they think would pass the test of deliberation in the public sphere. We rely on this second, hypothetical, kind of publicity because, for one reason or another, we cannot always oversee the decisions taken by those in public office in our name. We, in other words, have to trust those in public office to act in accordance with the normative principles of publicity and democratic deliberation.

Trust and transparency are thus two different forms of behaviour in a democracy. Sometimes we don't trust those in public office. The aftermath in Britain following the Blair Government's decision to go to war is an example. Here there was, and remains, a suspicion that those in Government did not act in accordance with the principles of publicity. Whatever the suspicion, the only way to quell public unrest would be through transparency. In the words of a former inquiry chairman,

It is only when the public is present that the public will have complete confidence that everything possible has been done to the purpose of arriving at the truth. When there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrust any investigation carried out behind closed doors ... actual publicity enables the public to see for itself how the investigation is being carried out and accordingly dispels suspicion ... the evil, if it exists, shall be exposed so that it may be rooted out; or if it does not exist, the public shall be satisfied that in reality there is no substance in the prevalent rumours and suspicions by which they had been disturbed.<sup>4</sup>

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<sup>4</sup> Salmon, Cyril. (1966) *Royal Commission on Tribunals of Inquiry*. London: Her Majesty's Stationery Office.

When The Iraq Inquiry was launched in 2009, the chairman of the Inquiry, Sir John Chilcot, noted that Committee wished to "ensure that its proceedings are as open as possible because they recognise that it is one of the ways in which the public can have confidence in the integrity and independence of the Inquiry."<sup>5</sup> The normal situation, in other words, is one of actual publicity.

Yet, as I have said, delays to the Inquiry are in no small part due to disagreements between the Inquiry and the British Government over the declassification and publication of key documents. Beyond the Inquiry, individuals have also made Freedom of Information (FOI) requests for certain documents. Mr Stephen Plowden has made an FOI request for records of diplomatic exchanges between Blair and Bush. Dr. Chris Lamb has made an FOI request for the minutes of two Cabinet meetings from March 2003. The Cabinet Office - or in the case of FOI requests the relevant minister - have the final say on declassification and, thus far, they have refused publication. What is interesting though is *how* publication can be refused and how this justification is made palatable in public discourse. The denial of actual publicity must be presented in such away that it appears to be as a legitimate form of behaviour that is compatible with the principles of liberal democracy.

The Inquiry and the FOI act are subject to the same restrictive concept of public interest immunity. According to this concept certain forms of information are exempt from the duty to disclose if in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Both the Inquiry protocols and the FOI Act specify public interests. Information is exempt from actual publicity, for instance if its disclosure would, or would be likely to, prejudice diplomatic relations, economic interests and so on.

The point is that a norm of actual publicity is placed in a relationship of balance against plausible insecurities. Ways in which security may be placed in a situation of likely harm. In my re-

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<sup>5</sup> Chilcot, John (2009) Opening Statement by Sir John Chilcot. Accessed <http://www.iraqinquiry.org.uk/about/Statement.aspx>



search I show how this 'balance' metaphor legitimates the endurance of official secrecy. In order to understand how, we need to understand how both actual publicity and official secrecy are ways of governing that protect the security of the citizen, or the State. One way to understand the relationship between publicity, secrecy and security is through two different rationalities of Government that co-constitute liberal-democratic States like Britain. Each rationality of Government creates a source of insecurity for the political community and ways of securing against that insecurity.<sup>6</sup>

Usually, the exercise of official secrecy is based on the rationality of Reason of State, or *Raison d'Etat*. According to *Raison d'Etat* the State must collect technical knowledge about the material realities of itself and other States - such as its population assets, its wealth, areas of strength and weakness and so on. Collecting this knowledge allows the State to plan the future; the future is no longer seen as something subject to the whims of the gods but something that can be controlled. This knowledge also allows the State to compete with other States for power. This knowledge creates the problem of the secret. Or rather it creates the insecurity of actual publicity. The value of this knowledge would be lost if everyone knew it. In order to provide foundations for a political community - the State - *Raison d'Etat* requires the sovereign to act beyond the ordinary law by keeping mysteries hidden. Of course, this is not to suggest that deception was not advocated or practiced prior to the emergence of *Raison d'Etat*. There is, nonetheless, an identifiable historical moment when sovereignty becomes a matter of governing an object - the State - and at that moment it becomes important to maintain a competitive advantage by keeping knowledge of this object secure and hidden. This official secrecy is not a tool for the protection of the individual ruler's interest; secrecy ought now to be exercised for a common good - the protection of State and the

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<sup>6</sup> This argument draws on the work of Michel Foucault. See *Security, Territory, Population: Lectures at the Collège De France 1977-1978*, translated by Graham Burchell. Basingstoke, UK: Palgrave Macmillan.

population. This defence of secrecy is in the name of security *of the State*: by keeping secrets (such as the details of critical infrastructure, methods of defence, sources of intelligence and so on) institutions such as the armed forces or security services will be better equipped to defend the territory and the population of the nation-State. By defending territory and population in this way, it is possible to have a foundation for public law and order, and it is from this public law and order that justice and liberties may be realised by the citizenry. This is how secrecy can be considered foundational to modern political life, and how the democratic principles of openness must occasionally be suspended. On this rationality of governance, based on Reason of State or *Raison d'Etat*, publicity is form of insecurity because it prevents the collection of knowledge used and secrecy is way securing against that insecurity.

In response, a new rationality of governance emerges in the eighteenth and nineteenth centuries: liberalism. This rationality of governance suggests that the State cannot always know or always pursue the best course of action. It opposes the notion that mysteries of State help to plan the best future for the political community. Everything ought to be exposed to public opinion. A defence of actual publicity is in the name of security of the individual and of civil society. This liberal critique suggests that public authority could never possess the kind of detailed knowledge to legislate and plan for every eventuality. We might describe this rationality as liberal fear; a fear that what is being kept secret is actually harmful to the common good. Official secrecy always contains the possibility of threat by creating a space, exempt from law, where violence and corruption may breed. It does not constitute a crime but it does contain the *possibility* of criminal acts.<sup>7</sup> This leads to a suspicion that the secret is something that could not be legitimized were it to be public; that secrecy is not being used as part of a prudent strategy of power, but has instead become an opportunity for Statesmen to transgress public law. This makes secrecy a

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<sup>7</sup> For a discussion see Horn, E. (2011) Logics of Political Secrecy. *Theory, Culture & Society* 28:103-22.

source of insecurity. But why does this make actual publicity a kind of security? It provides the security of the liberal subject against the threat of too much Government. Actual publicity allows the public to check that those in public office are not abusing power in such a way that harms the common good. But it also provides a way for the public to check against ineptitude. In this way 'security' always a contested concept and the differing approaches to governance that ensue are not always compatible.

Now let's go back to the Iraq Inquiry. When either the Iraq Inquiry or FOI appellants request disclosure of material, this request is put to a test. The public interest in the norm of disclosure is weighed against the likely harm of that disclosure.

In Mr Plowden's case, the Foreign Office argued that there was a "very high" likelihood of relations with the United States being prejudiced by disclosure of confidential information and the possibility that disclosure "could lead to a reduction in information sharing generally which would in turn lead to the severe prejudice of the UK on security and diplomatic levels".<sup>8</sup> The balance metaphor is situated within a rationality of *Raison d'Etat* where actual publicity is the normal, nice-to-have situation but ultimately it is a source of insecurity to the State. The security subject at the heart of the balance metaphor is the security of the State.

In Mr Lamb's case, the Cabinet Office argued that if the Government were to publish Cabinet minutes, "either ministers would feel inhibited from expressing their real opinions or officials preparing the minutes would water down their accounts of what took place in order to avoid controversy. In either event, the result would not be better information, *but worse Government*."<sup>9</sup> The Attorney General vetoed disclosure by arguing that the very act of

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<sup>8</sup> Angel, John, Henry Fitzhugh, and Marion Saunders. (2012) Information Tribunal. EA/2011/0225 & 228. Plowden and Foreign and Commonwealth Office v IC.

<sup>9</sup> Ryan, Chris, Henry Fitzhugh, and Andrew Whetnall. (2009) Information Tribunal: EA/2008/0024 and Ea/2008/0029. Cabinet Office V IC and Lamb

publishing the minutes would damage the possibilities for accountability in the future by encouraging ministers to deliberate in quiet corners. Publication, in other words, would lead to more secrecy, secrets that were not 'official' records but hidden mysteries that could never be recovered. This balance metaphor is situated within a rationality of *liberalism*, not *Raison d'Etat*. The subject of security is the citizen, not the State. But here, actual publicity is denied because, paradoxically, actual publicity based on the liberal fear of secrecy might create more insecurity for liberal citizens, more dark spaces that could hide iniquity and ineptitude. The act of validating the assumption of hypothetical publicity could itself constitute insecurity.

In these situations, what is severely under emphasised is the way in actual publicity is a way of mediating security problems, and the way in which official secrecy is a source of insecurity. Of course, there is an ethical issue here about talking about politics in terms of insecurities and security measures, and whether doing so has a negative effect on politics. This is not the place for that debate.

Instead, I am suggesting here that the current approach to determining disclosure in the Iraq Inquiries and in FOI requests always allows the Government to maintain the veil of official secrecy. One way of getting away from this tendency is to abandon this way of thinking about the Right to Know as a balance between a normal democratic principle and the threat to security that such a principle poses. At the very least, we have to be able to debate these issues in such a way that acknowledges that disclosure can result in harm to the security of the State or the citizen, but not disclosing can harm the subject of security too. This is why the balance metaphor is dangerous - it does not consider the assumptions behind the objects that are being weighed. By thinking that we can balance publicity against the harm of publicity to security, we are already privileging one understanding of security over another.

I will end with the remarks of Mr Stephen Plowden during of the FOI hearings.

Going to war is the most important decision a country can take. The invasion of Iraq was and is widely believed both in Britain and abroad to be illegal and immoral. It led to thousands of British casualties, the deaths of thousands of innocent Iraqi civilians and untold other sufferings. The invasion increased the threats to our national security: the attacks on London on 7 July 2005 were made by people angered by this action and so too, apparently, were other planned attacks, which the security forces have thwarted. The claim used to justify the invasion, that Iraq possessed weapons of mass destruction and had failed to comply with UN Security Council mandatory resolutions requiring Iraq to rid itself of such weapons, turns out to have been mistaken. Even if there had been good grounds for that belief at the time, peaceful means of getting rid of these weapons through the work of the UN's inspectors and by other peaceful diplomatic efforts had not been exhausted. All this is already pretty well known. The question which is still to some extent obscure, and on which documents whose disclosure I have requested might throw light, is whether the British prime Minister and Foreign Secretary deliberately misrepresented the French position in order to justify the invasion.<sup>10</sup>

This is a question about whether a man in public office acted in a way that harmed the common good. This is a question of security for the liberal subject and a question that can only be answered through actual publicity, until this kind of claim can be made sense of in FOI Courts and in deliberations between the Iraq inquiry and the Government, official secrecy will endure, and the Right to Know will be curtailed.

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<sup>10</sup> Cited in Angel, John, Henry Fitzhugh, and Marion Saunders. (2012) Information Tribunal. EA/2011/0225 & 228. Plowden and Foreign and Commonwealth Office v IC

## MICHEL TROPER

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Professor in Public Law and Political Sciences at the University of Paris X

I would like to start by congratulating those who had the wonderful idea of organizing this day, to warmly thank them for their invitation, and to apologize to be present only through the miracle of technology.

Due to time restraints, and maybe also due to a lack of skills, I am forced to limit myself to some general remarks on this difficult topic: "*Rule of Law versus Reason of State*". The difficulty lies in the fact that this topic encompasses different issues, and not just two; Reason of State and Rule of Law, but also *État de Droit*, which is not really the same thing, human rights, state of exception, and, of course, democracy.

Due to time restraints again, I am forced to divide and choose. Thus I will speak only little of democracy and human rights, but I will try to tackle the other themes in a more exhaustive fashion.

I will start with some definitions and basic distinctions.

*Rule of Law*: there is a set of characteristics to define the Rule of Law and I am using those identified by John Finnis. According to Finnis, the Rule of Law is characterized by some principles: rules are general, they are valid only for the future and possess thus no retroactive power; it is not physically impossible to obey them; they are public, clear, coherent, and stable enough to guide our behaviour based on our knowledge of those rules. This last characteristic reflects the old definition by Montesquieu: *Freedom is not to do whatever we want, but the right to do what we should want*; that is the exclusive right to obey but the law, so that we are able to know the consequences of our actions. Finnis adds that, in such a system, those who have the power to apply the rules have to be accountable and have to enforce the law coherently and conform to their content. We can thus see that the characteristics of the Rule of Law are those of a desirable situation. However, the

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mere enumeration of these characteristics does not provide us with the means to reach this situation.

This is different from what the German doctrine called *Rechtsstaat*, and that which we can translate by comparable formulas in other Latin languages, but not by *Rule of Law*, which is *Stato di Diritto* in Italian, *État de Droit* in French, *Estado de Derecho* in Spanish, etcetera. All these formulas define a system which is a bit different, which does not aim at describing an ideal situation, but which aims at providing the means for its realization.

The *État de Droit* is thus something more ambitious, because it shows the way to reach this desirable situation. The *État de Droit* wants indeed to revive an ancient dream, which is to be subjected to the law rather than to other human beings.

But, what does it mean to be subjected to law, if these laws themselves are the creation of man? And to what extent can the State be a subject to the law, if it is itself the source of law?

There are two points of views of *État de Droit*, but not one that gives us the desired guarantees.

According to the first point of view, the *État de Droit* would be a State subjected to a law that does not derive from the State itself. This point of view obviously implies the existence of a non-State law, hierarchically superior to the State and to positive law, a so-called natural law.

However, this point of view is opposed by strong objections. Firstly, natural law is not a reality whose existence is objectively verifiable and which is agreed upon by everybody. Natural law doctrines are very diverse. Some find its source in God, some in physical nature, and others in a universal and immovable human nature. We sometimes pretend to know it by reason, other times by revelation or by intuition. The content of this natural law is sometimes conservative, even reactionary, and sometimes progressive.

Secondly, while positive law does not establish certain conduct, but rather creates institutions in charge of applying the rules

and sanctioning their violation, no such institutions exist in natural law. Natural law cannot be applied by itself, but needs human beings to interpret and enforce it. Yet, these human beings are necessarily those taking action in the name of State organs. That's why the so-called "State subjected to law", is in reality only submitted to itself.

The same thing can be said with regard to human rights. First of all, according to some points of view on human rights, these rights are only natural ones. Secondly, when human rights are proclaimed in official documents, such as Constitutions or International Conventions, they remain part of natural law, even though turned into positive law, and the necessity of institutions for their interpretation and application remains. Moreover, as the various rights and freedoms are liable to enter into conflict, it is necessary to balance and reconcile them; a role once again attributed to the State's institutions, such as the Courts, so that we remain permanently subjected to other human beings.

Therefore, the idea of the existence of a law outside the law and the State seems impossible to implement. Faced with this first point of view, we can make one more objection: the *État de Droit* is the State that acts within the framework of the law and only within the framework of the law. This State aims first and foremost at avoiding particular actions of arbitrarily nature that are not subjected to general rules, that neither have coherence nor give guarantees in the respect of individuals, freedoms, or moral principles. This State also renounces to the doctrines of the Reason of State, which authorize the deviation of principles in view of the preservation of a State interest that is different from the citizen's interest. The *État de Droit* is thus a form of power, which exercises itself through means of law, in the form of law, through the hierarchy of norms: no act can be accomplished if it is not conform to a superior norm, which in itself has to be enunciated in accordance to a superior norm, etc. We hope that when fundamental rights are being protected by the highest hierarchical norms, espe-



cially by the constitution, that they will also be protected in the specific decisions taken in accordance with these rules.

This *État de Droit* - which is obviously much preferable to a situation in which particular decisions are made one by one, according to the whims of their authors or the circumstances - does however not provide us with satisfying guarantees.

For what reason? First of all, when we are moving up norm by norm, we always end up at a norm without hierarchical superior. This supreme norm in internal law is the Constitution. And if the Constitution contains rules that authorize conduct or actions contrary to fundamental freedoms, the *État de Droit* will have been fully respected and we will have acted according to the Constitution, but the condition of those freedoms will not be as good.

Secondly, even if the Constitution contains satisfying norms with regard to fundamental rights, they still have to be applied. Yet, implementation is not a mechanical process. Rules are not implemented by logical proceedings. Implementation always implies sort of a margin of appreciation. This is self-evident when we look at human rights in the jurisprudence of the European Court of Human Rights, even though it is very protectionist of rights and freedoms. The Court leaves the States with a national margin of appreciation, so that some behaviours are allowed here and forbidden elsewhere. Of course, this margin of appreciation exists also within the States themselves.

Take the Declaration of the Rights of Man and of the Citizen, the great Declaration of 1789, which obtained constitutional value under the fifth Republic. It specifies in numerous articles that freedom must be exercised within the framework of laws, within the limits defined by the law. It is thus necessary to have laws to define freedoms and they cannot do it neither without a prerequisite interpretation of the text of the declaration, nor without the adding some rules. Thus, article 11 of the Declaration proclaims the principle of freedom of speech: *"The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with*

*freedom, but shall be responsible for such abuses of this freedom as shall be defined by law*". But several laws are needed to specify the rules with regard to the freedom of speech. It is necessary to have a law on the press, a law on audio-visual communication, penal laws to repress abuses, etc., but the content of these laws cannot be determined in advance. Several possible contents are compatible with the principle proclaimed in article 11 of the Declaration. These laws themselves must be implemented by means of further concrete decisions, which in turn implies some kind of discretionary power.

This is the weak link in the doctrine of the *État de Droit*: this doctrine cannot claim conformity between decisions and superior rules, and we have to accept simple compatibility. Contrary to what the doctrine appealed to, the knowledge of the hierarchical superior rule does not permit to foresee the content of the rule that will apply it, and citizens can neither know the decisions they will be subjected to, nor the consequences of their actions.

Thirdly, general rules are not directly observable. They are registered in texts, but these texts are written in their natural language, which is vague and ambiguous, and needs therefore to be interpreted before any implementation. Thus, the power of the interpreter is enormous. It is easily observable when this interpreter is a Court of last resort, namely a Court whose decision is imperative whatever its content. The meaning of the text is thus reduced to what the Court says it is. As a famous American jurist said: "*the law means what the judge says it means*".

Furthermore, I must add that a conflict exists between the doctrine of the *État de Droit* and the idea of democracy. This conflict is twofold. On the one hand, if we submit the majority of the people or its representatives to binding rules, the peoples' sovereignty, which defines democracy, is at risk and the people is no longer sovereign as it cannot do as it pleases. On the other hand, democracy is put at risk even if the process is correctly applied, as during the application and interpretation process, Courts or other authorities can interpret the law in another way than was meant by the

people or its representatives at the time of the adoption of the supreme rules, the Constitution and the laws. Thus, the *État de Droit* does not offer any guarantee that the citizens will be governed by law and not by man.

With regard to the Reason of State, which is a rather vague notion, but a simple definition might be sufficient: we can define the "Reason of State" as the justification of an act that is contrary to morality or to a rule of positive law, but that is necessary to preserve fundamental interests of the State or the general interest.

To what extent is this Reason of State opposed to the *État de Droit* or to what extent can the *État de Droit* protect itself against the abusive use of the Reason of State by Governments? I am rather pessimistic on this issue. Before moving forward, I have to get rid of the question whether it is truly immoral to accomplish immoral acts for the common good. The question is perfectly legitimate, but it is necessary to put it between brackets here. The only question I intend to address is whether the system of the *État de Droit* can really prevent the implementation of the principle of the Reason of State to make an exception to the normal application of law. It is important to distinguish two cases. The first one is the case of a clearly immoral act, such as killing, torturing, detaining people in camps etc. Let us hypothesize that this act, clearly immoral, is however legal. It is legal because there is a rule that authorizes it, either because in a given State it is authorized in all circumstances, even in normal situations, or it is authorized only in during times of crisis or under exceptional circumstances. In this hypothesis, the *État de Droit* is not really opposed to the Reason of State. It does not prevent it. To the contrary, it organizes and authorizes its use. It may more or less accurately define the cases in which the Reason of State authorizes these acts. It may provide more or less restricting procedures for the application of the Reason of State, but whatever the vague or precise character of definitions and procedures, it still means the *État de Droit* allows for the invocation and the use of the Reason of State.

The second case is the one of an act, still presumed immoral, but this time clearly illegal. By hypothesis, the *État de Droit* is opposed to this illegal act. However, it often leaves some margins. That is what happens when rules relating to freedoms are enunciated with exceptions formulated by vague phrases. It is said for example that such an act is forbidden "unless for exceptional circumstances", and the question as to what constitutes an "exceptional circumstance" is intentionally left open. This vague character is not always the result of devious intentions. It is often necessary because that what is exceptional is that which we cannot foresee. It can be a natural catastrophe, a foreign war, a civil war, an epidemic. These sorts of circumstance can never be accurately defined in advance. The law must necessarily leave some room of this kind. The otherwise illegal act thus becomes legal because of circumstantial reasons and their definition by the Reason of State as exceptional due to the circumstances. As such, this Reason of State is nothing but an application of the *État de Droit*. However, it is possible that some general rules do not provide such margins; that there is nothing in the Constitution or in the laws to authorize certain acts even under exceptional circumstances. Normally, these actions are therefore illegal. But it may still be possible to validate them *a posteriori*. An illegal act has been carried out, but, instead of cancelling or condemning its authors, a judicial authority can always decide that "considering the exceptional circumstances" the act was justifiable and valid, even without an authorizing text.

I will not be the one to condemn the *État de Droit*. It is necessary and essential to limit the arbitrary nature as much as possible, and to subject citizens to general rules and to protective procedures of fundamental rights, but we should never forget that law can serve many causes. It can even become a tool of oppression, but it can offer some guarantees as well, but these guaranties, even when useful, will always be imperfect.



## **YVES CHARLES ZARKA**

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The Reason of State in a democracy. I am not a lawyer, but a philosopher. I will try to briefly address two points.

First of all, we must know what we talk about, because when we do not know what we talk of, we may say things that are false and do not shed any light on the issue at stake: the Reason of State. My first step will thus be to determine the significant levels of the Reason of State. The second will be to determine whether, in a democracy, the Reason of State is an archaism, which has survived from past forms of authoritarian power, and is thus somewhat of a fossil from the past present in the current regimes; or if the Reason of State has always been present, not as a remnant of the past, but as an all-time requirement linked to the exercise of power? Is it so that as soon as there is power, there is Reason of State, even when we move from an authoritarian system to a democratic one?

The most immediately recognizable level of the sense of the Reason of State is provided by the idea of a derogation from the established laws in function of a more important political necessity; that is to say, in view of the preservation of the common good or the public interest. The reference to an extraordinary necessity sufficiently indicates that the Reason of State cannot be simply confounded with politics as a whole, nor can it define the whole exercise of the art of governing. The Reason of State intervenes when an emergency situation requires the holder of power to act beyond the common law principles. Within the sense of the Reason of State we thus find the ancient and famous precept: "Necessitas non habet legem". However, necessity does not suffice to justify the derogation from the common law for the Reason of State, if it does not concern the public good or State interest. The Reason of State is here conceived as a reference to a superior law than the ones that govern the State ordinarily, because it is aimed

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at the conservation or survival of the State. The necessity that justifies the Reason of State is an exceptional necessity, which demands an extraordinary exercise of statecraft. The difficulty lies in the knowledge of the State interest. Who is entitled to determine such? The Reason of State always remains marked by ambiguity: does she regard the State's interest or the one of the Prince?

The second level of significance of the Reason of State concerns the notion of ratio. The rationality of the Reason of State is conceived as superior to the rationality of the rules responsible for the daily government of public affairs. Everything is thus conceived as if she embodies a political dimension, which is inaccessible for common reason. The Reason of State imposed a schism in the political concept of reason. She transcends the common reason to the extent that she becomes impossible to assimilate. To talk of the Reason of State, means then to suppose there exists a dimension of reality and political actions that escapes the ordinary comprehension of the subjects and which cannot be recognized but when we put ourselves in the point of view of the law governing the political being. But what is this reason they invoke to declare it inaccessible to ordinary comprehension? Does it not risk to merely provide a convenient mask to practices for no reason?

This transcendence of the Reason of State naturally leads to the third level of its meaning: the idea of secrecy. The Reason of State has often been linked to the notion of State secrets, *arcana imperii*. The secret refers to two ideas regarding the exercise of power. One concerns the effectiveness of government practice that is inextricably linked to concealment: "He who does not know how to conceal, cannot rule". The second concerns the definition of the State as a concept of domination. The art of secrecy is one of the mainsprings of political domination. Clapmar, German thinker on the Reason of State, thus distinguished the *arcana imperii*, which are related to the conservation of the form of the Republic, and the *arcana dominationis*, linked to the conservation of those holding the power. The political doctrine which attaches great importance to the role of secrecy in the art of governing, embraces almost

necessarily the principles related to an understanding of politics in terms of domination.

Finally, the fourth level of significance refers to the idea of violence. The political action exercised through the Reason of State often takes to a use of force outside the law. It is the significance of the notion of coup d'état in the seventeenth century, which did not mean that it concerned an illegal seizure of power (conspiracy) but, to the contrary, a Prince's action in favour of the public good or the conservation of the people. Politics is not limited to its discourse, principles and laws; the invocation of the Reason of State reminds us that it is also an ambit of possible violence, which suspends or violates its legal form.

This multiplicity of levels of consideration related to the Reason of State demonstrates that it belongs to a history that has been both intellectual and practical: it concerns written texts as well as actions and effective political strategies.

These different levels of significance of the Reason of State emphasize the fundamental opposition between a democratic political form and the practices related to the Reason of State. In other words, to speak of the presence of the Reason of State in a democratic regime means that, at least in certain occasions, democracy enters in contradiction with itself. The practices related to the Reason of State are in fact nothing other than the suspension of the Rule of Law. It follows that the Reason of State can be invoked in a democracy but as an exception linked to a domestic emergency, affecting for example State security or a grave crisis due to a foreign war. At least this is how the intervention of the Reason of State is justified *a posteriori*. Correspondingly, a Government that would often appeal to the Reason of State could quickly lose its claim of democratic legitimacy, or even democratic legality.

The question we asked ourselves at the beginning therefore returns: is the invocation of the Reason of State in a democratic regime an archaism, which reveals a legacy of the political system prior to the instalment of democracy, or is democracy itself sub-



ject to circumstances and needs that inherently facilitate and even necessitate the invocation of the Reason of State.

The idea that we could get rid of the Reason of State is linked to the first hypothesis, according to which the Reason of State represents the survival, in a democratic regime, of a political dimension remnant from previous, archaic and out-dated forms of political power. However, if the Reason of State is archaic, the persistence of this archaism is precisely the issue. How do we explain the persistence of the invocation of the Reason of State in a democratic regime? We can give four reasons for the return of this archaism.

1. The democratic political form is defined by a principle of legitimacy (popular sovereignty) and a type of legality (the Rule of Law), which are likely to adapt to a wide variety of common circumstances (related to the territory, the population, customs, history, etc.). But beyond the common circumstances that allow us, at least in terms of principle, to attribute universal validity to democracy, there is the exception, the emergency, and those unforeseeable circumstances that may require the recourse to the Reason of State. This would then be the punctual, partial and provisional suspension of the normal procedures under the Rule of Law. In this case, the invocation of the Reason of State would be less of a crisis of democracy, and rather a crisis within democracy. It would not call the fundamental principles of this political form into question, but rather their capacity to respond effectively to unexpected and exceptional circumstances. The exceptional and urgent character is obviously fundamental. This implies that there is no collateral crisis, but the endangering of the existence of the State itself, of the public good and the freedom of its citizens. This exceptional situation may concern the onset of a foreign war, an attempted coup (in the modern sense of the term), or a terrorist attack on public security, etc. In these circumstances we understand that the publicity and the duration intrinsically linked to the democratic procedures may not be best suited to effectively respond to the emergency. But this recourse to the Reason of State may, in a

certain sense, be inscribed into the history of the democratic regime because of a justification *a posteriori*, to which it will be subject once the crisis has been averted, and especially in view of the survival of the regime that has made this recourse.

2. The intervention of the Reason of State may also be the result of a tension between the law and power. In fact, democracy presupposes that the legal principles govern the necessities of power. However, law and power correspond to distinct orders, each with their own requirements and their own laws. This is where a second and more profound aspect of the Reason of State can be imposed. The Reason of State would take the form of a reason of power, which opposes itself to the reason of law and justice. The Reason of State then corresponds to an emancipation of the logic of power with regard to the logic of the law. We can take the example of the sale of weapons abroad, or similar cases such as the authorization for the sale of dangerous food (in a domestic or foreign market); cases where the responsibility of the State is directly involved. This form of the Reason of State is more profound than the previous one, because it corresponds to an internal distortion of the orders that define the very existence of political society. It would again be a crisis *inside* democracy, rather than a crisis *of* democracy, but different from the previous case, in the sense that emergency cannot be invoked and that the failure to respect democratic procedures may consist in a deliberate violation of the law.

3. Real democracies are not in all respects, nor can they be, conform to the absolute ideal of democracy. The intervention of the Reason of State can equally slip into this divide between the real and the ideal. This divide goes beyond the impossibility of direct democracy in the large contemporary States. The idea of democracy embraces in fact the principle of representation as a condition for its effectiveness. The delegation of authority and power, as well as the periodic return to the expression of popular sovereignty through elections, are integrated principles of the democratic idea, or at least one of its forms: the one we know today. But

the divide insists that democracy is defined by institutions, which need to assume a social and political form of self-regulation, preventing or allowing to overcome possible conflicts (between citizens, corporations, between the private and the public interest). Only that, even when they are good, the institutions do not function by themselves. They require human intervention. Whatever the fundamental value of these institutions, it does not manifest itself but in function of the men who operate them. In fact, democracy does not merely require good institutions, but also good governors, meaning governors that do not themselves violate the principles and the laws for whose enforcement they are responsible. In this case, the invocation of the Reason of State would be a veil, aimed at hiding the surreptitious substitution of the public interest with the private one, a substitution that is the true definition of corruption. The democratic institutions can be corrupted in two ways: either because of the failure to adapt to temporal conditions (a discrepancy between society and the State), either because of the use to which the men who operate them subject them. Here, the Reason of State is but a way to hide the corruption of the governors and the weakening of the institutions from the public eye. Is it then a crisis *within* democracy, or a crisis *of* democracy? The answer to this question must be pragmatic, depending on whether the damage caused by the practices mentioned above have or have not put the very existence of the democratic form into question. We know that democracies are not eternal, that they can be corrupted and convert to authoritarian, and even totalitarian, regimes. We also know they are capable of overcoming crises as serious as those that discredit almost the entire political class.

4. Finally, the invocation of the Reason of State can also be an indication of a type of crisis linked unequivocally to a crisis *of* democracy itself. What are these crises? It are those who question the very form of democracy and political society, that is to say those crises that lead directly or indirectly to the destruction of the principle of the sovereignty of the people and the Rule of Law. In fact, democracy has strengths and weaknesses that have been ana-

lysed since antiquity. The public use of the word, the need to persuade, the necessity to obtain voluntary compliance are without a doubt strengths, but it are also weaknesses when placed at the service of demagoguery, which nowadays is media demagoguery. Government through law is also a strongpoint, but this strength becomes a weakness when the State apparatus falls - even after regular electoral consultations - under the hands of partisan castes. We could summarize these crises of democracy with a formula: demagoguery of the elected and despotism of the appointed. When the democracy of parties is reduced to the battle for power, with the distribution of privilege, emoluments and power positions as its main objectives, we can say that there is an internal crisis of democracy and the alienation of its founding principles. We should thus not be surprised that, in this context, there indifference towards politics is spreading rapidly among the population, with as a consequence the demobilization of voters and the loss of credibility of political parties (that is to say, the castes in reality), which each in turn seize the levers of power. The recourse to the Reason of State does then have no other function but to mask - but this fools no one - the crisis of democracy itself.

In response to the original question on the role of the Reason of State in democracy, I would tend to say that this role corresponds to moments of more or less serious crisis. When the democratic regime is no longer up to the principles of legitimacy and legality that define its essence, then the power drapes itself with the Reason of State to hide the multiplicity of distortions and abuses, and in particular the substitution of the public interest with the private one, or the quasi-monopolisation of the State apparatus by the political parties. In one word, the intervention of the Reason of State occurs when there is a reversal in the roles of servants and masters of the State.

Giovanni Botero, *Della ragion di Stato*, 1589. On this author, cf. *Raison et déRaison d'Etat*, under the direction of Y.C. Zarka, Paris, PUF, 1994, p. 101-120.



## **MARIA ROSARIA FERRARESE**

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Today I would like to talk about how and why the concept of State secrets is more and more subject to cultural and legal limits. Furthermore I will argue how the limits imposed on State secrets fit into a more general legal and institutional transformation related to processes of globalization and constitutionalism. Of course, the cultural and legal elaborations do not necessarily have consequences within reality, but they definitely contribute to its change.

The idea of truth is strong and inspiring, but today it finds itself in a contradictory or ambivalent situation. On the one hand, the truth is more and more vindicated, expected and demanded. Instances of truth continuously emerge through various words, various channels and various strands of information.. The debate on *truth and democracy* rages through the United States. In the legal field, various books shed light on the relationship between law and truth, and in the institutional field the claim for *transparency* in the institutions is gaining strength. The motto of institutional transparency is accompanied and favoured by the promises of transparency and truth that emerge from information technologies. These, often quite naively, appear to propose themselves as a secure instrument of truth. However, on the other hand, it is increasingly difficult to find refuge or a safe haven in absolute truth, given that today more than ever, we live immersed in diversity and pluralism. We cannot and do not want to renounce to the pluralism of opinions, religions and cultures. We need pluralism for two reasons: theoretically because it is a doctrine for peace and for conviviality within diversity; and practically because it is a fundamental resource to find adequate answers to the complexities of today's society.

The strong contrast between the need for truth and the need for pluralism is part of the ambivalence between "the one and the manifold", which is typical of our times. The one is represented by

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the strong tendency towards convergence in other fields, including the legal and political ones; we feel the need to establish connections, to construct bridges, to talk to one another, to demolish barriers, to understand each other. The manifold derives from the large diversity in which we live, and in which we are juxtaposed to one another as never before, in the awareness that this is not reducible or erasable.

Today, the instances of truth also emerge as requests based on the right to judge historical and political events. The law is considered a tool for judging history and a new literary movement is dedicating itself to the theme. An example of this is the book by Resta and Zencovich with the significant title *Riparare Risarcire Ricordare* ("*Repair Compensate Remember*"), which puts us in touch with that which is called "judicialized history". In the same way, we can talk about of "judicialized politics", namely a politics submitted to a review of legal nature, as - also in this case - the premise or promise of truth. In other words, if already in the past the concept of the *Rule of Law* and the *Stato di Diritto* implied a politics subject to legal limitations, today a new frontier is crossed by constitutional progress and by that which Rodotà has called "the right to have rights". Among these, the "Right to Truth", which encompasses both spheres of history and politics.

The relationship between history and truth, as well as between politics and truth, is not an easy one. It is rather complex and full of tensions. The emergence of the Right to Truth needs to be collocated in a more general framework of limits to politics that are being set by today's constitutional culture. The most prominent expression of these "judicialized politics", namely politics subject to new judicial constraints, can be found in contemporary constitutionalism, an institutional and cultural structure that strongly characterizes our era. The term "constitutionalism" has various meanings, but it currently indicates a set of constraints on the political sphere in name of people's fundamental rights and in name of so-called "human rights". Hence the term indicates another step forward in the traditional conception of constraints on public power.

Also in the past the State was subject to regulations and control; however, today's constitutionalism is a process leading to ever more significant limits on politics' margin of appreciation and the management of power, through the specific reference to human rights. In this sense, constitutionalism and political science have ceased to think of the political sphere as the kingdom of omnipotence and the "state of exception" as the supreme test of State sovereignty. This modern concept contrasts with Carl Schmitt's doctrine, which conferred theological connotations to the sphere of public action. On the one hand, the legislator no longer holds the power to - as an old maxim says - "*do anything besides transforming a male into a female*"; and on the other hand, also the "state of exception", which was the ultimate proof of sovereign power, is increasingly looked upon with suspicion and banned from constitutional theories.

Today's policymaking is expected to run according to criteria that allow the control by other institutions and citizens in particular. Furthermore, we are moving in the direction of a truly "non-negotiable" part in the policymaking process, in the effective words of Ferrajoli: Political decision making cannot enter into conflict with the people's fundamental rights.

More and more, politics thus recedes from its prerogatives of secrecy, arbitrariness and mystery that defined it under the XVI century's doctrine of the "Reason of State". These prerogatives derive from a doctrine in which State power is thought of in terms of an inscrutable sovereignty and policymaking, not amenable to the judgment of any higher authority, as the State itself is conceived as a *superiorem non recognoscens* entity. The Reason of State implied that the State had exclusive property of an own 'reason', which could not be subjected to scrutiny, and which therefore automatically corresponded to the truth. By the way, I would like to mention that, if the Reason of State was both politically and culturally born and installed in Europe, it is also true that recent historical events have demonstrated a sort of paradoxical reincarnation of that concept within the United States. Among other things,



the whole war in Iraq shows President Bush as a very late and out of time interpreter of the traditional Reason of State. The traditional "Reason of State" is the expression of absolute supreme power that can lead to lying, hiding the truth and creating a fictitious one in order to take an important decision, such as the one of waging war; even a war destined to provoke worldwide consequences. Basically, within this historical occurrence we can find a paradoxal inversion of the roles between Europe and the United States, in which the latter invoke the "state of exception", a criteria that was never truly theorized (which does not imply it was never practiced) within the American tradition.

If the Reason of State implied and implies that the truth can be constructed inside the secret rooms of power and impose itself from above, the big attempt of modern Constitutions and especially of current constitutionalism is not only to bring policymaking and power itself back within the legal sphere, but also within a virtuous sphere, where citizens can understand, see and judge; restricting the sphere of the *arcana imperii* ever more.

Thus, another problem arises, a problem at the root of the modern State. In fact, if on the one hand the modern State's umbilical cord was made up of theories on the Reason of State, on the other hand its birth marked an important step in the rationalization process of the world. Weber and others, such as Giddens, highlighted this duality. From another perspective, other theorists in the line of Durkheim, highlighted instead a different symbolic service offered by the State: Bourdieu, for example, defines institutions as an "organized fiduciary", meaning that they function according to trust relationships. Hence the State *"exists by virtue of the faith"* that it is capable of promoting.

In short, we notice a duality within the State in the ambivalence between its role as a place of strength and power, that is not subjected to judgment and justification, and its role also as a factor of rationalization in the world. Constitutionalism, as a doctrine, tends to shift the balance towards this second direction. Under this profile, politics loses its "theological" connotations (the legislator is

omnipotent) and becomes a more secular activity that it is controllable by judicial and ethical, as well as political, measures and judgment. In terms of the classical power tripartite, this implies a shift in the balance from the legislative powers, which in the past were considered the true centre of the State, to the judicial powers, that held only gregarious power. The balance has indeed significantly shifted towards the latter.

The Courts and the judicial powers of various nature, and especially the Constitutional Courts and some international jurisdictions, have become decisive factors within today's judicial relationships. Furthermore, the DNA code of judicial institutions holds a model for the exercise of power that has become a model for political institutions as well. The Courts and the judicial institutions are in fact required to justify their actions. The writing of the so-called "motivation" is a typical action that almost always characterizes the operation of the Courts and the judiciary. To the contrary, by definition political bodies did not have to justify their legislative decisions. I remember, reading a work on the history of law by Giovanni Tarello - a famous researcher and historian of Italian law - many years ago, being struck by his annotation on this issue. With regard to this acquired institutional conviction that the legislator was not required to justify his own decisions, today we live in an era with an increasing tendency not only towards "judicialized politics", but also a "judicialization of politics", meaning that also the political sphere must justify its decisions and cannot merely restrict such evaluation to the moment of elections.

Basically, when taking decisions, a "political obligation" exists to recognise the priority of fundamental and human rights: it is something superior to the political power and it becomes an important criterion to test the constitutionality of the laws. At the heart of constitutionalism lies an obligation to operate in terms and measures coherent with the laws and with the respect of fundamental human rights. We could also talk about some sort of political obligation to formulate decisions in a way that they appear justifiable.

Constitutionalism invites the State to stay within the boundaries of reason, rationality, justification; all terms that are half technical and half no, and that reflect a new approach to politics. This obligation, which is becoming increasingly demanding, covers not only the parliamentary, but also the executive structure. The most important and institutionalized expression of constitutionalism lies along the lines of the so called "judgment of the constitutionality of the laws". But also Government action cannot remain exempted from new types of inquiry and control, other than the ordinary parliamentary control. The Chilcot Commission is an example of this evolution, and it could be argued that it is at the same time old and new. The parliamentary inquiries do not constitute an innovation; they are part of a normal exercise of parliamentary control over Government action. However, where they tended to be mere formalities in the past, with little to no effectiveness; today's novelty lies in the power of the "Right to Truth" as a democratic right.

This case demonstrates how the instances of truth in our world have often emerged in reference to war or other major criminal events that involve groups and communities, such as the civil wars that pestered some countries. It is also in relation to such events that the Right to Truth has emerged, and consequently a States' duty to guarantee a Right to Information has increased. In this way the State's role as the prime "organized fiduciary" , according to the above-mentioned expression by Bourdieu, is confirmed.

The invite to policymakers to stay within the boundaries of reason, rationality, justification, is expressed in various other ways. As jurist well know, in the domain of administrative action, there is a now international standard to which public administration must abide: the so-called *giving reasons requirement*, and it is truly a recognized *global standard*. All the different forms of public administration, also at the level of major international organizations, must operate in accordance with this criterion. This implies that the decisions must be taken in such a way that any excessive use of the margin of appreciation becomes visible to allow effective *judicial review*. Furthermore, as has been noted, merely

providing reasons or justifications is not enough anymore: they must be good reasons, convincing reasons. This helps to raise the threshold of transparency and of *democratic governance*.

Hence the Right to Truth signifies a step forward towards a democratic foundation for political decisionmaking. Policymaking becomes capable of justifying its actions, particularly when difficult and hard decisions are to be taken, decisions that can have dramatic consequences on people's lives. Through this "public" form of Government, which presupposes the availability of information, citizens must possess certain tools in order to achieve the best possible understanding of the facts and to form their own idea of the truth.

Surely, this Right to Truth is at a very embryonic stage, even though Article 19 of the United Nation's Universal Declaration of Human Rights already affirmed that *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontier"*. The Right to Truth, even if *ante litteram*, was already alluded to here. Growingly precise approximations toward this Right to Truth can be found in a 1997 United Nations document, which states that *"Everyone has an inalienable right to know the truth about past events, circumstances and reasons that through the infringement of human rights have led to gross crimes. The full exercise of the right to truth is essential to avoid that such events repeat themselves in the future."* Now this reference to the future does not only raise new requests for the Right to Truth, which I will address later, but it also reminds us that it are usually the victims who demand a need for the Right to Truth, especially in the case of big events.

In any case, proclamations are not sufficient for the Right to Truth. As Rodotà observed, new institutions are required. However, before covering this issue, I want to recall the problems involved in demanding truth, as the same Rodotà observed. The relationship between politics and truth must be treated with cau-

tion. It can be a problematic coupling, because truth does not imply only light: truth has its own shadows and dangers. It was the great Hannah Arendt who talked about the possibility of a "*dictatorship of truth*". From another perspective, also Sartre underlined the difficult compatibility between freedom and truth. In short, truth should not be universalized. We must be careful in conserving an idea of truth within democratic boundaries: it must be build with the involvement of different subjects and opinions.

To conclude, I would like to go back to the need of new institutions for the search for truth and for the full realization of the Right to Truth. This necessity does not arise only from serious cases such as the war in Iraq, which led to the formation of the Chilcot Commission in the United Kingdom, but also from other far away countries that may seem less developed in comparison to us. The famous Truth Commissions, particularly the Truth and Reconciliation Commission in South Africa of 1994, remind us that it is very important to "*come to terms*" with history, as a book from J. Elster says. At the same time, these commissions also emphasize the fact that the search for truth must be accompanied by other societal necessities, such as the reconciliation between the different factions in a civil war. These important events, split between politics and law, suggest a more rational and balanced use of the word "*truth*" and indicate new possible institutional directions in the search for truth.

## **MAURO BUSSANI**

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Professor of Comparative Law at the University of Trieste, Scientific Director of the International Association of Legal Sciences (IALS-UNESCO), Adjunct-Professor at the Faculty of Law at the University of Macau, R.A.S. of the R.P.C.

Thank you. It has been a very rich discussion. I think a lot has been said in the course of this debate. For example, we explored the variations in understanding the notion of universal jurisdiction. Such variations may be distinguished according to their efficiency in tackling the most serious violations. The variations we have seen are the model of a centralized system in The Hague; more efficient models such as the regional systems in Sierra Leone, East Timor, and, with some difficulty, also Cambodia; models based on prosecution and criminal law following a European approach, as opposed to models following the American approach of civil action.

Other incitement solicits more accurate analysis of the present fragmentation in the reasoning supporting the Reason of State. This fragmentation is largely due to the devolution of the national interest in every State in a thousand different directions, all of them directly or indirectly influenced by the power and the actors behind economic and financial globalization. Equally interesting solicitation has come from the many interpretations that have been echoed during this conference, and which cross political and academic debate on the Rule of Law; interpretations all based on certain visions and on more or less candidly explicit opportunism.

I have decided to concentrate on the concept of democracy in the time allotted to me because I would like to bring to the floor some deeper and less debated elements, elements that I think can help us achieve a better picture of what democracy is and our aspiration to export that democracy to other realities.

I think it is clear that those who look at non-democratic societies as some kind of disease in need of a, more or less violent,

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cure, find themselves opposed by those who think of our democracies as local expressions of a particular culture. However, even when deducting any kind of ethno-centrism - the tendency to think that our civilization's cultural model is the best and should serve as an inspiration to others - from the equation, one certainty remains. It is one thing to prefer democracy as a system because it is our system, but it is another to understand its intimate structure: a structure revealing powerful and historically consolidated connections with some legal elements.

What are in fact, from a legal point of view, the foundations and prerequisites that rendered the birth and development of that which we intend by "democracy" possible?

We should immediately eliminate the naïve belief that democracy can be fully described by the very variable types of Constitutions or different models of (s)electing its Governors. These may be partially correct answers, but these models vary very much, so even when accepting this answer, it is clear that it cannot and does not suffice, unless enriched with more in-depth ingredients. There is no doubt that - above all, but not solely - great concepts of freedom of expression and equality emerge (and without entering into the great debate concerning the notion of equality), but history has also granted an important role to another concept.

The maze of phenomena that produced free access and effective protection of private property has, in fact, brought about a series of obligations, rights and, above all, communicative reflections, which in the long run have been able to convey values on the individual, as well as derive values from the individual; they have thus pretended to conform the subjectivity of the individual itself not only in relation to others, but also in relation to public authorities. They shaped the interaction of individuals with the rest of society.

It is no coincidence that the protection of the right to private property developed throughout Western history has always corresponded directly to the idea that rights belong to an individual as such, and not to an individual as part of a family, of a tribe, of a

religious or ethnic community, or of a party. Hence the principle that attributes rights and obligations to the individual as an individual, and which implies the other fundamental principle of individual responsibility, instead of group responsibility. It is a principle that continues straight into the recognition of the intangibility of the private sphere and the fundamental rights of each and every person, guarantees that in turn serve as the structure for the elaborated protection of private ownership. This set of evolutions that put the individual at the centre, and attributed this bundle of rights and privileges to the individual itself, could continue. This brings me onto another point.

Another essential aspect to understanding our democracies is the fact that Western mentality has adorned justice and law with autonomy, unrelated to the dimension of purely political, moral or religious choices. Justice and law are to be understood not as metaphysical concepts or judicial classifications (Constitutions, written texts, prisons, tolls), but as the widespread mentality, profound tradition and common vision of what is legitimate, and how and by whom it should be administered.

Among those delivered to us through history, this is one of the fundamental assumptions in each of our democracies. Clearly starting in the twelfth century - an outline of history transcending Vichy, Weimar, Salò and many other counters -, this evolution towards the autonomy of the judicial sphere can be discerned in relation to the corresponding idea that the administration of the law must be entrusted to professional technocrats, rather than the ideological or theological classes. Professionals that carry out their activities on the basis of a specialized culture and cultivated knowledge; recognized as a third, impartial power, which exactly for these reasons has been able to represent the fertile soil for the seeds of equality and freedom, even against public authorities.

In fact, no other institution could have guaranteed freedom, rights and prerogatives vis-à-vis public authorities in the West if the law had not coupled it to the existence of a professional (not a priest, nor a party official) that works and is perceived as a third,



impartial and independent subject, which reasons and decides not on the basis of political, ideological or religious categories, but on the basis of a professional, secular and specialized culture.

If the law is at the foundation of our democracy it is also because it has been able to act, over the course of the centuries, as some sort of insulation, a filter against the pressure of political and religious power. This is what has allowed the authors of the historic efforts to minimize the impact of arbitrariness in our societies - efforts of which exactly our democracies are the most fruitful results -, to make legitimacy prevail over the absolute sovereignty of any kind.

Mind you that only from this perspective we can understand the differences in structure, category and nomenclature that exist within Western law. From systems with strong liberal imprints to systems that have been built upon or inspired by social market models; from Roman or *civil law* countries to *common law* countries; from Monarchies to Republics. Paradoxically, all these differences are possible exactly because in the Western history that has brought us the democracy we are discussing, the autonomy of the judicial over the contingent policy choices has been affirmed over time as a fundamental and widespread value, allowing the law and its techno-structure to evolve independently from the similar or different historic events happening in the political, social or economic field.

At the basis of this understanding of democracy and the Rule of Law lies the circular interdependence of freedom and individual rights, secularism and professionalism, communication resources and a widespread mentality. Of course, no one could deny that the same judicial systems, exactly because of what they are and represent, are continuously contested by politics. This is something the international financial institutions know very well. The World Bank knows it well. The International Monetary Fund knows it well. The American State Department knows it all too well.

Eisenhower was invoked yesterday, but it suffices to scroll through the documents of the State Department, especially those

of the post-World War II period, to find the constant reiteration of the fact that the law is one of the most potent arms in the hands of the American Administration when it comes to asserting its interests. Obama himself reiterated this fact only a few months ago. In the mean time Europe - be it said with a touch of melancholy - has shown itself incapable of becoming a driving force for human rights (at least when it comes to foreign policy interests) and its instruments remain to be perceived as a mere regional tool, while furthermore diminished by the European Union Institutions themselves in a bureaucratic way, lacking any substantial (and autonomous) external projection.

Certainly, and it was recalled just a moment ago, judicial systems everywhere are the subject of political contention, of efforts to change and reform (often only in favour of those who propose those modifications). What changes however, in time and space - it is a fundamental fact and worth repeating -, is the different legal culture spread throughout the society of reference and thus the different capacity of jurists to contribute or resist the torsion imprinted in the rules by who governs the community or by who seeks from the outside to influence and transform them.

In the West, unlike elsewhere, this capacity has been consolidated through the instruments of secular technocracy, elevating the latter to the salient characteristics of the relationship between power and the individual, and by guaranteeing the law to cover the role it stably carries in our societies - contrary to what is preached in ignorant and peripheral discourses that seem to ignore its strength (of not for purposes of chronicle), thus obscuring the ultimate reasons of our societal living and our democratic forms.

In conclusion, wherever democracy has prevailed, it has been a costly and difficult victory. But victory would not have been possible if the ground had not been cleared beforehand from our religious and political constraints, and if we did not have the arms of our legal tradition, its techno-structure and jurists at our disposal.

It are victories and arms I believe can, at the present time, clearly mark the difference between that what is the West and its

democracy compared to what is not the West and is not democratic; between the West and those places where democracy can only work its way at the cost of an investment of resources and much more articulated times than the times and resources prescribed by those who cling to the dichotomy between the Koran and the Rule of Law, peace and war, relativism and universalism. I believe the examples, among many others, of Libya, Afghanistan, Egypt and Iran have demonstrated so and these examples must be tenaciously conserved in our memories and spread about as widely as possible.

Thank you.<sup>11</sup>

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<sup>11</sup> More reflections and indications by the author in: Bussani, Mauro, *Il Diritto dell'Occidente. Geopolitica delle regole globali*, Einaudi, Torino, 2010.

## **CESARE SALVI**

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Former Member of the Italian Senate, Former Minister  
of Labour of Italy

Thank you. When Marco Pannella speaks of "*real democracy*", in an ironic way - but with a heavy irony in this field - he adapts to contemporary democracy the formula that was used for the last phase in the life of the Soviet Union. The irony lies in the fact that Brezhnev was serious when he spoke of "*real socialism*".

As we know, he blocked any attempt at addressing the issue of the transition to socialism, which Kruščev posed, when he said that socialism had already arrived and that nothing had to be changed. That was the terminal phase of this system. The formula "real socialism" was used in a good sense by those who used it first, but as it did not appeal much to those who lived it, nor to those who lived outside it, it became an expression of criticism and even sarcasm.

When Pannella uses this expression - correct me if I am wrong -, he does so to adapt it to our contemporary democracies. If we retain this to be democracy, as Brezhnev believed that the system he lived was socialism, and as was theorized by Fukuyama with the concept of the end of history, then it is a system that we do not like very much. This is the meaning of the expression.

The original set-up the organizers have given to this conference, is the fact that the issue is not put as a question of contrast between metaphysical or transcendental principles - which as Bussani rightly said cannot and should not be used as the basis for reasoning -, but as a question of contrast between the effective power, the factual power as exercised in the real democracies, and the existing positive law. Even us lawyers now use the expression of positive law less and emphasize that it are the rules that are being broken and not that which we think is beautiful or good.

In my speech I will briefly focus on an aspect deriving from the novelty of contemporary law, namely the ever-increasing influ-

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ence of supranational sources of law. Inside these supranational legal sources, and sometimes even within the texts itself, one the one hand we find positive law mechanisms used to distort the law itself. Consider, for example, certain decision-making mechanisms in European law with regard to the central banks or the most recent tax treaties and pacts, which, according to a prominent Italian jurist, are illegal even from the point of view of EU law and thus represent a very complex and difficult derivation. Or we can think of supranational organizations such as NATO. On the other hand, in addition to and even within these same sources and supranational organizations, we find the dimension, the logic and the affirmation of human rights.

It should be observed that, historically, the West has used human rights as an instrument of power politics. If I am not mistaken, the first example dates back to the nineteenth century when the European powers used them against the Ottoman Empire. Russia's humanitarian intervention, the interventions by Austria and Hungary, or the one of England, which occupied Cyprus, and so on, were all related to the declared need to defend the religious freedom of Christians in those territories.

It is an ancient story, which does not mean that we should confine ourselves - and this is today's dilemma - to the purely logic of sovereignty that inspired - as we know and as I will recall in a moment - the Charter of the United Nations, and remain disinterested in what happens just across the border since it regards another State.

As we know, the United Nations Charter has many difficulties of implementation when it comes to addressing the issue of the protection of human rights. The United Nations arises, even legally, with great schizophrenia. The UN Charter on the one hand, and the Universal Declaration of Human Rights on the other: they are coeval, written by the same States, but they have no legal connection between them.

When we talk of a humanitarian intervention authorized by the UN Security Council, we talk of something which is already at the

limits of, if not beyond, the law, because there is no norm in the UN Charter - right or wrong as it may be - which attributes the task of protecting human rights to the Security Council. The tasks of the Security Council and the UN General Assembly concern the prevention of aggressive wars. They are instruments related more to the *continuum* of the Peace of Westphalia and the League of Nations, than to the theme we are discussing.

The UN Charter is based on the principle of State sovereignty, of the prohibition of interference and the prohibition of aggression. According to the Charter, the UN intervenes only when a State attacks another State. Even the unique hypothesis provided for in the Charter for the legitimate use of force - the legitimate self-defence of a State from aggression -, applies only in the initial phase of aggression, because immediately after the UN will be taking charge of the reasons of the aggressed State.

It is a mode of preservation of the peace between States, not of human rights within the States. The latter is not provided for in the UN Charter, but, aware of the impossibility of creating a global organization without addressing this issue, in 1948 the Statesmen who drew up this text wrote a Declaration of universal rights, which is still very beautiful and modern today. According to me it is still better and more comprehensive of the various aspects than the one drawn up by the European Union. They are, however, two non-communicating vases. Among other things, the Security Council for example should have been able to perform these functions with its own armed forces and a proper structure, something that was never implemented.

As we know, during the so-called "Cold War", there was little to protect human rights. Each thought of their own without a big sense of humanity, and there were two superpowers. With the phase of decolonization, the new States did not accept the lesson on human rights from who had kept them under imperialism until that very moment. Therefore, until 1990, the UN did not meddle with the issue. The problem arises after the end of the bipolar world, when the doctrine and practice of humanitarian interven-

tion spread, although the UN texts on which they are based - I repeat, right or wrong as it may be - offer only weak, if not zero, legal instruments to defend their validity.

In truth, there is a school of legal thought according to which, when human rights are affected in a very serious manner, this attack should be equated with a threat to peace, as peace cannot be considered solely as a relation between States. There has been a lot of discussion on this in the face of horrific tragedies as in Rwanda. Confronted with the extermination or genocide, the thesis was that one could not say that this was anything other than a threat to peace. It was an argument noble in its intentions, but not that strong from the point of view of positive law.

According to me, the weak point in all the United Nations mechanism, on which the Radicals have waged an important battle, is the lack - it must be said - of a third judge who determines when there is a violation of the Universal Declaration. As Professor Ferrarese rightly said, the novelty of contemporary law is the growing weight of Courts in the protection of human rights. Who decides when there is a violation? A political body such as the Security Council or a third Court?

This major battle, of which the Radicals were the protagonists, obtained a first result with the creation of the International Criminal Court, born in Rome in 1998. The result is important because it affirms the principle of the need for a third party to evaluate and it seeks to subtract decisions on the violation of human rights from the political sphere.

However, this very important result has two limits. Firstly, a Criminal Court as such identifies particularly evil individuals as those responsible. Beside this, there should be an assessment on whether or not, if this reasoning makes sense, a violation of human rights by a State has taken place, irrespective of the necessary assessment on individual criminal responsibility.

The second limit is the fact that the United States has not joined the Statute. The United States does not sign anything that consents a foreign Court to judge one of its citizens. Indeed, a Su-

preme Court judge who referred to a foreign law in a dissenting opinion - I do not remember the exact case; Professor Bussani who teaches comparative law might explain this better -, received a wave of criticism because the United States apply solely the laws of the United States of America, and the rest does not exist or is bad or should however not be talked of. This is a form of protectionism also at the judicial level.

This legitimizes, for example, the Africans who are all protesting, most recently also the South African President, because the International Criminal Court is processing only Africans. They are wondering how come there is no responsible in the rest of the world. Is it possible that the United States have never violated human rights? If the most powerful nation, or at least the nation that considers itself such and who believes to be the bearer of human rights in the world, does not ratify the Criminal Court, it is clear that the instrument is weakened by much.

If we had the time, we could gradually investigate other supranational mechanisms and their respective Courts. Beside the dimension of the United Nations with their Declaration of Rights and its Court, which does not yet suffice, we Italians, and others, also have the Council of Europe and its Strasbourg Court. The European Union has its Charter and its Courts, and also Italy itself has its Charter and Courts. Among other things, these Charters and especially these Courts do not exactly say the same things: particularly on socio-economic issues they say very different things.

While the constitutions of what economists call the golden age - even though yesterday Marco said he does not like this expression - possess a strong social dimension, as is the case also for the UN's Universal Declaration, more recent ones are neoliberal Constitutions for which the respect for life, law and freedom are all human rights. Obviously, this creates quite differential problems of implementation.

Earlier I talked of NATO and the UN. I only want to make a connection to this battle for the Right to Know. I prefer this one to



the expression Right to Truth, because the Right to Truth always reminds of someone who decides what the truth is. The Right to Know is different. I want to know all the facts, everything that has happened, to then decide on what is true or not. It seems a more pluralistic approach to me.

For what it is worth, I add a personal recollection of the period of my intense political experience. In 1998, the Italian Government in power - the Prodi Government - lost a confidence vote because it had not accepted certain demands from a party, which was part of the governing coalition. This party was *Rifondazione Comunista*, and the demand regarded the introduction also in Italy of a law providing for the thirty five hour working week, as had been adopted in France. A political crisis began. Me personally, as the President of the most important group of the parliamentary majority in the Senate, took part in all the secret meetings that are being held in these cases.

Public opinion, Parliament and almost everyone - me too, maybe due to intellectual limits, realized only towards the end what was going on - thought that the issue at stake was whether or not it was correct to continue the legislature with a President of the Council other than the one who had been elected by the people. Today, our immune system is more used to it because in Italy it appears that voting is prohibited and in the past years not one President of the Council was the expression of a popular vote. However, I am talking of a different phase in which it was still believed that this was an essential principle.

They also discussed on whether it made sense to continue the Government experience, renouncing to the presence of *Rifondazione Comunista* by leaning on another parliamentary group, which in the mean time had been formed by parliamentary personalities coming from the centre-right - now that investigations are being held into changes within the political spectrum, I wonder whether the investigations should not be extended also to the past: I do not know when these crimes will surpass the statutory limits - and which put some conditions on who should succeed to Prodi if

their support would have been requested. To be honest, Prodi, to protect himself, declared to be against this proposal.

Within our party we decided that the only solution consisted in the nomination of Ciampi, then Treasury Minister, as President of the Council and to approve the budget law. Since it was October, the other argument was whether we needed to pass the budget law before going to the vote. We decided on four of five names and agreed to see whether things would function. In March - in between, there was also the election of the new Head of State - we would have decided whether to continue, whether to go to the voting urns, and so on.

This regrouping, led by former President of the Republic Cossiga, did not even agree on Ciampi, and proposed Massimo D'Alema as the only possible name. D'Alema was then leading the party that was successor to the Italian Communist Party and DS (Leftist Democrats), which had a relative majority in Parliament.

Only gradually I found myself among the few people able to know - I see that now they speak more freely about it, but there has never been a debate - that the real problem was that the Prodi Government, as the last act of its existence, had decided the activation order for the NATO intervention in Kosovo. At the time almost no one knew it would happen, while it was certain. Prodi, retaining it to be just and maybe also to leave something to do to his successor, had made the decision with the Council of Ministers to put the Italian armed forces under NATO command in view of this hypothesis.

Parliament and the country knew nothing of this. While publicly they discussed - and here enters the Right to Know - whether the replacement of the President of the Council corresponded more or less to democratic principles or whether it was a "reversal", while they discussed the budget etcetera, the real question posed by Cossiga was if the former communists gave evidence of being able to carry out Prodi's decision, to overcome the obstacle of the Kosovo intervention, which took place five months later. This is a problem of knowledge and decision-making, of the Right

to Know. The real game - both with regard to the political decision on going to early elections or not (the argument used against early elections was that it could not be used publicly, because of this veil of secrecy, and that we could not go to a vote while we had already committed to a war that would have started five months later but of whose existence hardly anyone knew), as with regard to Prodi's successor - was totally alien to the parliamentary political debate. This seems to me a clear example of "real democracy", which I have lived personally. At a certain point I had to ask for an explanation and the situation was explained to me only when the crisis was almost resolved.

To conclude, even though there are other things to be said, the assumption of the Right to Know is fundamental for the protection of human rights. Yesterday we discussed this a lot with regard to Iraq and our British friend will provide us with ulterior elements today. It is decisive, but it is not enough. A second problem is emerging, namely the fact that humanitarian interventions cause much more harm to human rights than the absence of a humanitarian intervention. It emerges clearly from the situation on the ground in Afghanistan, Iraq and Libya.

There is third element emerging in Syria, namely the conflict between the two reasons for intervention. If we intervene to protect human rights, we must take action against Assad. If we intervene in the fight against terrorism, then perhaps we must take action against those who are fighting Assad because, for what we can read, they may be more prone to terrorist activities than Assad.

Beyond the criticism on the issue from different points of view, there is no end to this road. It seems to me that within the idea of nonviolence, so dear to the Radical Party, we can find a great intuition that connects to the argument I tried to develop before with regard to the fact that we need a third independent party, a Court, and not political subjectivity.

When he was a Member of the European Parliament, the honourable Cappato worked on a significant report in the field of hu-

man rights protection, which has been approved by the European Parliament in 2008. In its point 9 it States that *the most appropriate instrument for the promotion of human rights is non-violence*. Put like that it is easy. We need to understand concretely how it could work. However, it demonstrates a great sense of intuition to argue that you cannot protect human rights with instruments that are different from the ones at the foundation of human rights themselves. We can imagine what this could mean, but we certainly need to examine it more profoundly and the European Union should make this prospective its own.

The European Parliament also asked the Commission to organize a European conference on nonviolence, a provision that has not been executed because the concern for the fiscal compact and related items was higher than the one for this issue. The anecdote the former Belgian Prime Minister told us yesterday on how Europe has occupied itself of the question Iraq for sixty seconds is interesting. It is a chilling story. What we know now was about to happen and they did not even dedicate a minimum of their discussion to search for a common position. It would be useful if, as many rightly say and from the very start of the campaign for the elections to the European Parliament, the issue of how to restructure the European Union with respect to the issue of austerity would be put on the agenda. If the European Union wants to be the protagonist on the theme of human rights, it should raise and re-launch this issue, asking the political forces and actors of the various factions running in these elections to make a commitment to promote this report, which to me seems still valid, or at least to indicate the objective for the European Parliament of an exit, in general terms, from the dramatic alternative of returning to a logic of sovereignty, by which every State internally does what it wants with regards to human rights, or chooses to intervene, bombard and solve the problem that way.

Considering this topic is of the utmost importance today. To undertake a nonviolent way to the supranational protection of human rights is a task that the European Union could and should ad-

dress, starting by respecting the commitment to a European conference on the issue, possibly enlarged also with the countries of the Council of Europe, etc. Unfortunately in this moment in Ukraine many sad things are happening, but we should involve also Russia and the other countries in the area. The objective should be to develop the idea of protecting human rights with peace, which does not mean indifference and timidity, but the use of instruments different from those of war, symbolically summarized in the expression nonviolence.

Thank you for your attention.

## **STEPHEN PLOWDEN**

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Applicant under the British Freedom of Information Act  
at the British Ministry of Foreign Affairs

Thanks to the Nonviolent Radical Party for organizing this conference and inviting me to speak, and also for following so assiduously the Freedom of Information (FoI) case which led to this invitation. I only wish that I could have brought you better news, but unfortunately the case, which started with my FoI request to the FCO in February 2010 was decided at the end of January 2014 against me. Nevertheless, I hope you will find that this is still an interesting story with many lessons.

On 10 March 2003, President Chirac gave an interview on French television about Iraq. He said that Iraq did have weapons of mass destruction and we did have to get rid of them, but we had got the UN inspectors back in Iraq now, so we should give them the few months they had asked for to see if they could get rid of the weapons by peaceful means. However, if the inspectors came back to the Security Council to say that they were not getting anywhere, because Saddam would not cooperate, then, sadly, war would become inevitable, but it was not inevitable then. But the Americans and British did not want to wait a few months. They had their troops lined up and didn't want to keep them hanging about, especially as it would be very hard to invade Iraq in the heat of summer. So by taking a remark that Chirac made later in the interview out of its context, the British Government claimed that France would veto any resolution authorizing an attack on Iraq that might be brought to the Security Council not only then but at any time in the future. Tony Blair used this argument in the debate in the House of Commons on 18 March to say that there was no point in further negotiations in the UN - we should attack now. This deception certainly influenced some MPs to vote for him and may have swung the debate in his favour.

I knew about this deception at the time because I rang up the French Embassy in London, who sent me the French transcript of

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the television interview and an English translation. On 20 March I sent Tony Blair a letter with one paragraph reproducing what he said in the House of Commons and another reproducing the relevant paragraph of Chirac's interview. But what I didn't know until the Iraq Inquiry was that almost immediately after the interview the French were in touch with the British at every diplomatic level to say that the British had misinterpreted Chirac's remark. When I learnt about this from Sir Roderic Lyne's questioning of Jack Straw on 8 February 2010, I made a FoI request to see the documents that Sir Roderick had mentioned. There were several documents to do with the diplomatic exchanges between Britain and France and one other, the record of a telephone conversation between Mr Blair and President Bush on 12 March 2003. Sir Roderic referred to this conversation in the following question: "Was it also agreed between Number 10 and the White House on the afternoon of the 12<sup>th</sup> [March] that we would, between us, say it was the French who prevented us from securing a resolution?"

The FCO turned down my request, so I repeated it, as the rules of the FoI Act require. The FCO turned me down again, so I then appealed to the Information Commissioner. Some time after my appeal, the FCO decided to disclose the records of the diplomatic exchanges between Britain and France, because by then so much of the content of these documents had been revealed at the Chilcot Inquiry that the FCO thought there was no point in continuing to keep them confidential. So the only document still in dispute was the record of the Blair-Bush telephone conversation.

It was common ground that, under the legislation, there was a strong presumption that conversations between Heads of State should be confidential. But it was only a presumption, not an absolute rule, and it could be set-aside in exceptional circumstances. So the argument was all about the public interest in disclosure or the public interest in keeping the document confidential. I argued that the British, and indeed the American public were entitled to know everything about how a war, which many people regarded as illegal, and many more people thought was immoral, came about. The

FCO argued that disclosure would hurt our relationship with our most important ally, the US, and also with other States and the UN.

The Information Commissioner ruled that the FCO should reveal what Blair had contributed to the conversation but not what Bush had. He said that the public interest considerations were "very finely balanced" but that the "short-term and specific" public interest in releasing what Bush had said was "outweighed by the risk posed to the long-term integrity and maintenance of the relationship between the UK and the US, particularly that between Prime Minister and President".

Both the FCO and I appealed to the Information Tribunal. My chief argument was that the Information Commissioner was wrong to say that the public interest in disclosure was only short-term and specific. Many people, including diplomats, such as the British ambassador to Paris, and also special advisers, were well aware of the deception, but had gone along with it. But the people who were in a position to have done something if they had known did not know. Among those people were almost all MPs, including most Cabinet members and the Foreign Affairs Committee of the House of Commons. We needed to find out exactly what had happened in order to decide reforms were required to make sure that if similar circumstances were to arise in the future, and a similar deception were attempted, it would not succeed. If the considerations were "very finely balanced" when only the short-term arguments were taken into account, then surely the inclusion of the long-term arguments would tip the balance decisively in the direction of disclosure.

The case was heard in the First Tier of the Information Tribunal on 28 and 29 March 2012. The panel upheld the Information Commissioner's decision and indeed went further in favour of the FCO. It said that some of Blair's remarks that the Information Commissioner had ordered to be disclosed should not be, because they would enable inferences to be made about what Bush had said. As I understand it, not having seen the document, the panel's decision reduced what could be disclosed to a few anodyne sentences. You might have thought that the FCO would have been



content with that, but in fact they decided to appeal to the Upper Tier of the Tribunal. Their argument was that it was legally incorrect to adopt a sentence-by-sentence approach to the disputed document as the Information Commissioner and the FTT had done. Instead, the document had to be taken as a whole. I did not appeal but did repeat my arguments in a long witness Statement.

The judge in the Upper Tier agreed with the FCO that the approach that had been adopted was not valid. He did not, however, support the FCO's plea that none of the document should be disclosed. Instead, he ordered the case to be sent back to the First Tier and said that it should be heard by a new panel, not by the panel that had heard it the first time. This was the most favourable judgment that I could have expected, and raised my hopes that the next time the FTT considered the case, it would find in my favour.

On this occasion there was no hearing but only a paper consideration, which agreed with the FCO that no part of the record of this telephone conversation should be revealed. Let's look at some of the arguments used on both sides during this long process.

Obviously, the more that these events recede into the past, the weaker becomes the case for keeping any documents confidential. There was no dispute about that principle. But the FCO argued that nothing which had taken place since the FCO had refused my request, which was in July 2010, could be taken into account. I argued that this cut-off missed the point of the FoI Act. The question was not whether officials in the FCO had made the right decision in 2010, but whether it was now safe to allow the public to see the record of this telephone conversation. The momentous events that had taken place since July 2010, most important of all the end of the war and of the American occupation, must weaken the case for keeping what Blair and Bush had said to each other confidential. Moreover, to say that nothing that had happened since my request could be taken into account created an absurd anomaly: if somebody had asked in the summer of 2013 to see this document, their case might have a different outcome from mine although the public interest would be identical. In its ruling of

January 28, the panel seems to have agreed with this argument but said that FCO's interpretation had been established by a judgment in a higher Court which it was not competent to overturn.

One argument against disclosure was that the existence of the Chilcot Inquiry largely satisfied the public's Right to Know, even though it was unlikely that the Cabinet Secretary would allow the Inquiry to quote all the documents that it wanted to quote, which meant that it would not be able to explain to the public all the reasons for its findings. I argued that the existence of the Iraq Inquiry should have no relevance to the FOI proceedings. Although I personally had (and still have) high hopes that Sir John and his colleagues would produce a good report, it was wrong to assume that they would - there have been many unsatisfactory official reports in the past. Even more important, nothing should be allowed to diminish the public's Right to Know under the FOIA. If the existence of the Chilcot Inquiry was allowed to affect the issue, that would set a very dangerous precedent. Future Governments would be able to block a request under the FOIA by setting up their own inquiry and saying "we have established another mechanism for looking into this".

In his diaries, published with official permission, Alastair Campbell gave what appears to be a very full account of the Blair-Bush telephone conversation. Sir John Chilcot complained to the Cabinet Secretary that it was anomalous that a special advisor was allowed to give his version of events, whereas an Inquiry of five privy councillors set up by the Prime Minister was not allowed to quote the official record of the same events. I repeated this argument and added that given that Mr Campbell's account had been published, the public was entitled to know whether it was accurate or biased. The panel found that the publication of Mr Campbell's diaries did have some significance, but the Government would not be formally responsible for any disclosures in such memoirs or diaries, which were deniable in a way that official records were not. It seems to me that it would be very hard for the Government to deny the accuracy of Campbell's account, given his prominent role

in Mr Blair's Government and the fact that he had been given permission to publish. Moreover, if there was any question that Campbell's account might be denied, that makes it all the more important for the public to be able to check on it.

One of my arguments was that if the public was not allowed to see the record of this conversation, after so much else had been made public, and so much of that was discreditable, then people would start to speculate "what is so toxic about this document that we are still not allowed to see it?" Such speculation might be quite unfounded, but it could not be in the public interest for it to happen. The panel did not deal directly with this argument, but it did say that *"we did not see anything in [the document] which would amount to a 'smoking gun' or anything of that kind"*.

Information Tribunals have always taken the view that since they are not experts in matters of Government policy, they have to be guided by the opinions of the relevant Ministers and officials. I had tried to anticipate that argument in my witness Statement. I pointed out that history showed that the FCO's expertise was often deficient. Shortly before the Iranian revolution of 1979 the British Embassy in Teheran assured London that the Shah was in complete control, and apparently the FCO was also taken by surprise by the Arab Spring. I also argued that the FCO's Statements were not always objective. As an example of that, I mentioned that the Government (nominally the Home Office but in reality the FCO) had been severely rebuked by two Courts for its attempt, against the evidence, to keep the PMOI on its list of terrorist organizations, but in spite of that, in a debate in the House of Commons in April 2011, a FCO Minister was still saying that it was right for the PMOI to be proscribed and that the PMOI "has little or no support within Iran and that it is not considered a legitimate opposition group by the Iranian people". This cannot be ignorance; it must be bias.

The crucial issue has always been how much annoyance disclosure would cause to the US and what the consequences would be. My argument was that it was not enough for the FCO to show that the US would be annoyed; it would have to show that as a result

the US would withdraw cooperation in a way that could seriously threaten an important British interest. It still seems to me, on the basis of my cross-examination of the FCO's witnesses in the 28/29 March hearing, that the FCO admitted that there would be no such threat. The January 2014 panel said that they were inclined to agree with me that it was unlikely that there would have been any concrete identifiable ill effects flowing from disclosure. But they accepted the evidence of the FCO witness that there would have been a significant risk of a 'cooling off' in the extent to which the US would have co-operated with and confided in the UK Government in both the diplomatic and security fields, and a significant risk that access and candour would have been being restricted. They also accepted that the US would have been upset by the disclosure of the disputed information and, "to that extent at least, relations between the two countries would have been prejudiced". These remarks do not seem to me to be strong enough to justify the panel's conclusion, but obviously I'm not unbiased.

In a closed session of the Tribunal hearing of 28/29 March 2012 (part of which was later revealed), in a discussion of the ICO's order that Mr Blair's contribution to the Blair-Bush conversation should be disclosed, the FCO witness agreed that that if the US were persuaded that this disclosure would not set a precedent, then the relationship would not be damaged. He said, however, that his experience in negotiations in Brussels was that when someone said that something would not set a precedent that is exactly what it did do. I commented that the idea that the UK would not be able to persuade the US that this disclosure would not set a precedent was incompatible with the close and trusting relationship that was claimed to exist between the two countries, and that Mr Lapsley's experience in Brussels was completely irrelevant. The panel did not discuss this point in my argument.

### **Some conclusions about the administration of the FoI act**

The dispute between the Iraq Inquiry and the Cabinet Secretary about what documents the Inquiry can quote has resulted in the

Inquiry going on very much longer than was originally intended. David Cameron should have put a stop to this long ago, and should do so now, by ordering the Cabinet Secretary to allow the Inquiry to quote whatever documents or extracts from them that it pleases. The idea that such a responsible body would disclose anything that might threaten Britain's security is ridiculous. If, despite the negotiations between Sir John and the Cabinet Secretary now in progress, the Iraq Inquiry is not allowed to quote all the classified documents, then someone - not me! - should make a request to the FCO under the FOIA to disclose them.

We need to change the rule that the Information Commissioner and Information Tribunals are not allowed to take into account anything that takes place after the Government department involved refuses the request for disclosure. They should be allowed to consider everything that takes place up until the time they have to decide.

The independence of proceedings under the FoI Act must be safeguarded by making it clear that if there are other investigations going on into the events in question, that does not in any way diminish citizens' rights under the Act.

The rule that no Tribunal, or any other Court except Parliament itself, can hear evidence to the effect that ministers lied to Parliament must be changed. (The FCO sprang this point on us at the opening of the March 2012 hearing. The judge rebuked them for not telling me before that they were going to raise this, but agreed with the legal point which is based on the Bill of Rights of 1689). The doctrine that MPs can say what they like in Parliament, without fear of being held liable in legal actions outside Parliament, is very important and must be preserved. But freedom from extra-parliamentary sanctions need not imply freedom from extra-parliamentary criticism.

### **Reforms to British Governmental institutions**

The reforms to British Governmental institutions required to ensure that similar deceptions are not tried again, or if tried would

not succeed, are far ranging. There is no time to discuss them now, and in any case these are matters for the British rather than the European Parliament. It is clear, however, that in Britain we need to look, among other things, at the codes of conduct of civil servants and special advisers, and at ways of ensuring that Parliament has enough information about the Government's plans and reasons to enable it to do its job of holding ministers to account. No doubt Chilcot will have a lot to say about these issues.

### **The principles that should govern foreign policy**

Certainly in Britain, and it seems in every country, foreign policy is determined by what the Government thinks would best promote the country's interests. But no person or country has the right to pursue their own interests at the expense of what may be the vital, literally vital, interests of another person, group or country. But this happens the whole time. Biafra's attempt to secede from Nigeria in 1966 was followed by a terrible war in which more than 3 million people died. Britain supported Nigeria against Biafra for commercial reasons. A Commonwealth Office briefing to Harold Wilson, the British Prime Minister at the time, said "The sole immediate British interest is to bring the [Nigerian] economy back to a condition in which our substantial trade and investment can be further developed". The USSR supported Nigeria because it wanted a contract to build a steel mill. France behaved better, but it seems that even its humanitarian motives for supporting Biafra were not entirely unsullied by commercial and other extraneous motives. More recently, and still continuing, we have the dismal story of European countries kowtowing to China about Tibet for reasons of trade. When David Miliband was British Foreign Secretary, he changed the British position on Tibet, while claiming only to be clarifying it, in a way that made things harder for Tibetan opponents of China. Under the present British Government, we had the shameful affair of the British Prime Minister and deputy Prime Minister having a private meeting with the Dalai Lama, one

of the truly great men of our times, in the crypt of St Paul's Cathedral because they did not dare to be seen with him openly.

Even if a country's foreign policy should be determined only by its own interests, those should be long-term interests, not just short-term commercial ones. I very much doubt whether in the long term there is any conflict between *raisons d'état* and the Rule of Law. The most important long-term interest for every country is a just and peaceful world - if it is not just it will not be peaceful - and that can only be achieved through the Rule of Law.

The PMOI is the supreme current example. The American and British Governments' lies about the PMOI have made it easier for the PMOI's enemies in Iran to persecute them. But the US and UK were not alone. As I understand it, in an attempt to curry favour and preserve trade links with Iran, most other European countries have behaved similarly. If instead the PMOI had been given the support it deserved, we might now be dealing not with a bloody, theocratic regime in Iran causing mischief throughout the region, but with a tolerant and principled democratic Government.

It is to the credit of the European Parliament that it has behaved much better towards the PMOI than member States have done. But the situation of the people who were forced to move from Camp Ashraf to Camp Liberty, on the pretext that they would be safer there, is desperately urgent. The test for Europe is now two-fold. The only way to prevent another lethal attack on Camp Liberty is for the UN to establish a permanent presence in the camp. Will the EU insist on that? And will individual countries accept the camp's residents as refugees or will they continue to bow to Iranian pressure? I hope that the EU, at the insistence of the European Parliament, will rise to this challenge.

# **ESTHER BECEIRO GARCÍA**

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## Spanish Society for International Human Rights Law

1. The Human Right to Peace.
  - A) Codification process: from the Luarca Declaration to the Advisor Committee Declaration.
  - B) The elements of the Human Right to Peace.
2. The Right to Know in the Declaration on the Right to Peace.
  - A) The Right to Information.
  - B) The Right to Truth of the victims of human rights violations.
3. Media manipulation about the Iraq War.
4. Conclusion.

### **1. The Human Right to Peace.**

#### **A) Codification process: from the Luarca Declaration to the Advisor Committee Declaration.**

10 years ago, the Spanish civil society started an initiative with the aim of translating the universal value of peace into the legal category of human right. This initiative was strongly influenced by the disagreement of Spanish people, and other peoples in the world, with the decision of some Governments to participate in an aggression against Iraq, in spite of their people's will.

The first step was the adoption by a drafting committee of 15 experts of the Luarca Declaration on the Human Right to Peace on 30 October 2006. This declaration was the first-ever civil society instrument encapsulating in legal values a holistic approach to peace.

Following that approach, peace is not only limited to a negative dimension, which means the absence of armed conflict; but it also has a positive component, which encompasses three elements: the satisfaction of the basic needs of all human beings, in order to eradicate structural violence; the elimination of cultural violence;

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and the effective respect of all human rights without discrimination.

This legislative initiative was then shared with the international civil society through a four-year World Campaign in favour of the international recognition of the Human Right to Peace (2007-2010).

Taking into account the contributions received from the different regional expert meetings, a technical drafting committee composed of 14 Spanish experts adopted on 24 February 2010 the Bilbao Declaration on the Human Right to Peace.

This declaration was then revised by an international drafting committee, composed of 10 independent experts from five regions of the world, which adopted the Barcelona Declaration on the Human Right to Peace, on 2 June 2010.

Finally, the Declaration was submitted for discussion to the International Congress on the Human Right to Peace, held in Santiago de Compostela (Spain), on 9 and 10 December 2010, in the context of the World Social Forum on Education for Peace. On 10 December 2010, the international civil society adopted the Santiago Declaration on the Human Right to Peace and the Statutes of the International Observatory of the Human Right to Peace.

In parallel, 2010 the Human Rights Council, welcoming the important work being carried out by civil society organizations, requested its Advisory Committee (18 experts) to draft a declaration on the right of peoples to peace in consultation with Member States, civil society, academia, and all relevant stakeholders, within a timeframe of two years<sup>12</sup>. Between 2010 and 2012, the Advisory Committee prepared three draft declarations; including in the last one 85% of the standards contained in the Santiago Declaration.

In 2012 the Human Rights Council established "an open-ended inter-Governmental working group with the mandate of progressively negotiating a draft United Nations declaration on the Right

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<sup>12</sup> Res. 14/3 of 17 June 2010.

to Peace, on the basis of the draft submitted by the Advisory Committee, and without prejudging relevant past, present and future views and proposals"<sup>13</sup>.

The working group held its first session from 18 to 21 February 2013. It appointed Ambassador Christian Guillermet (Costa Rica) as chairman-rapporteur and reviewed the AC declaration. Upon receipt of the OEWG report, the Human Rights Council extended its mandate for an additional year, asked the chairperson-rapporteur to hold informal consultations with all stakeholders and requested him to prepare a new text to be submitted to the OEWG at its second session, that will take place in June 2014<sup>14</sup>.

CSO aim to achieve the drafting process with the Human Rights Council in September 2014, so that it could submit a final declaration to the General Assembly to be finally adopted on 10 December 2014.

### **B) The elements of the Human Right to Peace.**

As I said, civil society declarations and the Advisory Committee declaration refer to a holistic approach to peace that includes negative peace and positive peace. This approach is composed of several elements:

1. The right to human security, which includes freedom from fear and from want, and implies the enjoyment of all human rights, in particular economic, social and cultural rights.
2. The right to a full disarmament, under comprehensive and international supervision; which includes specially the elimination of all weapons of mass destruction. The resources freed by disarmament should be allocated to development.
3. The Right to Peace and human rights education, which is necessary to unlearn war and build identities disentangled from violence; and is also essential for the full development of the child, both as an individual and as an active member of society.

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<sup>13</sup> Res. 20/15 of 17 July 2012.

<sup>14</sup> Res. 23/16 of 13 June 2013.

4. The right to conscientious objection to military service, since it derives from the freedom of thought, conscience and religion. This right was further developed by the Santiago Declaration, which includes the right to civil disobedience and to conscientious objection against activities that entail a threat against peace.
5. The right to resistance and opposition to oppression, recognized in the preamble of the Universal Declaration of Human Rights, as well as in the first declarations of rights, such as the United States Declaration of Independence, and the French Declaration of the rights of man and citizen. This right shall also include the right to oppose to human rights violations.
6. The right to development, and to participate and contribute to the development in order to realize all human rights, specially economic, social, and cultural rights.
7. The right to a safe environment, that affects not only present but future generations, with special attention to the mitigation of climate change.

In addition, the future UN Declaration on the Human Right to Peace should include standards addressed to protect peoples belonging to vulnerable groups. In particular,

1. Victims of human rights violations; who have the Right to Know the truth, the right to justice and the right to reparation, which are all essential to prevent new conflicts.
2. Vulnerable groups, which deserve specific protection measures and should have the right to participate in the adoption process. This category includes indigenous peoples, women suffering from violence, and individuals deprived of their liberty.
3. Refugees, who should have the right to enjoy refugee status without discrimination; and the right to voluntary return to their place of origin in dignity and with all due guarantees.

4. Migrants, who should have all their human rights respected. States should also prepare strategies to combat racism and xenophobia.

The Advisory Committee also included two issues that were not included in the Santiago Declaration, namely:

1. The duties and responsibilities of the private military and security companies, which should not assume inherently State military and security functions, and should comply with international rules and procedures.
2. The duties and responsibilities of the peacekeeping missions and peacekeepers, which should fully comply with the UN rules and procedures regarding professional conduct.

All these elements of the Human Right to Peace are therefore based in the international human rights law. Many of them are already codified human rights, which are included in the future UN declaration with a new perspective towards the achievement of peace. Other rights are emerging rights, such as right to disarmament or to environment, which have been the object of declarations in which the international community showed concern.

The main differences between the Santiago Declaration and the Advisory Committee declaration are related with the right-holders, the duty-bearers and the implementation of the Declaration.

Firstly, while the Advisory Committee recognized the Right to Peace to individuals and peoples, the Santiago Declaration recognized two more right-holders, namely: mankind and minorities. Since they have both been recognized as right-holders in international treaties and declarations, and they can be particularly affected by the violations of the Human Right to Peace, they should also be recognized as right-holders.

Secondly, the Advisory Committee placed the main responsibility of the realization of the Human Right to Peace on States and the United Nations Organization; stating also that there are other actors that must contribute to it: civil society, academia, media, corporations and the international community as a whole. CSO consider that peoples, individuals, corporations and other social

actors should be added to the list of duty-bearers of the Human Right to Peace.

In order to guarantee the realization of the Human Right to Peace, the reform of the Security Council should be achieved. As the main guarantor of the maintenance of international peace and security, it should have an unquestionable legitimacy to make effective the Human Right to Peace on behalf of the entire international community.

Accordingly, the composition of the Security Council, unchanged since 1945, does not represent any more the current international community of 193 Member States. The veto right of the five permanent members should be profoundly revised. Besides, the working methods of the Security Council should be more transparent, and civil society representatives should be allowed to take part in its proceedings.

Finally, reference should be made to the monitoring mechanism responsible for the implementation of the future UN declaration. In this point, the Advisory Committee just "*invited*" the Human Rights Council to set up a special procedure.

Instead, CSOs believe that the monitoring body should be a working group composed by ten independent experts, elected by the General Assembly. Following the best practices developed by the special procedures of the Human Rights Council, monitoring the implementation of several UN declarations has been entrusted to expert bodies. This was the case of the working groups on enforced or involuntary disappearances or arbitrary detention; also the special rapporteurs on torture, religious intolerance, human rights defenders, violence against women, etc.

Therefore, the proposed working group on the Human Right to Peace would strengthen the competences that the UN Charter recognized to the General Assembly in the field of maintenance of international peace and security. This is particularly relevant when the Security Council is paralyzed by the abusive exercise of the veto right by its five permanent members, as the Syrian case shows.

## 2. The Right to Know in the Declaration on the Right to Peace.

### A) The right to information.

Both Santiago Declaration and the Advisory Committee Declaration make reference to the Right to Know or right to information, saying:

*All peoples and individuals have the right to access and to receive information from diverse sources without censorship, in accordance with international human rights law, in order to be protected from manipulation in favour of warlike or aggressive objectives<sup>15</sup>.*

This right to access information derives from the freedom of expression, which includes the freedom to seek and receive any kind of information and opinions. This right has been recognized by the Universal Declaration of Human Rights (art. 19); the International Covenant on Civil and Political Rights (art. 19.2); the European Convention on Human Rights (art. 10); the American Convention on Human Rights (art. 13); or the African Charter on Human and Peoples' Rights (art. 9).

This right has been further developed by the Johannesburg Principles on national security, freedom of expression and access to information; adopted on 1 October 1995 by a group of experts in international law, national security, and human rights.

After the recognition of the freedom of opinion, expression and information on Principle 1; Principle 11 refers specifically to the right to access information, establishing a general rule: "*Everyone has the right to obtain information from public authorities, including information relating to national security*". In principle, no restriction on this right can be imposed on the ground of national security, but there are exceptions if "*the Government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest*".

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<sup>15</sup> Art. 8 DS; Art. 4.3 AC.

Principle 12 develops this exception, establishing: *"A State may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest"*.

Another important principle is Principle 15, which establish that *"no person may be punished on national security grounds for disclosure of information if the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or the public interest in knowing the information outweighs the harm from disclosure"*.

Those principles add also that *"in all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration"* (P. 13); and that *"once information has been made generally available, by whatever means, whether or not lawful, any justification for trying to stop further publication will be overridden by the public's right to know"* (P. 17).

The recognition of the Right to Know as an element of the Right to Peace has a specific purpose: avoid manipulation in favour of warlike or aggressive objectives. At this point, freedom of expression and information constitutes a key tool to disseminate informations and opinions, and also to exercise control over politicians and governors.

That is why the Human Rights Committee has recognized the freedom of opinion and expression as a *"necessary condition for the realization of the principles of transparency and accountability"*, which is *"integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote"*<sup>16</sup>.

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<sup>16</sup> General Comment No 34, par. 3 and 4.

## **B) The Right to Truth of the victims of human rights violations.**

There is another aspect of the Right to Know recognized by international human rights law: the right of the victims of human rights violations to know the truth.

Both the Santiago Declaration (art. 11.3) and the Advisory Committee Declaration (art. 11.1), recognize this right, saying also that it is not subject to statutory limits. Besides, it is a right that has a double dimension - individual and collective -, because it belongs to the victims, the members of their families and society in general<sup>17</sup>.

This right has its roots in international humanitarian law<sup>18</sup>, and the International Committee of the Red Cross has recognized it as customary rule of international law<sup>19</sup>. There are also two main international instruments that recognize this right: the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*<sup>20</sup> and the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*<sup>21</sup>. It has also been recognized by both national<sup>22</sup> and international Courts<sup>23</sup>,

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<sup>17</sup> E/CN.4/2005/102/Add.1; 8 February 2005, Principles 2 and 3; GA Res. 60/147, 16 December 2005, Principle 22.b; A/HRC/RES/12/12, 1st October 2009, preamble; E/CN.4/2006/91, 9 January 2006, par. 14, 35, 36, 58.

<sup>18</sup> Additional Protocol I to the Geneva Conventions. Arts. 32 and 33.

<sup>19</sup> Rule 117 in ICRC, *Customary International Humanitarian Law*, Volume I, Rules. Cambridge Press University, 2005, p. 421.

<sup>20</sup> E/CN.4/2005/102/Add.1, 8 February 2005, Principles 1, 2, 3 and 4.

<sup>21</sup> Res. AG 60/147, 16 December 2005, Principles 11, 22 and 24.

<sup>22</sup> Constitutional Court of Colombia, judgement of 29 January 2003, case T-249/03 y C-228 of 3 April 2002; Constitutional Court of Peru, judgement of 18 March 2004, case 2488-2002-HC/TC.

<sup>23</sup> European Court of Human Rights, decision of 14 November 2000, case *Tas v. Turkey* (Application No. 24396/94) and of 10 May 2001, case *Cyprus v. Turkey* (Application No. 25781/94). Inter-American Court of Human Rights: decision of 29 July 1988, case *Velásquez Rodríguez*; deci-



connecting it with other rights such as the right to an effective remedy, the right to an effective investigation, the right to information and the right not to be tortured; and also with the duty of the State to protect human rights and investigate their violations. However, this does not mean that the Right to Truth is only an element of other rights; it is an independent and inalienable right, as indicated by the Office of the United Nations High Commissioner for Human Rights<sup>24</sup>.

### **3. Media manipulation about the Iraq War.**

Taking into account the above considerations, we can conclude that the Right to Know is a human right, and this right is commonly threatened, even more often than we think. One of the main threats to the Right to Know is the manipulation of the media. Governments and corporations have strong influence in media, and they use it to adapt the information given by the media to their interests. We only have to observe how different TV channels or newspapers tell the same facts with different views, depending on their influences.

One of the most important examples of the 21st century was the manipulation campaign towards the Iraq war, started by the United States and followed by several countries.

The aggression of Iraq was justified on the basis of one main argument: Iraq was a threat for the US national security, and a threat to global security. There were, according to the media, several reasons why Iraq was a threat: it possessed chemical and biological weapons, it was developing nuclear weapons, and it has a close relationship with Al Qaeda.

This information was then demonstrated to be false, and other causes for the war were pointed out, namely the oil control, and

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sion of 24 January 1998, case Blake; decision of 7 September 2004, case Tibi c. Ecuador.

<sup>24</sup> *Study on the right to the truth*. Report of the Office of the United Nations High Commissioner for Human Rights. E/CN.4/2006/91, 9 January 2006, par. 55.

the establishment of the American military and politic power in a strategic State of the Middle East. However, US and its allied States used these reasons to justify the need of the international community to attack Iraq in order to defend itself. And so it did, even if it was an illegal attack under international law.

A whole campaign media was carried out with the aim of convince people of the needing of defend ourselves from Iraq, which included a constant presence of military- related analyst on TV, talking about the threat that Iraq was. This campaign was based on several elements: increasing the fear to terrorism, propagating prejudices about Arab world and Islam, considering the refuse to the war as an unpatriotic behaviour, or threatening to jail journalist who publish "classified" Government leaks.

The manipulation was not limited to the causes, but it affects all the information related to the progress of the war: the civilian casualties were minimized, the military force of the coalition was highlighted, and unconfirmed reports were taken as confirmed news. Besides, he consequences of this campaign are not limited to the support of the aggression, but it has led to a general feeling of hate and fear towards Arab world and Islam, that may take several years to overcome.

#### **4. Conclusion.**

The Right to Know is a human right, essential to guarantee not only freedom of opinion and expression, but also other important rights such as the right to vote, freedom of assembly and association, or even the right to conscientious objection.

Be informed is always necessary to form an opinion about anything, so this right has a special dimension when it is related to issues concerning peace and security, which always affect human rights. We cannot permit another war based in lies, neither the use of fear to implement a Government agenda that would be not accepted without that fear.

Access to information must be guaranteed in all situations, as an essential element of democracy. It allows citizens understand

the Government and its decisions, but also ask for responsibilities and chose their representatives with more effectiveness. We cannot underestimate this right, since it is necessary to ensure that all human rights are being respected worldwide.

## **OGARIT YOUNAN**

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Founder and President of the Academic University for Nonviolence and Human Rights (AUNOHR) in Lebanon

Hello everybody! I would like to thank the NonViolent Radical Party. It is the first time I partake in a conference held in Brussels and organized by the Radical Party and other partners.

I want to refer to something special today, as a concrete example of what is happening in the Arabic region, in the aim of giving a source of analysis and maybe some answers to the issues raised during the discussions of the last days, as the one on Iraq. Coming from Lebanon, I am obviously concerned by what is happening in that entire region, and obviously by these discussions among Europeans.

But first of all, I would like to say that I am a nonviolent activist. I would like to tell you about our latest initiative, as a crowning achievement of our 30 years struggle: the "*Université pour la Nonviolence et les Droits Humains dans le Monde Arabe*" (AUNOHR - *University for Nonviolence and Human Rights in the Arab World*). The first of its kind, it was created four years ago (autonomous and independent from the Lebanese University). It is based in Lebanon and offers 9 academic specializations at the Master and PHD levels in the field of nonviolence and human rights, including a Training Centre to share our expertise. We are pioneers in Lebanon as we are the initiators of socio-political, associative and educational training, with modern methods. AUNOHR welcomes students from all Arabic countries, militants, university professors, teachers, associations' members, religious communities, journalists, and lawyers etc., who want to be trained to acquire professional skills with expert professors coming from all over the world.

This university is born to help foster social change: Academics aiming at social change.

Why? Well, because we - that is me and Dr Walid Slayby, a nonviolent thinker of the Arab world and co-founder of this uni-

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versity - have chosen to struggle every day of our life to create and realize a new nonviolent strength, a nonviolent political and social strength, in Lebanon and in the Arab region,. And given that it is a meticulous job, we wanted to create this university to train the new political, social and pedagogical executives of society.

In Europe, there is not much to say on nonviolence. I think we need to point out the importance of this philosophy of nonviolence. I think Europe should revive and increase the awareness on nonviolence. Otherwise it will remain marginal, something that is not fully understood. People do not really understand why nonviolence is a force or how it can become a force. In the Arab world you need to have a ceasefire first of all, you need to make sure there is no war, and then create the nonviolent force.

When I say nonviolent, I say non-denominational. So we are also fighting against extremism, racism, religious - Christian or Muslim - fundamentalism; in other words all possible forms of extremism. This is what we have been doing on a daily basis for the last thirty years.

I am happy to tell you that we managed to set up an Arab network, and educational, political and social network, bringing together thousands of people. The university is now training the main leaders of these Arabic movements, for its continuity and efficacy in socio-political change. That is the aim of the university. I am not interested in being a university teacher, I am a sociologist so I do teach at the university but that is not my main role, my main task is to fight for social change in our society by using concrete examples and nonviolence.

I teach Machiavelli and I was interested in comments about him, I also teach Gandhi, who remains less well known even if he is very famous. I teach Henry David Thoreau, the father of civil disobedience. I was glad to hear Professor Michel Zarka linking the concept of Reason of State to violence. That is an important link. We don't have to embellish concepts of violence by "positive" terms or so called "objectivity"... Despite the fact that there are differences between European States, even in recent history

Europe has been an accomplice to acts of violence, which caused misfortune to some peoples. And these are "crimes". Who is going to evaluate these crimes? Who is going to be judged? A dictator? It is obviously important to bring a dictator to justice, but judging accomplice systems to the misfortunes of other countries, other peoples, is just as important. And, to liberate itself from its feeling of guilt, nonviolent actors in Europe have to ask for the accountability of the society, the system, and the decision maker that was an accomplice or left it to happen, etc.

So, intellectuals and nonviolent activists will revise those concepts, I am sure, affirming the lessons of history, the lessons of the Iraq War for example. And that is what you do, I think, in this conference. We can understand that Europe has been shocked by this Iraq War, by this contribution in the Iraq War. I really understand all of this, because coming from this part of the world (speaking Arabic obviously), I would like to invite activists from Iraq who have been trained on nonviolence to my place, and these are the new generation that will bring you a new message and practical answers.

What we need to do now is to prepare for that change even when we are under fire, when we have to deal with suicide attacks. We are still in a war situation in Lebanon and Egypt and Syria, Libya, and Palestine. During the war, I started my fight for nonviolence; I did not wait until the end of the war.

How we can build this nonviolent force? We need new ideas, new concepts, and new strategies. The concepts are the same, and the values are the same at the international level, but approaches would differ from one context to another. Be sure that if you would go to Iraq now for example, for an activity on the Reason of State, this is not the actual priority. The priority is to work on denomination and fundamentalism, to stop the war, to be free from fear, the right to life...

Some concrete examples.

There is a religious leader from Iraq, one from Palestine, one from Lebanon etc. This Muslim Sheikh modestly came to contin-

ue his training for 4 years with us at the nonviolent university. He supervises more than 60 mosques, it means hundreds of religious people and companies and tens of thousands of believers. Every Friday, he started to revise his sermon - texts that are read inside the mosques - and organized workshops on non-violence and human rights for Sheikhs. For five years, in every city where religious people are living, concepts and attitudes began to be lived, experienced differently.

Another example from Palestine: Our students, these active militants have changed all their strategies to struggle in a more efficient nonviolent way, and became a model and an innovative source for other socio-political actors. They succeeded in their last nonviolent actions at the international level, and have now found allies even within Israel's public opinion.

In Lebanon, in Tripoli up in the North - a city under constant media attention due to the high level of violence, fanatical groups, the effects of the Syrian crisis etc. - a young 25 years old teacher, trained with us on nonviolence, has been able to change her school of about 5.000 pupils - when we speak of Lebanon, we speak about less than 4.000.000 inhabitants, so it is a small country, where 5.000 pupils in one school is a lot. This school, composed solely of Muslim pupils, created the first nonviolent organization supported by pupils' parents.

Through these concrete examples, as well as the activities with journalists who run nonviolent programs on TV, with the young activists that launched a national campaign to abolish the death penalty, and with all others who are fighting to establish the right to civil marriage etc., we are founding this movement, we are creating this nonviolent Arab movement with patience and strength. This is the *Raison du Droit* and just laws, emanating from the society and its nonviolent struggle, and not the Reason of State.

I conclude by saying that we are getting ready for an international conference on non-violence in Beirut. At the same time, I agree with the proposal of organizing a European conference on nonviolence, for which I congratulate you and especially for the

2008 resolution, which in its article 9 calls for an engagement on nonviolence. Last year, I went with our friend, the French philosopher of nonviolence Jean Marie Muller, to Iraq, and Muller was dazzled by this desire of nonviolence on behalf of all of those we met. And he asked the Iraqi *"How come you like nonviolence so much while you have not known it up until now?"* So, an Iraqi professor answered him *"But you in Europe, in the occidental world, you have not known bombs for a long time now, you do no longer live with the fear caused by war; thus, nonviolence for you is no longer a concept for everyday life. But for us, by aspiring to nonviolence, we are aspiring to life, to the break with violence, and that's why nonviolence is a vital basic need, to us!"*

Therefore, a conference on nonviolence in Europe is actually necessary, especially when speaking of the Reason of State, and following the participation and complicity in wars in addition to the rise of violence and fanatical groups, etc, Europe needs to turn this historical moment, this learning moment in favour of nonviolent choices.

Our international conference in Beirut - I hope we could make it together - is going to be a huge contribution for all of us and not only for the people living in Arab countries, especially if our non-violent European friends would really be into this Arab struggle for nonviolence. When we fight for the abolishment of death penalty, and Sir Cassini here, ambassador of Italy in Lebanon, at the same time was admiring our brave acts, when I fought to cancel the law on the compulsory military service in Lebanon, and I managed to do it despite its taboo characteristics. When we fight to change the denominational system in Lebanon and to pass a law on civil marriage in Parliament, etcetera, all that process will further the cause of nonviolence in this part of the world, because what is happening now is preparing for the future!

I thank you for this invitation, and I really hope that together we can work towards the concrete realization of the ideas of nonviolence in the world.

Thank you!





## **DARA THONG**

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President of the Association of Young Cambodians in France

Hello, good day. Thank you for giving us the floor today.

We are delighted to be here with you for this conference which brings together global institutions and others, and which promotes the fundamental values essential for human rights. We are really delighted to be here to promote some values and to denounce some facts and realities that still exist in Cambodia today.

I know that most of you know the situation in Cambodia since Saumura Tioulong told you yesterday. I will try to be very brief, very clear and go straight to the essential, not into the details. I do want to raise a number of issues, which the Cambodian people are going through now.

Just to introduce ourselves, we are an association bringing together Cambodian youth around the world; we want to rise up against some issues in Cambodia. We want to fight and defend the right of Cambodians.

We are part of the Cambodian population abroad and we are Cambodians in Cambodia; we represent 70% of the total Cambodian population. It is the future of Cambodia. The fact that our association "Samaki Kohn Khmer" is here in Brussels is symbolic and conveys a message full of hope to the Cambodian youth!

As Saumura Tioulong said yesterday in her speech, asking the European Union to act, we dream of democracy in Cambodia, particularly Cambodian youth which makes us the 70% of the population. We dream of a State based on the Rule of Law, of social equality, of development for all, of justice for the people, of non-violent democratic transition and a true Constitution, not the virtual one we have now as the Constitutional Assembly is made up of one and only one party now in Cambodia. It is an illegal Constitution.

What you should know is that the Cambodian people today, and on a daily basis for decades, has been subjected to forced evictions, to abusive concessions, to bloody repressions against

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the Cambodian people, as the repressions recently carried out on the 14th of January against our workers who were demonstrating peacefully. They, peaceful demonstrators, were reprimanded with machine guns. The people of Cambodia are deprived of citizens' rights and this has been confirmed by some 10.000 irregularities in the elections of the 28 July 2013. Today, to sum up in few words, the people of Cambodia are "*an oppressed people*"!

What we need today from the European Union and from all the Institutions it embodies, is to help us to create a better Cambodia, to reform the Commission and guarantee free and fair elections in Cambodia and to protect the people against human right abuses!

I would like to thank you all, to thank all those who have contributed today and who have made it possible for me and the Samaki Kohn Khmer team to be here, and I would particularly like to thank Matteo with whom we have exchanged before I came here, to thank the Nonviolent Radical Party, which I think is a wonderful creation not only because of this forum but also for the work it did since so many years in the service of humanity. We are proud to be here with you today!

Thanks!

## **GIUSEPPE ROSSODIVITA**

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Lawyer, Secretary of the Radical Committee for Justice  
"Piero Calamandrei"

Thank you. I will try to keep it short. I have asked to intervene in response to what I heard this morning from Professor Ferrarese, Professor Bussani and Professor Salvi. Stimulated by their speeches, I wish to launch a question, a doubt, a provocation.

These presentations have introduced the theme of the link between the Courts, jurisdictions and the Reason of State, as well as the theme of the law applied by these technocracies, selected for a specialist legal culture: it was said that these Courts should represent the bastion for the protection of the fundamental rights of each individual, the places where the Rule of Law opposes itself to the Reason of State. Professor Salvi has introduced the topic of sources and in particular those of the supranational Courts and jurisdictions.

Perhaps the Italians present here know the situation, but to me a spontaneous question arises with regard to what is happening in Italy, a situation to which, unfortunately, the majority of citizens remains ignorant. To me it seems that it is a fact of grave extra-ordinarity, which puts some of the schemes I have heard in previous speeches at risk.

The Courts must pronounce themselves according to the law, motivating the reasoning behind their decisions, especially in *civil law* systems. My question is what happens at the moment these institutions - the Courts formed by autonomous and independent technocracies that should operate according to the law - also start behaving as interpreters of the Reason of State. It is a question posed also by Professor Zarka, who asked in what places we can find the Reason of State. I wonder what happens if the Courts become interpreters of the Reason of State even in their internal regulations, and they themselves end up elaborating a Reason of State - not imposed by the political institutions - which stands in conflict with the Rule of Law.

The example I make is very simple. As we know, the European Court for Human Rights in Strasbourg has condemned Italy for the

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violation of fundamental human rights, the persons' right to dignity, the right to be regarded as people, with regard to the situation in which detainees are being kept in the Italian prisons. It is a supranational jurisdiction.

Bringing this fact back to the context of the internal legal order, the political institutions, the legislative and the executive in the first place, should provide some answers. However, this situation also raises the question of the judicial conditions - although this is not the time to explain in legal detail what is happening - to suspend the execution of sentences, which are technically illegal, in Italy, as has happened in Germany or in California.

As the Transnational Radical Party we have dared all players involved - we talk of six hundred seventy five recipients of this denunciation - to suspend the issuance of orders of execution of penal sentences, because this fundamental human right, recognized also in terms of the internal penal and penal-trial regulations, cannot be repressed. The State's punitive claim must yield when it becomes aware of the fact that technically illegal punishments are being applied, penalties different than those provided for in our system, penalties that imply real and true torture and structurally afflict the dignity of man.

The Courts, the judges, the magistrates; those parties that should ensure the application of the law and fundamental human rights *against* the Reason of State, have themselves become interpreters of a Reason of State, while they do however not question the righteousness of the legal approach which regulations impose the suspension of the orders of execution of illegal punishments when there is full awareness that the effective penalty will not correspond to the one provided for in the law.

According to me, the supranational Courts are the best place to overcome also the Reason of State, when the latter imposes itself against the fundamental human rights. However, what else can we imagine within the legal framework when also those who should represent the last resort for the application of the law give way, becoming themselves interpreters of the Reason of State against the Rule of Law? That is all. Thank you.

## MARCO CAPPATO

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Treasurer of the Luca Coscioni Association for the Freedom of Scientific Research, Council Member of the Municipality of Milan, Former Member of the European Parliament

I should try to say something about what States' Constitutions can do in protecting the Rule of Law against the *Reason of State* and the national interest, also by nonviolent means. For the conference on which the speaker of the Middle East was talking about or for the idea of a European Conference, I think that the corner stone is to be found in science and technology. The technological revolution is at the same time a huge threat and an opportunity; threat because it strengthens power and opportunity because it can break down power.

Yesterday, Fausto Bertinotti was saying that the national economic interest and *Reason of State* determine plutocracy and he gave the example of the international financial system. We can deliberate on all the different reasons behind the national economic interest, liberal phonemic or monopolistic reasons, but that debate takes us too far away. I think there's a technocratic reality, not in the positive sense Professor Bussani was talking about, but rather a technocracy of power against individual rights, which gravitates around the institutions.

Let us take two examples. Today the question of the death penalty is an extra-judicial matter because of the technology of drones. They are executions carried out, outside the terms of international legality if we compare them with the executions conducted through judicial processes. Another example is the spying on large scale at the international level.

These two examples have two things in common: the huge role of the private sector and sometimes the voluntary or involuntary union of political and economic power. In the case of mass spying on a global scale, I will make two different examples. An example, in which the economic power aided the surveillance power, is

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the case of Hollywood's *big shots* who not only welcomed, but actively contributed to the emergency laws following 9/11, because these laws authorized the State to enter into private citizens' computers without prior judicial review, to prevent file sharing over the web.

Then there are Snowden's revelations, which speak of yet another reality; a reality in which some private companies actively collaborated by turning themselves into surveillance tools with a power States themselves could never have dreamed to achieve. We can think of some telephone providers, which have become direct instruments for mass surveillance worldwide. However, other companies protested, rebelled and have asked the American Government some weeks ago, with a public letter, to resist the demands for surveillance carried out through their services.

I think it is very important; it has an impact on national sovereignty. If Angela Merkel is suggesting breaking the universal nature of the web, to create a national or European Internet, why is she saying that? For obvious reasons. All network infrastructure is controlled from the U.S. and all the network management bodies are under American law. In the absence of a universal jurisdiction within the UN to deal with Internet freedom, Brazil and Germany are pushing for national bodies rather than an America body to manage the web. They want to respond to the infringement of people's freedom on behalf of the US, documented by Snowden, through nationalistic means.

For this reason I think supranational law and modern technologies are intertwined, also for the promotion of nonviolence. If you listen to Saumura, our Cambodian friends, or Kok Ksor, what can Europe do to promote nonviolence? I think that our tools are going to be the information and communication technologies, such as supporting independent media and defending nonviolent democratic activists against spying or censorship.

In alternative to the technologies used for generalized mass spying, more resources need to be invested in promoting and developing technologies, which free the individual and which dis-

mantle power structures. The report to the European Parliament was an attempt towards such direction, because it is not just a matter of principle but also of budget. The NSA employs hundreds and hundreds of people to monitor people's communications, and these people are using social media, such as Facebook, and telephone carriers. What we do not have is a balancing budget: the provision of substantial money to invest in technologies used to free the individual, to increase its power to access the truth and to communicate freely from the supervision of Governments. I think that the fundamental challenge is to set up public investments for developing new nonviolent technologies used in support of individual rights and freedoms.

The other question is science, which constitutes another kind of Right to Truth, precisely the right to have access to scientific knowledge in the democratic debate. We will discuss such things between the 4th and 6th of April in occasion of the World Congress on the Freedom of Scientist Research.

Democracy needs to promote scientific revolution in order to give value to the Rule of Law and democratic debate. Otherwise, for example in the revolution of the genome, non democratic forces will take power in the scientific debate because they are in a better position than democratic Governments in managing in a technocratic and non liberal way some of the new frontiers of scientific knowledge.

These are the fundamental aspects in seeking an answer to the question of how institutions and States can promote and support the nonviolent struggle, also through these kinds of conferences in Europe and the Middle East.





## **NICCOLÒ FIGÀ TALAMANCA**

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Secretary General of No Peace Without Justice

Thank you Elisabetta. Very briefly I would like to say thank you to all of you on behalf of the association *No Peace Without Justice*.

Thank you to Matteo and others who did all the hard work in organizing the meeting. We are coming to the end of the meeting and I will use one of the two minutes available to me to say something briefly about Syria.

The international community, including the nonviolent community, have to face this unique situation, we have to reflect on it, and we have to acknowledge the importance of nonviolence, not just as a system or a method, but also as a part of our identity and of those who chose this method in their struggle for change.

It is now almost three years ago the revolution started in Syria, a revolution that aspired to be nonviolent. Despite the bombings, despite Al-Qaeda attacking from one, and Assad from the other side, thousands of activists continue their nonviolent struggle, feeling abandoned by the international community who uses the excuse of Al-Qaeda to do absolutely nothing.

Obviously, it is a complex situation. I have heard that those who oppose Assad are necessarily Al-Qaeda, Islamist and extremist. This is not true and saying it means betrayal of ourselves and of the other nonviolent activists that are being bombed today, with tens of thousands of deaths. We have arrived at 130-140 thousand deaths, a number equal to the total number of victims in the war in Ex-Yugoslavia.

Saying that there are no nonviolent activists is something we should avoid at least among us. They exist and must be supported and assisted in their search for a political solution, the only solution able to bring an end to the conflict. They exist and are not pacifists. I am honoured to say that our nonviolence is not the pacifism of those who think that the people of Africa, Syria or Yugo-

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slavia will continue to kill each other, and we should stand by and watch until peace arrives because they have all died.

This is all I wished to say. I know Marco will make a much more authoritative statement now, so I pass the floor to him.

## **ANTONIO STANGO**

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Secretary of the Italian Helsinki Committee for Human Rights

Thank you. I only have two communications to make. The first is that I have just been informed that Spain granted the extradition of Alexander Pavlov to Kazakhstan, a case that involved many of us. Spain is the only country of the European Union to have an extradition Treaty with the country, whose regime is becoming more authoritarian every day. I think it constitutes a particularly serious case within the European Union.

The other communication concerns Ukraine. Because they were in Brussels for some meetings, a number of people from the nonviolent "Euromaidan SoS" organization participated in the first part of our current activities and I think that Radio Radicale interviewed one of them. They handed out a dossier about the current tragic situation in Kiev and other parts of Ukraine. I think that, as it has been correctly pointed out, we should try to stand next to them for their nonviolence, their hope and trust in the kind of Europe that we always wanted to build.

Thank you.

## FRANCESCO DI DONATO

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Professor of Political Sciences at the Parthenope  
University of Naples

First of all I would like to express my gratitude and complete support to this initiative, in which - it is almost impossible to say such a thing nowadays - the cultural process perfectly integrates with political action.

In today's world, where the economic dimension seems to monopolize the whole political sphere, we need more culture. Particularly in Italy, we need to combine politics and culture, according to Norberto Bobbio's idea that all the active protagonists of the political life must, at least once, read. He expressed this thought in one of his famous books.

The theme that was here proposed, Reason of State and Rule of Law, is a classical argument within the political doctrines' history and it conforms to the development of Western political and juridical thought. It is a theme through which many ramifications, and specifically of modern thought, are explored by interdisciplinary means.

I would like to begin my reflection with a passage of a famous 'damned' character, the Saint-Just of the Public Health Care Committee, who decided on the Terror. Saint-Just identifies the Reason of State with the art of governance, by utilizing the following words that I find very interesting today: *"Every art produced its own wonderfulness. Only the art of governance produced nothing but monsters"*. I think we can begin from this very meaningful assertion of one of the main protagonist of the French Revolution. The French Revolution is a period that from a historical-political human standpoint is regarded as extremely relevant, precisely because during that experience the Reason of State and Rule of Law were integrated and united for the first time, though at the price of tragic suffering.

The deliberation that follows from Saint-Just's thought, as the representative of an entire era and consciousness, seems to me to

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be the following. The art of governance, as Foscolo writes in his famous passage from *I Sepolcri* with regards to Machiavelli, is an obscure art filled with tears and blood. For this reason in history (I take this argument from a hint of Luciano Pellicani) there have been many geniuses in the field of art and culture, while not the same can be said with regards to political leaders. Being a Man of State, implies knowing how to merge the Reason of State with the Rule of Law and democratic participation, an art that knows no equal in terms of difficulty. It is an art that almost touches upon the confinements of the impossible. This explains why in history, despite the quantity and quality of events, we do not have an abundance, or rather there is a lack of figures that have been capable to further the combination of these two elements.

Everybody, even those who do not have a particular profound knowledge or do not excel in political science, when they talk or hear about the Reason of State cannot avoid but to think about something suspicious and fraudulent. The Reason of State makes us think about rational behaviours, only to favour who is governing and not to favour who is governed. Hence, within the Reason of State's problem, there are two key elements: on the one hand there are the governors' strategies or actions that the governors believe rational in order to improve the State (and often themselves); on the other hand, the rights and obligations of the people who are governed, and therefore undergo the governors' decisions.

However, also the policy makers have duties, and it is rewarding when the Rule of Law controls the actual compliance to those duties and allows for their enforcement in case of transgression or inactivity. Who governs has the precise duty to respect the law; this is the crucial point that links the Reason of State with the principle of legality. This concept of respect must not be interpreted in a broad manner, but on the contrary, in a rigorous and restricted manner.

Respect means substantial, and not merely formal, obedience to the laws. Formal obedience translates into substantial transgression, covered by an apparent regularity. Legal formalism is a grave mode of *Serendipity*, of heterogenesis of the means. The

sinful effect lies in the fact that the law, whose motive of essence is the protection of the weak, becomes instead a tool for the abuse of power, suppression and legitimation of arbitrariness and arrogance. Through the symbol of justice, the quintessence of injustice is realised: *summum jus, summa injuria*, according to Cicero's famous words. When this situation takes place, which is often the case for Italy, we stand in front of an illegality of the legal.

Jurists, the priests of the law, pretend to be its jealous guardians, while in reality they are the most cynical and relentless transgressors. Thus it can be stated that they often violate the law in name of the Rule of Law. They are still and they truly believe to be the "*prophets of the law*", to reclaim the beautiful expression of an important historian of American law, John Dawson.

The State, which requires jurists (who are the cofounders of the State) and which finds itself in the position of serving and at the same time defending itself from the jurists, is based upon a specific rationality whose major difficulty is to construct and maintain an untouchable credibility. This credibility is the product of a continuous legitimation, which is created or destroyed in society's texture and life. Hence it is the result of the governors' ability to realise, through the instrumental activity of the institutions, the community's interest by respecting the law. At this point, the real difficulty stands in the fact that very often that same legal system, being defined by jurists and therefore being the product of a judicial mentality, is the maximum expression of that specific formalism and of that *Serendipity*. Hence the law is not only inapt to fight jurists, but it is actually their strongest productive instrument. Results of such assumption are the vast range of norms and their intrinsic qualitative properties.

The first aspect consents the lawyer-interpreter-creator to have an endless liberty in the normative manipulation. Without major problems, he can demonstrate any thesis, by supporting it with premises and with logical-rational arguments founded on the consequential succession of the premise: *omnia in corpore juris inveniuntur*, everything can be found within the body of the law.

The second aspect permits the lawyers to stand in a central and indispensable position in every important decisional step. If a norm is written in an incomprehensible language, full of technical terms and of allusions to other complicated norms, only a lawyer can clarify its meaning. In this way the decisional power becomes a patriarchal mediation exercised by the juridical-bureaucratic class.

From this perspective, the idea of national interest was initially beneficial, as Meinecke demonstrated. It served indeed to put into crisis the patriarchal mediation and to move the axis of the decision making policy towards other power centres, not necessarily dependant on judicial reasoning. Nevertheless, in consequence to time and historical events, the Reason of State became a sort of alibi, employed by the governors to protect themselves from any critique and responsibility.

The argument, true or false, of the interest of the State ultimately created a reserved and exclusive sphere, in other words a free zone where neither common morality nor personal ethics had the right to enter. In this way the conditions for an abuse of the interest of the State were created, and the interest of the State became a shield to suppress the worst operations perpetuated by the governors, who lacked any concern and whose cynicism was equal to their dishonesty. Mindful of this experience, we reached a historical era, in which we have convinced ourselves that a Government that operates according to the Reason of State can never go beyond the limits of the Rule of Law. Reason of State and Rule of Law have become two absolutely essential terms.

From this point of view, it is necessary to trace a fundamental tri-partition, very important in the history of the doctrines and of political and legal thought, but also in the history of the western culture *tout-court*, upon which it is worth reflecting. There are at least three different forms of national interest. The first one is the classical Reason of State, the one conceived by the major theorists of the concept, Machiavelli and Hobbes firstly. For these thinkers, national interest is the main tool to control the risk of violence and to govern the fear caused by insecurity. The State inserts itself

within the framework of the process of civilization, and therefore its own objectives become the principal priorities since the State is the entity that guarantees social progress.

The second Reason of State, whose theorists are coincidentally all Italian (Giovanni Botero, Ludovico Zuccolo, Federico Bonaventura, Ludovico Settala, Girolamo Frachetta, Antonio Palazzo, Traiano Boccalini, to remember only a few of the most important ones), is the one of the post-Machiavellian period of the Counter-Reformation. The shifts of Machiavelli and of the Lutheran protest determined an enormous choc within Europe's Christian conscience. The Counter-Reformation reaction aimed at decreasing the message and the philosophy behind the Machiavellian analysis. For this reason national interest acquired moral connotations that made it compatible with the inquisitorial model. In the Italian peninsula, which at the time was still not a State, this phenomenon translated into an opportunism finalised towards particular (as Guicciardini wrote), personal, familiar or micro feudal interests dissimulated by general interest. Within this movement, we find the notorious Torquato Accetto, who talked about 'honest dissimulation' as the Reason of State's superior art. This is a Reason of State that, born with an anti-Machiavellian function, merges perfectly with Machiavellism, with the interpretation that deteriorates or turns upside down Machiavelli's thought.

Hence the demonic aspect of power, according to the known definition of Gerhard Ritter, was identified with the idea of Machiavelli and the national interest was interpreted not on the basis of the actual theory of the Florentine citizen, but it was orchestrated particularly by his enemies at the time of the Counterreformation (and it is known that the major enemies of Machiavelli in that period were the Jesuits). We can define this type of Reason of State as non-legalist. It is the Reason of State that fools the principle of legality and Rule of Law. It protects the interest of the policy makers, without caring too much about the interest of the people they governs, when it is their interest whom the principles of the Rule of Law need to be respected in a very precise and rigorous



manner. It is a crucial aspect of modernity and of modern thought, where the affirmation of individual liberty passes through the determination and respect of the limits determined by the law.

The third typology of Reason of State can be defined as being French in conceptual opposition to the second one, which can be regarded Italian. The Reason of State of this third category is the method of thinking and acting of the men of State, of the grand commis d'État. It is the national interest not only of the great politicians, such as the cardinals Richelieu and Mazzarino or King Louis XIV, but also of the great administrators of the State. It is the national interest related to the national civilisation that made the French State magnificent. Think of the two key actors in the history of the Exagono, such as Colbert or the chancellor d'Aguesseau.

This third typology never existed without the Rule of Law; it actually constructed it. It contributed enormously in founding the Rule of Law, to the point that some theorists, like Arnold Clapmar, important German thinker of the 17th century, or like French Gabriel Naudé, were convinced that a State could not exist without a Reason of State. I just want you to notice that the most important theorist on the national interest, and that is Thomas Hobbes in my opinion, never explicitly talks about the Reason of State in his works. However, the relation between the Rule of Law and the national interest, personal and social obligations is very evident.

I will make a final reference. A prominent intellectual of the Modern era, not well known to the public, Amelot de la Houssaye, who was Machiavelli's translator, wrote a very insightful thing on the Reason of State. He argues that the focal point of the issue is that politics is founded on principles common to all States as much as it is founded on singular State's principles. Each State, besides sharing some principles with the other States, has its own Reason of State. Hence the State maintains itself with ordinary and exceptional measures that are characteristics of its regime's nature.

However, today the idea of a national State that can dominate above everything and everyone appears to be in a crisis; due to the interdependency between States –I think of the most recent events,

such as the one of the Italian navy marines in India - we can notice an emergence of the necessity that the interaction among States is based on the law and not only on the 'Italian' Reason of State.

The major opponent of the national interest, the French Enlightenment, particularly through the voice of Jean-Jacques Rousseau, formulated a strong critique towards the national interest, as it is interpreted in the Italian way. In conclusion to this brief *excursus*, it is worth reconsidering the argument brought forward by the genius from Geneva: "*The Reason of State is an obscure art, whose darkness goes hand in hand with mystery*".

I think that on the basis of these historical premises, it is absolutely necessary to deliberate on the national interest and the Rule of Law today in order to resolve those mysteries: how is it possible to invoke State secrecy privileges for a case like the one of the Ustica aircraft without feeling shame and ignominy? Furthermore, it is important also to achieve in politics what a great sculptor from Genoa, Francesco Queirolo, produced in a beautiful statue, *Il disinganno*, which today is situated in the Sansevero chapel in Naples. A net of marble covers the figure - I don't know how he made a net of marble, but he did! - and if you eliminate it, you can bring to uncover true knowledge.



## **JOSÉ MARÍA GARCÍA MARÍN**

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Professor in the History of Law and Institutions at the University Pablo de Olavide in Seville

Some days ago, Professor Di Donato of the University Federico II of Naples and the Sorbonne asked me to talk about the Reason of State. As a historian of law, the theme of the Reason of State and the Rule of Law are not ideal for me. Francesco insisted nonetheless that I speak from a historic point of view and thus, reflecting on the subject proposed, I came to the conclusion that to talk about the Reason of State in the sixteenth century or to talk about it today is the same thing.

The idea that the end justifies the means, that there is a Reason of State that should remain unknown to the citizens, the theme of Iraq, of Iran, of Syria, and the type of problems that are being created, are not in any way different from similar problems that have occurred over the course of history. I refer to the problems I followed on several occasions and today I would like to cite some documents, which I have studied for some time now.

I refer in particular to a document by the personal confessor and adviser to Emperor Charles V, García de Loaisas, published in 1530, which concerns the German Protestants. The document reads: *"If they want to be dogs, they will be, and Your Majesty should close your eyes, since you do not have the force to punish them nor a way to avoid it [...]. Forget, Majesty, the fantasy of converting souls to God, from now on occupy yourself with converting their bodies in obedience."*

I was very surprised by this phrase, which I remember and will always remember. How is it possible that the confessor of an Emperor at the head of an empire of Christians, of the Christian university, told him such a thing? Later on I understood, reading other documents, that Loaisas was referring to the fact that in that moment there were more pressing problems which the Reason of State required the Emperor to deal with, rather than to worry about the German protestants.

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The theme of the Reason of State is something that has always existed, and I will say more: the Reason of State may now be oil, it may be the conquest of a territory, it may be and it has been, religion. Focus on what was said by Francesco D'Andrea, Neapolitan jurist of the late seventeenth century, when the Kingdom of Naples belonged to the Spanish Crown; one of the most important, intelligent and extraordinary jurist I have ever known, given that I really believe that in Italy "the most embarrassing person is capable of making timepieces."

In 1680 Francesco D'Andrea says: *"In essence, religion serves the State, it is like a cloak, it changes according to the need and where we are."* What does he mean? It is an instrumental vision of religion, and if we take other authors - there are so many that I would not know where to start - it is possible to compare religion to oil. There is one truly paradigmatic case, namely when in 1527 Charles V ordered the Spanish troops to sack Rome.

Initially, the idea appeared to be a grave mistake: the impression was that the Emperor was wrecking everything, that he attacked the Church. One of his advisers, an Italian by the name of Bartolomeo Gattinara, asked his Majesty how he intended to govern the city of Rome and whether it had to be the Apostolic See or not. Some thought it should be an apostolic see completely subdued to the Emperor, of which he could dispose as he best retained. In practice, they were suggesting him to depose the Pope.

Again, this is very surprising, especially at that time, and I will try to explain why: the Pope was acting as the lord of a territory, as a Head of State, as a temporal Prince, and his objective was to expel the Spaniards from Italy. That was his Reason of State: the Pope allied himself with the King of France, the utmost Christian Francis I, who even allied himself with the Turks. Therefore, if the friend of my friend is my friend, then the Pope was in bed with the Turks. Reason of State, nothing more, nothing less. This explains why Charles V struck the French in 1525 in the battle of Pavia, and in 1527 also the Pope with the invasion of Rome.

There is something interesting in some of my books. For example, in the famous book by Meineke *The Reason of State in the Modern Age*, the author writes that the idea of the modern Rule of Law has changed with Boudin with great force and clarity, masterfully achieving the combination between power and the need for law; an ideal need that could not close all the roads to Machiavellianism.

The question is clear enough: Machiavellianism has influence the political thought of the majority of European countries, Spain included, given that in the seventeenth century our Ferdinando II of Aragon (Ferdinandi the Catholic) was a King who "signed peace sheltered by his shield". A terrible phrase to indicate that, while he signed, he held his shield ready to hit the person with whom he was signing the peace agreement. Reason of State, the end justifies the means, as Francesco D'Andrea said.

Reason of State; he end justifies the means. Francesco D'Andrea said it: religion is a cloak we wear or take off depending on convenience, on our interests, on our preferences.

There is sixteenth century author who published a book in 1646, called Salvador de Mallea, who writes: "*The Prince must be absolute in his Government and needs to radiate with his thoughts*". We can pair it with another contemporary author, Blázquez Mayorazgo, who says: "*he who cannot pretend, cannot govern*". This is the key. Most of the political realists in the sixteenth and seventeenth century - when Spain dominated, fortunately or unfortunately, a third of the planet - recommended the King to fake, or truly the art of lying, the art not to talk, the art to never let his own ministers know what he was thinking. A fortiori, the citizens, or subjects, should not have known.

What happens today? We replace religion with oil, or any other type of interest. The interests have changes but the principle is the same: be it oil or a coal mine, or gold, is sufficient to start a war. Rule of Law? Justice in war does not exist. The reasons that push a State to act are not the ones they declare. It happens today and it has always happened.

It is a historic problem that has always existed and will always exist. Man continues to be what he is. There are many examples. I will limit myself to the one of Iraq when it invaded Kuwait, or when the United States invaded Iraq. The same thing goes for Libya as it goes for Syria.

The Reason of State exists and has always existed, even before it came out of Machiavelli's pen. Our Ferdinando the Catholic practiced it before him at the end of the fifteenth century.

I conclude with a phrase by Machiavelli, taken from his *Discourses*, in which he advised the Prince, in order to maintain the order and the Kingdom, to encourage his citizens in any religious practice. Whether it was a real or a false religion was not important. There is nothing more to add. Oil or religion, they are the same thing. Thank you.

## **GIANFRANCO BORRELLI**

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I will briefly recall the original sense of that which we mean by Reason of State, that is a complex device for the production of powers, which has been defined as the last great product of the Italian political laboratory (Foucault, 2004). In fact, as of the end of the 16th Century, starting from Italy and spreading through all European countries, discourse and practice affirming the Reason of State give birth to the processes of political rationalization in Europe's modern history. With regards to Italy in particular, the main purpose of these political techniques is to safeguard the enormous economic, financial, cultural and artistic heritage, endangered by the conquering attempts of foreign powers, especially France and Spain, from the middle of the sixteenth century. Then, from Giovanni Botero's text (*Of the Reason of State in Venice*, 1589) to the writings of the forties of the seventeenth century - in particular those of Scipione Chiaramonti and Virgilio Malvezzi -, dozens of treatises propose a political program that is then practiced in the Regional Courts all over Italy. It is an exercise in political conservation, operating in a rational and dynamic way, according to the codes of conduct for civil conversation: it uses the autonomy of and undefined and fragmented politics to enact certain techniques of intervention, in particular techniques of concealment, secrecy, simulation and true deception. The main objective of this complex of techniques is to produce an effective circle between the control of political authority, of any

form of Government, and the obedience of the social classes (Borrelli, 1993 and 2005).

From then on, the *Reason of State* represents a device characterized by the use of a strong overload of political power, and that normally acts on two levels. On the internal level, the *Reason of State* is aimed at the growth and safety of the power of the State: as the practical art of Government - defined in the different Euro-

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pean countries as *polizei*, police, *polizia* -, it is intended as the most articulated and spontaneous expression of the economic potential of the population, guaranteeing security on the legal, civil and criminal plane. At the international level, the *Reason of State* aims at the development of the power of the State through diplomatic-military technology, by creating a system of alliances and by organizing a military apparatus that is constantly subjected to updates; in this manner it contributes to ensure, starting from the middle of the seventeenth century with the Treat of Westphalia, to the balance between the European States.

From that time on, the Reason of State is continuously at work, adapting itself to the various situations of power, and contributing to conservative mediation. As demonstrated in the last century by the studies of Clinton Rossiter (Rossiter, 1948) and Carl J. Friedrich (Friedrich, 1957), a gray area remains within the Western public law systems, based on a Constitution: a discretionary decisional power which operates, as an exception, also in a covert way, subtracting power to the Constitutional norms of the Rule of Law; or it openly intervenes as a complex of prerogatives of full decisional freedom assigned to institutional figures, such as the President of the Republic or Government Commissioners who are given extraordinary deliberative and executive powers. It is some sort of *dual State*: a formal State based on the Rule of Law and, next to it, the opaque area of administrative juridification which works through discretionary regulation. Sheldon Wolin reminds us that these practices of the Reason of State can be treated as those economic and administrative rationalization processes, which in contemporary times are being accomplished through *Welfare* policies for the benefit of the population; policies that intend to achieve social discipline and seek to guarantee an efficient circuit between political authority control and the obedience of the population (Wolin, 1987).

At the international level, the Reason of State becomes, and still operates today, as a *reason for war* which constitutes the permanent violation of international law, of the sovereignty of in-

dividual States and the political rights of citizenship. The path followed by this *reason of war* is well known and we all remember it. First of all, everything related to the exercise of military power within the technical apparatus and Government projects will always remain hidden from public opinion. In this respect, already in the mid-eighties, Steve Smith recalled the need to survey the secret procedures of the defence policies of the United Kingdom and the United States (Smith, 1986). And more, today the use of illegal use of the information system and technologies - from the Echelon databank to the National Security Agency (NSA) - would have to be put under the strict control of the international public opinion, as it constitutes a permanent violation of all rights to privacy. Lastly, parts of the *reasons of war* are those practices of simulation and deception used to justify acts of war, as has been clearly demonstrated by the justifications used for the war in Iraq: the false motives to render the armed conflict possible have been subjected to harsh criticism, but only from too narrow a part of the international democratic community.

How should we respond to this perversion of practices and devices of the Reason of State, and in particular of the reasons of war? We certainly need to strengthen and increase transparency in the activities of international agencies: therefore, we need to give strength to the permanent observers inside the large international organizations - primarily the UN and the European Union -, but we also need to enable independent structures. The idea is to put the production and use of non-conventional weapons under the permanent observation and control of global agencies. Moreover, we must put the activities linked to global trade under control - just think of the international trade between the European Union and the United States -, as they are increasingly transgressing health rights, environmental protection and regulations for food hygiene: the affected populations are often completely unaware of these Treaties. Finally, we must rigorously enforce those processes of the Information Communication Technology (ICT) that guarantee the right to privacy of every single citizen.

Finally, I would like to remember how these practices of the Reason of State are surrounded by some devices and organisms belonging to the so-called *multilevel governance*, which operates - in national and international contexts - as a real emergency device; they are non-participatory and non-representative bodies, active since decades, which intend to respond to the crisis of democratic Government. In fact, these bodies, which at the time of their constitution affirmed the need for the realization of full pluralism in their activities through the criteria of impartiality and fairness, often tend to void the practice and procedures of liberal democracy and representative Government, assuming sometimes perversely negative elements. With regard to the policies of the European Union, I take the example of the risks reported already in the nineties by Sonia Puntsher Rieckmann: the Commissioners' discretionary use of power by the European Commission (Puntsher Rieckmann, 1998). The activation of the *Treaty establishing a Constitution* starting in 2009, put together best practices for the full democratization of the decision-making procedures, in order to overcome what was recognized as the *democratic deficit* of the European Union; in the most recent years, this experiment appears to have slowed down, not to say disappeared. There is a direct governing exercise of the European Central Bank and the European Commission, alongside the International Monetary Fund, which is no longer directed towards the realization of *democratic and political governance*, but which has enacted true *commissionary economic governance* (Arienzo-Borrelli, 2011). Without any democratic legitimacy, these bodies impose restrictive measures on Member States' fiscal and social policies - we have witnessed it in Greece and Italy - and they are measures of an absolute discretionary nature: suffice it to remember the August 2011 Memorandum for Italy. Finally, we should highlight the difficulties that regard the problem of full democratization in the federal sense of a European construction, to remind all of us that we need to give full representation to every single European citizen and to assign full legislative initiative power and control to the European Parliament.

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## **CLAUDIO M. RADAELLI**

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Professor of Political Sciences at the University of Exeter

### **Regulating the State Secret and its administrative connotations with the liberal principles of the open society**

In my contribution, I would like to go to the roots of the issue of State secrecy, looking at its simplest and most basic terms, before sharing some thoughts based on research we have done in recent years in Exeter. This way, I hope to contribute to the development of the debate and the campaign and struggle of the Radical Party for the Right to Truth and the Right to Know.

So, I start with some essential terms regarding the issue of the State secret. The expression is composed of two words, "secret" and "State". When we consider these terms separately, starting with "secret", we immediately notice how in recent years there has been a technological weakening in what can reasonably be kept secret. This is not just due to the technological weakening, but also to the social weakening of secrecy. It is all linked to how society uses new technologies and the type of information sharing an average citizen expects nowadays in the world of digital agorae, blogospheres and social networks.

Thus, the weakening of the "secretable" is not just a technical but also a social feat: there is less and less tolerance for keeping citizens in the dark on a part of life's dimensions they feel should be shared in public. This represents a historical drive, stronger than what we may expect with regard to how much and what can reasonably and legitimately be kept in secret.

If we examine the other term (the State), we arrive at the core of the issue with the question: what does the State do that can then be considered secret? We find change here as well: fifty years ago the State's main dimensions were peace and war, the world of chanceries and ambassadors, of foreign and defence policy, the classics so to say. While today's foreign policy blends with economic policy. Economic, monetary and trade issues weigh ever

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more in and especially in the foreign policy agenda. Economic policy becomes politics *tout court*. Often these economic policies are being constructed within international organizations with limited or incomplete legitimacy, such as the European Union. Organizations that can only be hurt by secrecy. We cannot apply to this new economic foreign policy the way of thinking on the State secret as may have been historically justifiable in the past, but ill-suited to current conditions.

Let us take an example of a decision on foreign economic policy that has left a sense of disgruntlement for its size of secrecy. We think of the decision related to the bilateral summit between Spain and Italy, in Valencia in 1996, between Aznar and Prodi, where they practically decided on Italy's path of entry into the Euro. It is said that Prodi made the trip to Valencia hoping to find an ally in Spain, in an attempt to soften the conditions for entry into the Economic and Monetary Union (the Euro zone). Instead, Aznar said that Spain was ready to enter immediately and with its parameters in order, thus leaving Italy on its own.

It was rather unclear on what diplomatic basis Prodi would have acted, or received and shared information during this fundamental foreign-economic policy summit, and on the basis of which diplomatic errors or genuine misunderstandings of the Spanish point of view. Maybe it was Aznar who set the trap for Prodi, or maybe Prodi knew but could not act differently due to public opinion. Or... The fact remains that even then, during the 90s, it made no sense to keep the Italians in the dark on the kind of diplomatic knowledge that drove Prodi's moves on the path that led Italy to a fundamental historic change, the entry into the Euro.

All of this represents a first step in what has become even more striking over the last 4 to 5 years, with a series of bilateral summits on the European Union Treaties (and unfortunately often outside the scope of those same Treaties) between Hollande and Merkel, between one Prime Minister and another, which sealed the fate of entire countries like Greece, Portugal and further on to all the countries of the Eurozone. Crucial historic decisions on

themes of the default of these countries and rescue mechanisms, obviously departing from economic policy, but investing politics *tout court*. On the basis of secret summits, decisions of colossal importance for entire countries have been taken. All of this needs to remain secret, for how long, in whole or in part?

To me it seems historically unacceptable to continue to tolerate a total diplomatic secret, in the name of the old conception of State secrecy, which impedes, even *in retrospect*, to know at least on what basis decisions are taken during these summits. The public opinion's thirst and need for knowledge pushes against the foundations of diplomacy, as well as legal boundaries and economic bases, and in some way also against the *intelligence* as has been well demonstrated by the case of Stephen Plowden who asked to be able to know and to understand with regard to the Iraq War. And thus contrary to what has been excellently demonstrated by the failure of the Chilcot Inquiry on the same issues of knowledge with respect to the Iraq War. Let us return to the European Union: *In retrospect* then, once the historic choice has been made, you cannot tie the fate of Greece, the fate of twenty-eight EU countries, to a bilateral summit between two persons who have met together, accompanied by their own personal advisers, for a day or two. These are severe blows to the legitimacy of European governance: the only nourish the social basis for euro scepticism and anti-politics. In other words, we are confronted with a dimension of economic policy and European politics, where the rights to transparency and access matter. They have been invoked for the first time in a very clear manner, and fully confirmed in a case raised by the former Radical Party Member of the European Parliament Maurizio Turco on an issue of the legal basis for a decision of the European Council. Turco won and the Right to Knowledge won, at least on that occasion.

However, the question should not be posed in a dichotomous way: State secret YES, State secret NO. As we have just seen, we need to adapt the regulation of the State secret to the dynamics of sociology, technology and international politics. It is impossible to

continue as if nothing has changed within social expectations, in technology and in how European countries move themselves in foreign policy and on international economic issues. It is impossible to think of the secrets and the States as irreducible monads, when we have a community binding the fate of 28 different countries, called the European Union. Along with the State secret, we must regulate the infrastructure of the administrative law that supports it, starting with the Freedom of Information Acts.

And here we can extend the reasoning. The thesis appears to be the following: we the citizens want to know the legal, economic and diplomatic basis of inter-Governmental decisions and of the decisions of the European Union, because the legitimacy and democracy of the European Union depend on it. You cannot on the one hand make the decisions ever-more at the level of summits, bilateral and interGovernmental meetings - more outside than within the range of the European Union Treaties - with what we can now call the "domination of the executives"; and at the same time impede, at least *a posteriori*, citizens to know, to see, to understand and to make a historic - and thus political - judgment.

In this tension between domination by the executives and (lack of) transparency, it is *accountability* to loose out, and with it the democratic future of the European Union.

I would wish to open a parenthesis on this, and to talk of some research we have done in the past years at the University of Exeter, thanks to funding from the European Research Council. We have coded and analysed various vectors for *accountability*, starting from the instruments available in different European countries, such as the various forms of *Freedom of Information Acts*, instruments for the empirical analysis of the effects of proposed laws and regulations, consultations, notifications and the obligation to consult. It concerns a set of citizens' rights and public administration duties - to consult, to notify, to make things known.

As demonstrated by Stephen Plowden, who used an instrument pertaining to administrative law that is the *Freedom of Information Act*, this part of administrative law is closely linked and an



integral part of the reflection on the core of the State secret, precisely because these rights are usually blocked when met by an issue protected by *State secrecy clauses*.

We focussed on how these instruments can be combined, whether they lie within a proper ecosystem and what *patterns* can be discerned in the various European countries. What did we find? Our result<sup>25</sup> shows that these instruments work well together and function only when two fundamental dimensions are present. They are two matching dimensions, which, instead of creating overlap and thus loss, integrate in an organic way. These two dimensions are, on the one hand, citizens' access to the public administration, to proceedings, to research and costs-benefits analysis or to analysis of public administration risk; on the other hand, access is completed only if combined with an obligation for the public administration, the State: the duty to inform, to notify, to render scientific and economic studies public, to organize information in a series of *dockets*, through which the entire decisional process that led to a certain decisions is knowable.

Thus the right becomes full and effective, allowing the citizen to operate as a 'principal', while the 'agent' is the public administration, which works for the citizen. Only when both obligation and accessibility are present can the 'principal' hold the reigns and keep the public administration under a certain control. When these components are not present contemporarily, the right remains ineffective; the right is reduced to words on paper, incomplete, limp, not allowing strong control by society on the public administration. The 'agents' are beyond control and the citizen is no longer the 'principal'.

With an important corollary: what happens when the equation obligations + access is not completed? The pathology of democracy prevails, not its physiology. We have not yet made specific

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<sup>25</sup> The study *Controlling bureaucracies with fire alarms: policy instruments and cross-country patterns* by Alessia Damonte, Claire Dunlop and Claudio M. Radaelli will be published in the *Journal of European Public Policy*, 2014

analysis, but there are strong indications that without this ecosystem of rights the State and the public administration are beyond control and auto-referential. Even worse, control exists, but only by political parties, by networks of corruption and associations worthy of contemplation by the penal code, not by administrative law. *Party patronage* prevails (party control of the public administration) and with it the appropriation of public means for private ends. Substantially, weakening this form of the Right to Know and transparency becomes also a strengthening factor for the pathologies of democracy.

To conclude, this struggle for the Rights to Truth and to Know - historically ascertained and effective rights, a struggle initiated at latest back in 2003 by Marco Pannella and the Radical Party with the campaign "Free Iraq" - is also the struggle par excellence to keep true democracy alive, and not allow it to become infected by this pathology, by these metastases called real democracy. When these rights perish, when they are feeble or denied, the territory of real democracy expands and with it the territory of the pathologies of democracy. Therefore, the issue of truth and knowledge is a fundamental battle, a battle for democracy, against real democracy. For this, we need to regulate the use of the State secret with liberal principles, adapted to the social time and expectations.

## **MARCO PANNELLA**

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President of the Senate of the Nonviolent Radical Party Transnational and Transparty, Former Member of the European Parliament, Former Member of the Italian Chamber of Deputies

First of all, I have been paying attention to the theme of our meeting for a long time and the conclusion I may draw is that the quality of the speeches, the quality of the contributions, which elsewhere might have been considered technical and not, as they really are, scientific. It is a true confirmation of the fact that once again a battle of extreme gravity and actuality is being fought over the theme of law and human rights on our continent and in our world.

Old patterns are being reproduced. Thus also the "Italian Plague", of which we have often occupied ourselves to search, if not for a cure, at least for a reduction of its capacity to deflagrate the entire world. We spread the fascist and Nazi plague in the early twenties, from a country with no real authority or power. What is happening in Rome really turns today's speeches into treasures, because they are extremely needed.

After years not so much of controversy, but of very harsh criticism, the President of the Italian Republic exercised a right, a prerogative - we could probably also speak of a duty -, and sent an extraordinary and small text to the Parliamentary Chambers to talk, as we had specifically asked, not so much of duties, but of obligations.

The debate here has shown how valuable it is to reflect on the relationship - dialectical, some would say - between legitimacy, illegality, awareness' own motives in terms of rights and law, of the importance to respect knowledge, to respect historicity, which is the foundation of the destiny of our world and each of us, not only as a Spanish "destiny", meaning destination. However, sometimes I wonder if we find ourselves in a compromised situation.

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I will not continue, if not to thank you and to emphasize the fact that our work may immediately encourage - within a month or two and possibly in more peripheral locations than this one - someone to take up this great debate that I think captures the gravity, the connotations of the moment we are living. Through this debate we are winning for the degree of conviction, not only because of the technical and professional relevance, but also because of the relevance of this theme of reflection and dialogue, without which the first would be liquidated as *logos*, as it has been done constantly.

This is the *caveat*. Something extremely grave is happening in Rome. I said before that the President of the Republic, by sending the official message, is finally exercising his full prerogatives and duties as the guarantor of the law and rights in our country. In this little "essay" he talked of duty, reminding that for decades now Italy has technically been in a flagrant criminal condition with respect to the European jurisdictions.

Our research into the value of the jurisdiction with respect to legislation is most interesting. It is not what anyone expects from us, but we must take note that there may lay constructive possibilities in the jurisdictions with regard to anti-liberal, authoritarian, reactionary and conservative regimes. As Radicals we wish to give credit to the European Court of Human Rights (ECHR) in particular, for having achieved that which remained unsolved at the legislative level.

How can we forget the events we lived, as *amicus curiae*, at the Inter-American Court: forty-one State in an open argument with Costa Rica? With the presence of *Hands off Cain, No Peace Without Justice*, the *Luca Coscioni Association*, and the *Nonviolent Radical Party Transnational and Transparty*, you have been able to see that today we are not unnecessarily alarmed, but that we are ready and prepared to treasure your attention and your urgent needs.

Urgency is characterizing our time. Our President of the Republic has been silenced. The new being announced in Rome is

the new that was announced in the twenties, of the typically nationalist kind; which, in order to dismantle the old ruling and unworthy classes, liberates itself from culture, from anthropology itself, from history, and is winning.

Duties no longer exist. There is no discussion on what the President has done in the exercise of his functions. Every day we have completely subversive Statements from the most important party, the Democratic Party (PD). I repeat: subversive Statements, every day. The newly appointed PD spokesman for justice has immediately declared that with regard to the two measures indicated in the President's message - on the factual urgency of some concrete structural reforms to respond to what the judiciary, the European jurisdiction, and the Council of Europe have been asking us for the past twenty years: the structural reduction of the judicial mass that does not consent us to have trials within a reasonable time - nothing will be done.

There is a revolt against the President of the Republic, animated by those who may draw some legitimacy also from his name. It has been declared that the measures requested by the President of the Republic will not be taken. They are the same measures we have been struggling for, but describing them stubbornly as obligations. Simple duties and more!

This is the *caveat*. There is a strong subversive power - yet no one seems to have figured it out so far - against the Italian institutional authorities in the effort to dismantle the President of the Republic and the international jurisdiction with a little Florence, or Tuscan, ease; something with illustrious precedents.

I thank you all very much. I really thank you very much and I also thank the interpreters. I turn not to the youngsters, but especially to those with - if they still have any - white hair, with the heritage of wisdom: here we go again. As they said in sixty-eight: *it is but the beginning, continue the battle!* It is necessary, because what Europe and the world have known in the twenties and thirties is about to explode once again. Your knowledge, your belief in change, is fundamental, and you must constantly rearrange and

animate it with knowledge and morality, but not with moralism. Fortunately, natural law has not been invoked as it has been for centuries.

I am a talkative, old man. I do not remember whether I have been repeating these perhaps tired novelties or sixty or seventy years, but I believe there to be subversion in Rome. We have a duty. We will follow the ECHR and we will follow knowledge, because knowledge is not what the parrots learn.

Thank you.

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## **THE NONVIOLENT RADICAL PARTY TRANSNATIONAL AND TRANSPARTY**

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is a political organization - with General Consultative Status at the United Nations Economic and Social Council (Ecosoc) - promoting the application and respect for human rights enforcement and the Rule of Law by encouraging its members to pursue non-violent actions to induce national and international institutions to comply with their own laws and democratic principles. The Radical Party does as such not participate in national, regional or local elections. Members of the NRPTT include Marco Pannella, Emma Bonino, the leader of the Cambodian opposition Sam Rainsy, the leader of the Uyghur minority Rebiya Kadeer, the Tibetan Minister of Interior Dolma Gyari, and George Soros.

[www.radicalparty.org](http://www.radicalparty.org)

## **NO PEACE WITHOUT JUSTICE**

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is an international non profit organisation founded by Emma Bonino and born out of a 1993 campaign of Radical Party that works for the protection and promotion of human rights, democracy, the rule of law and international justice. And undertakes its work within three main thematic programs: International criminal justice, female genital mutilations and Middle East and North Africa Democracy. NPWJ is a constitutive member of the NRPTT.

[www.npwj.org](http://www.npwj.org)

## **HANDS OFF CAIN**

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is a league of citizens and parliamentarians for the abolition of the death penalty worldwide. It was founded in Brussels in 1993. Hands Off Cain (HOC) is a non-profit organisation and a constituent member of the Transnational Radical Party. The name "Hands Off Cain" is inspired by the Genesis. The first book of the Bible includes not only the phrase "an eye for an eye" but also "And the Lord set a sign for Cain, lest any finding him should smite him". Hands Off Cain stands for justice without vengeance. That is why our main goal is the advancement of the UN moratorium on executions.

[www.handsoffcain.info](http://www.handsoffcain.info)

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