

The Future Cooperation between the EU and the African, Caribbean and Pacific (ACP) States: What after Cotonou?

by Dietmar Nickel

I. Uncertain Options for the Future after Cotonou

The Cotonou Agreement shall, pursuant to Article 95, section 4 thereof, expire at the end of 2020: Eighteen months before the end of the total period of the Agreement, the Parties shall enter into negotiations in order to examine what provisions shall subsequently govern their future relations. The last line of the section refers expressly to transitional measures that may be required until “the new Agreement comes into force.” There are evidently more and more signs that there will be no common agreement at all between the ACP States and the European Union:

- The Treaty on the Functioning of the European Union (TFEU), in the consolidated version of the Lisbon Treaty, has, in article 209, deleted the previous section 3 of Article 179 of the Treaty on the European Union (TEU): “The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.” This deletion evidently ensued from the recommendation of the Working Group on the External Relations of the European Convention which had come out in favour of a communitarisation of the European Development Fund (EDF)¹ (cf. supra). It certainly did not intend to question the significance of relations with the ACP countries. Nevertheless, this deletion was perceived on the ACP side and in development policy circles as a downgrade of privileged relations of long standing.²

¹ Cf. Martenczuk/Zimmermann in Schwarze (ed.), EU-Kommentar, 2nd ed., 2009, EGV, Artikel 179, Rn 11

² This psychologically significant element becomes clear in e.g. Mirjam van Reisen, The Old man and the Seas: The Future of the ACP-EU Relationship, The Broker, issue 25, June/July 2011, Special Report, pp. 6 and 9. Cf also Strategy for Renewal and Transformation 2011-2014, Secretariat of the African, Caribbean and Pacific Group of

- The cooperation by and between the EU and the ACP countries covered by the Cotonou Agreement is being increasingly superimposed by other partnerships. It is altogether conceivable, that all elements, which are currently contained in the Cotonou Agreement, are covered in the same or better form in other strategies, partnerships, and economic partnership agreements (EPA) or in the EU's general development policy.

- The newly created European External Action Service (EEAS) initially provided no directorate general or unit that was to deal explicitly with ACP States. In point of fact, the three major components were divided into their respective continents (Africa, the Pacific in Asia and the Caribbean in America).³

The combination of Africa, the Caribbean and the Pacific could appear as an obsolete element of history, which would make room for a new and more rational arrangement of the European external and development policy. The historical contingencies which decide whether a former colony should or should not accede to the ACP, have for this reason been overcome. Whether such a result is desirable from the perspective of both sides depends particularly on whether all other treaties to be concluded can be designed in such complete manner, that the value of the ACE-EU Agreement grown over decades can be retained. This study will hereinafter first go over the contents of the Cotonou Agreement and then examine whether and how they can be covered in alternative strategies, partnerships or the general development policy. Even if that were to be the case, it will be necessary to check whether there would be further specific added value to the ACP-EU cooperation worthy of preserving. Finally, the analyses could turn out different for both sides. They will in the end engage each other and must take account of the world policy that is developing around them.

States, Brussels (April 2011), Paragraph 24, and Renewal and Transformation, Elements of the ACP Secretariat's Strategic Management Plan 2011-2014, Paragraph 9.

³ This accurate observation as to the original setup of the EEAS is presented critically as a contributing element to uncertainty also in this document (footnote 2), Strategy for..., paragraphs 25 to 27. Today, Directorate General VI, Global and Multilateral Affairs comprises (in Department VI.A for Multilateral Relations and Global Governance) a Division V.A.3 for Cooperation Coordination headed by Felix Fernandez Shaw, where a reaction to the cited critic as well as to the incomprehension of the EP Development Committee can be seen. The division is of significant relevance for the high representative in her position as chair of the Council for External Relations, which also comprises the former development policy council.

II. The Cotonou Agreement – History of origins

The observer of the European development policy has, since the Treaty Establishing the European Economic Community (EEC) of 1957, known this policy as a shared competence in which both the Member States and the European level take action. The first Yaounde Convention of 1963 provided an inter-governmental instrument that offered a catch basin for former colonies of the Member States plus extensive use of the European institutions.

When the latest ACP-EU Partnership Agreement was signed on 23 June 2000 in Cotonou,⁴ it appeared that cooperation of more than thirty years by and between the EU and (by then) 78 ACP States,⁵ had been given sustainable form that promised beneficial interaction through peaceful joint work in pursuit of a constant goal: to reduce and eventually eradicate poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy. After the more modest Conventions of Yaounde (I of 1963-1969 and II of 1969-1975), and the four Lomé Conventions which followed, with a last extension which worked like a fifth convention (from 1975-2000), a period of 20 years lay before the partners. This was to guarantee stability and was appreciated as an expression of mutual trust and confidence.

The Cotonou Agreement entered into force on 1 April 2003. The first of the scheduled five-year revision periods (Article 95, section 3 of the Agreement), led to the signing of a further elaborated text on 25 June 2005, which actually could react on a period of experience of two years. The second revision took place on 19 March 2010.⁶ The ratification process is expected to be concluded by the end of 2010. In accordance with established practice, the text is provisionally applied. The five-year revision mechanism addresses a need for flexibility and for being able to

⁴ OJL 2000 L317, p.1

⁵ Cuba is the 79th ACP country, but is not integrated in the institutional link to the EU. The announced accession of the new state of South Sudan brought this figure to 80. Of these countries, 49 are from sub-Saharan Africa, 16 (including Cuba) from the Caribbean and 15 from the Pacific region.

⁶ As announced during the first revision, Sudan has not ratified the text. As a result, it has no access to the 10th European Development Fund.

react rapidly to changing international conditions in the ACP-EU sphere.⁷ The process is thereby characterised by a relatively lasting framework, combined with the possibility for an adjustment in the shorter term.

III. State of things – the contents of the Cotonou Agreement

The Cotonou Agreement governs the cooperation between the EU and the ACP countries in the fields of economic and financial cooperation.

Pursuant to Article 8, the parties are to engage in a flexible dialogue with the possible involvement of the entire institutional apparatus as well as the ACP-EU Joint Parliamentary Assembly, to broach human rights, but also democratic principles, the rule of law and good governance. The dialogue pursuant to Article 8 represents a preliminary step (to be skipped in urgent cases) to the consultations pursuant to Articles 96 and 97, which can lead up to the suspension of a party.

On the economic front, the Cotonou Agreement provides that the non-reciprocal trade preferences, which were introduced by the Conventions of Yaounde and Lomé, are to be replaced by free trade areas. Up to the now completed second revision, the Agreement provided that the negotiations of what are known as Economic Partnership Agreements were to begin in 2002, and be completed at the latest by the end of 2007, with the expiry of the corresponding special case authorisation of the World Trade Organisation.

The financial cooperation regulates in the agreement even the financial viability of projects and programmes, the cooperation between the partners, and in particular the role of the commission, the processes and inspections. Annexes I, Ia and Ib contained the

⁷ With the entry into force of the Lisbon Treaty, the capability of the European Parliament to exert influence on the negotiations of the third revision was changed drastically: Pursuant to Article 218, section 10 which stipulates that “The European Parliament shall be immediately and fully informed at all stages of the procedure.” It remains to be seen what the Parliament and in particular its development committee which is responsible for this matter will ultimately do with these new possibilities for the preparation of its consent of the next revision.

financial protocols that are fed by the EDF. For the period from 2008 to 2013, this is charted pursuant to Annex Ib of the 10th EDF, which amounts to €21,966 million. The same Annex Ib shows that up to €2,000 million are moreover provided by the European Investment Bank as a loan.

IV. Alternatives to Cotonou

a. Other partnerships

The ACP-EU partnership agreement is being superimposed by a growing number of other partnerships that the EU concludes with regions or individual countries, and not only geographically.

In the first place, there is the strategic Africa-EU partnership here, a Africa-EU joint strategy, that comprises Europe's entire neighbouring continent, with the exception of Morocco. In addition, there is a strategic partnership by and between the EU and South Africa, which entails that the latter country is bound with the EU in three partnerships.

There is a new association agreement with the Caribbean as part of Central America. The conclusion of a joint strategy with the Pacific Region seems to be imminent.

b. Trade cooperation

The EU has been negotiating since 2002 with seven⁸ ACP regions on the conclusion of EPAs. The data collection of Article 37 of the Agreement was fixed under outside pressure: On 31 December 2007 expired the special case authorisation of the World Trade Organisation for the non-reciprocal preferential access of ACP countries to the EU markets.⁹ Nevertheless, no EPA was concluded

⁸ Originally, there were six regions: the Caribbean, Pacific, West Africa, Central Africa, South Africa and East and Southern Africa. The secession of the five countries of the East African Community (EAC) from the latter region raised their number to seven.

⁹ Cf. Yenkong Ndangjoh-Hodu and Francis Shasha Matambalya, Contextualizing the Debate of the Africa-EU Trade Relations beyond the Cotonou Agreement, in the volume edited by the same authors entitled Trade Relations between the EU and Africa, 2010, p.7.

at that time.¹⁰ The EC-Cariforum EPA, signed in Bridgetown on 15 October 2008, was applied provisionally for the first time on 29 December 2009. All other negotiations have at best led to the conclusion of interim agreements with individual countries or groups of countries which are regularly limited to the movement of goods.¹¹

How difficult and even deadlocked the current negotiations are becomes particularly evident at the 3rd Africa-EU summit in Tripoli on 29/30 November 2010 where the Union came under a massive attack for its insistence on concluding further agreements, although the Commission had deliberately decided not to submit a new roadmap in order to prevent a summit issue from emerging. Even though this hope proved delusory, it can be assumed that the Union will press further for the conclusion of agreements. The Council on “External Relations” had decided as much at its meeting of 10 September 2010. Things were to be accelerated by using new elements such as a period limitation for the negotiations and for the duty-free access to the market for ACP countries.¹²

Even if the question as to whether and when further EPAs will be concluded seems to be completely open at this time as well, it is assumed that the issue will be clarified in one way or another by 2020.¹³ There were already calls for an enhanced dialogue and greater flexibility towards ACP countries at the Council of 10 September 2010. This also includes the Commission’s proposal of 30 September 2011 to maintain market access possibilities beyond 2013 only for those states that have taken appropriate steps to ratify their EPA.¹⁴

¹⁰ To maintain market access for a further transition period and valid for those ACP states which had initialled or signed an interim EPA, the Council of the EU adopted a Regulation to that effect no. 1528/2007 which runs to the end of 2013. Cf. James Nyomakwa-Obimpeh, *Time for a New Generation of Trade Agreements between the EU and ACP Countries?*, TEPSA Brief, 15 February 2012.

¹¹ An overview of the situation in December 2010 is provided by the “SWP-Aktuell” (Stability and Growth Pact Update 85) by Bettina Rudloff and Clara Weinhardt. A legal analysis of the problems encountered is provided by Amin Alavi, *EPAs, Cotonou and the WTO*, in Yenkong Ndongjoh-Hodu and Francis Shasha Matambalya (eds.), *Trade Relations between the EU and Africa*, 2010, p. 185.

¹² Cf. footnote 10, *supra*.

¹³ Cf. also Yenkong Ndongjoh-Hodu, *Development Agenda in the WTO Regional Process*, in the volume co-edited by him, *op. cit.*, footnote 9, p. 32.

¹⁴ COM (2011)598, 30 September 2011, and the presentation in the Commission communication to the EP, the Council and the Economic and Social Committee of 27 January 2012, *Trade, Growth and Development; Tailoring Trade and Investment Policy for those Countries most in Need*, COM(2012) 22 final, p.8.

The wording of the second revision of the Cotonou agreement, concluded on 19 March 2010, could be symptomatic: In the amended Article 37 thereof, there is only mention of the ongoing negotiations and a way is opened to the utilisation of the multi-year financing framework for the implementation of agreements that have been concluded.

All in all, a complete overview at the beginning of 2014 should thus make it possible to gauge which EPAs have been concluded and which are still being negotiated. The fact that the least developed countries (LDCs) continue to have unrestricted access to the EU market through the “everything but arms” programme shows that there is scarcely any incentive for them to conclude an EPA. This aspect must be taken into account in the overall assessment. Six years before the expiry of the Cotonou Agreement, it will be possible to draw the necessary conclusions.

c. A new European development policy?

With its Green Paper of 10 November 2010 entitled “EU development policy in support of inclusive growth and sustainable development – Increasing the impact of EU development policy,”¹⁵ the Commission had initiated a consultation procedure that was to lead to a comprehensive proposal for the revision of the development policy. It was widely expected that the Commission would propose the integration of the Cotonou Partnership Agreement in the EU development policy, or at least the integration of the EDF in the general budget of the EU (known as the budgetisation of the EDF). For that matter, it had in the past joined the constant calls from the European Parliament (EP) to incorporate the EDF in the general EU budget.¹⁶ As already pointed out (p. 1), the Working Group on the External Relations of the European Convention on the future of the EU had also done as much.¹⁷ A

¹⁵ COM(2010) 629 final.

¹⁶ In this respect, it looks back to a long tradition: its first proposals for budgetisation stem from 1973 and 1979; Commission Communications to the Council SEC (73) final and COM (79) 4 final, and a more recent proposal from 2003, COM (2003) 590 final.

¹⁷ Final Report of Working Group VII, CONV 459/02

corresponding proposal under the Commission's submission for the multi-year financial framework would have resulted in the distribution key for the EDF being included in the negotiations on the multi-year financial framework. Since the distribution key used on the EDF hitherto for the Federal Republic of Germany is considerably more favourable than the distribution key for the general budget of the EU, such a development has traditionally been looked upon with a frown in Germany.

Upon closer scrutiny, however, the difference is not all that substantial: The contribution key for the cooperation with the ACP countries was last fixed by the European Council in December 2005. According to that key, the German share amounted to 20.5%. The more disparate situation of the financing of the EU budget should be considered by way of comparison: The Commission's financial report on the EU budget 2009 shows that the 2009 budget implemented amounted to €112.1 billion (not the same as the budget approved in December 2008 or the revenue). Germany's own resources contribution to the budget amounted to €17.6 billion or €20.5 billion, if traditional own resources such as agricultural levies, sugar and isoglucose duties and other duties are taken into account (from which the amounts withheld by Germany to cover administrative costs had to be deducted). In percentage terms, the German "contribution to the budget" amounted to 19.7% (€17.6 billion) or 23% (€20.5 billion). If all revenues and not only the implemented budget of the EU are taken into account, namely €117.6 billion, Germany's contribution is reduced to 18.6% or 18.8%.

Depending on the figure selected for comparison with the general budget, the contribution to the EDF is at times lower and other times higher, but never in such a dramatic range, as to make it inconceivable to reach an agreement on an overall package in negotiations. Based on this ascertainment and on the request by the European Convention on the Future of Europe, the coalition agreement of the CDU/CSU and FDP from 2009 stipulates that: "We shall aim for the integration of the 11th EDF in the EU budget under a new financial perspective."¹⁸

¹⁸ http://www.one.org/c/de/politische_analysen/3129/

In its Communication of 29 June 2001, the Commission had not proposed – at least not yet – the budgetisation of the EDF in a budget for Europe in 2020.¹⁹ With regard to the expiry of the Cotonou Agreement in 2020 and a future integration of the EDF in the general budget, the Commission will in point of fact consider bringing the EDF key closer to the key for the EU budget.²⁰ In so doing, the Commission at any rate avoids a confrontation at this time with Member States who are interested in maintaining the EDF key which is more advantageous for them.²¹ It has also managed to make the overall sum of the financial perspective appear more modest by excluding the EDF amount, as it has done elsewhere, e.g. by excluding the ITER financing and a series of other expense headings.²² The manoeuvre is however so transparent, that it can play no role in the negotiations for the next multi-year financial framework.

The further elements for the revision of the development policy were presented by the Commission on 13 October 2011 in the form of two communications.²³ Those who expected statements about the EU's relations with the ACP were disappointed, however. Even the term ACP was sought in vain.²⁴ In point of fact, existing legal frameworks were mentioned nebulously alongside references to the EPAs and strategic partnerships. This absence of a reference actually made it clear that the Commission wanted to keep all doors open for the future of Cotonou. In light of this conduct on the part of the Commission, it should not come as a surprise that the ACP countries and some development policymakers have doubts about

¹⁹ COM(2011) 500 final.

²⁰ Ibid, 5.8.1.

²¹ In light of the improved key from its point of view, France also seems inclined towards an integration in the general EU budget. Cf. Assemblée Nationale, Rapport d'information par la Commission des affaires étrangères, no.3074, sur Aide au développement: quel équilibre entre multilatéralisme et bilatéralisme?, Rapporteur Mme Nicole Ameline, S. 168. Rumour has it that the United Kingdom has shown itself to be open to budgetisation. Should this be the case, suspicions would increase that there would be an abatement in the endowment for the Member States. It is precisely this assumption that constitutes a further point of criticism (understandable, in this respect) from the ACP Secretariat; cf. footnote 2. To counter this concern, the EP has always maintained that the EDF resources would not be affected by budgetisation (ring fencing).

²² Footnote 19, number 2.

²³ COM (2011) 637 final and COM (2011) 638 final.

²⁴ It thus follows the model of the Lisbon Treaty, which left the mention of the ACP-EU Convention in Article 179, section 3 of the EU Treaty in the Nice version without replacement in the transposition in Article 209 of the TFEU. Cf. p. 1 supra.

the Commission's support for the continuation of the partnership according to the Cotonou model beyond 2020.

A new European development policy could thus by all means comprise the 78 ACP states in two-tier partnerships: a general level as in the Africa strategy, and a level geared mainly to commercial considerations as in the EPA. It is indicative that the African criticism against the negotiations on the EPA surfaced at the 3rd Africa-EU summit in Tripoli, notwithstanding the fact that this summit took place within the framework of the Africa strategy on another legal basis and with a different circle of participants than the criticised negotiations.

IV. A renouncement of Cotonou?

Is there an irreplaceable added value which cannot be obtained in one or another form? To answer this question, the contents and implementation of the Cotonou Agreement will first be compared with the elements which already stand out today in the partnership agreements and in the EPAs. It is also necessary to take into account that the period from 2012 to 2020 still affords sufficient time for filling gaps and for further improvements.

a. Adherence to values

The Cotonou Agreement contains (in the preamble) an extensive reference which ranges from the principles of the UN Charter to the Universal Declaration of Human Rights, a large number of specific conventions, and including the consideration of the European Convention on Human Rights, the African Charter for Human and Civil Rights and even the American Convention on Human Rights. Article 9 lists in conceivably positive wording the significance of human rights and basic freedoms, democratic principles, the rule of law and good governance.

The Africa-EU strategic partnership admittedly contains fewer specific references to international conventions, but is not inferior to the Cotonou Agreement in the value list.

The Caribbean or Pacific association agreements and strategies are or will be in similar terms.

The EPA with the Cariforum States refers directly to the Cotonou Agreement, but at the same time draws attention to human rights, democratic principles and the rule of law separately.

A detailed analysis would shed light on theoretical differences in the wording of the value criteria between the various instruments. These however are cancelled by extensive cross-references. They express in part how the description of basic values developed over time. There is in any event a clear determination not to let any adherence to different values become apparent. The particular interpretation of identical concepts by the different contracting parties can therefore not be excluded. The treatment of homosexuality, for instance, can diverge decisively in convergent references to human rights. As aforementioned,²⁵ Sudan decided not to ratify the second revision of the Cotonou Agreement either, because it estimated completely different the value of universal prosecution as expressed by the international criminal court and its work.

On the whole, a deterioration from the Cotonou system is not evident nor expected.

b. The institutional structure

The joint institutions of the Cotonou Agreement are described in Articles 15 to 17:

The Council of Ministers comprises, on the one hand, the members of the Council of the European Union and the members of the Commission of the European Communities and, on the other, a member of the government of each ACP State. The Council meets at least once a year.

The Committee of Ambassadors comprises, on the one hand, the permanent representative of each Member State to the European Union and a representative of the Commission and, on the other, the

²⁵ Footnote 6.

head of mission of each ACP State to the European Union. The Committee of Ambassadors meets regularly.

The Joint Parliamentary Assembly is composed of equal numbers of EU and ACP representatives. At present there are 78 Members of the European Parliament, and 78 representatives of the ACP states, thus 156 members. The Assembly meets twice a year alternately in the European Union and in an ACP State. It also organises regional meetings in the different ACP regions with one ACP representative from the region and a corresponding number of members from the EP. These regional meetings have for sometime been held twice a year and are very popular because of the opportunity for concentrated exchanges that they provide. The committees of the assembly meet four times a year, twice in Brussels and twice on the occasion of the assemblies. Finally, the assembly organises occasional joint election observation and fact finding missions. It thereby attains a non-negligible concentration of its work in the ACP States, which is of some significance as regards good governance in the states concerned.

The Africa-EU strategic partnership has since its meeting in Lisbon in 2007 held a summit of heads of state and of government every three years, organised at ministerial level. The presidents of the EU and AU Councils of Ministers, of the European Parliament and the Pan African Parliament (PAP) and of the European and the African Commission meet at regular intervals in six-party talks. The respective representations of the EU in Addis Ababa and in Brussels promote institutional contacts. The pending EPA structures are already involved. Africa-EU Troika sessions are held twice a year and are attended, on the one hand, by the current and future presidency of the EU Council and the EU Council Secretariat (now probably the EEAS), and on the other hand, the current and future AU Council presidency, the AU Commission and high-level lead states. Meetings of foreign ministers from both sides are to be organised twice a year at Troika level, alternately in Africa and the EU. The two Commissions cooperate continuously at different levels and hold staff meetings once a year. On the parliamentary level, the dialogue is conducted between the EP and the PAP. The EP has created an ad hoc parliamentary delegation for relations with

the PAP that comprises 12 MEPs. The joint sessions are generally held once a year, alternately in the EU and in Africa. The EP delegation tries in particular to attend the plenary sessions of the PAP. The EP and PAP organise jointly parliamentary “pre-summits” each time immediately before the summit of heads of state and of government, where the precursor of an EU-AU parliamentary session can be clearly seen. Finally, cooperation between the EU’s Economic and Social Committee and the AU’s Economic, Social and Cultural Council is expressly planned.

The association agreement with Central America, including the Caribbean, provides for an Association Council and an Association Committee supported by a series of subcommittees, and a bilateral dispute settlement mechanism. The corresponding work on an agreement with the Pacific should be similar.

The Cariforum EPA contains its institutional provisions in Articles 227 to 323. According to these provisions, there is a Joint Cariforum-EU Council which meets at least every two years. Here once again, the Commission is part of the EU delegation alongside the EU Council members. The Joint Council is supported by a Cariforum-EU Trade and Development Committee (sic!), which is generally composed of senior officials. The Cariforum-EU Parliamentary Committee consists of 15 members of the European Parliament and 15 members of Cariforum State legislatures (one per State). The EP pushed through this cooperative small number in order to remain at the same manageable number of 78 delegation members, which currently constitute the delegation to the JPA, once all the planned EPAs have come into being. Finally, there is a Cariforum-EU Consultative committee, which is to comprise a broad representation of all interest groups.

If these young structures are extrapolated and projected to the year 2020, when the Cotonou Agreement is to expire, the following picture emerges:

Assuming that there are EPAs with all 7 ACP regions at the time, very close contacts on the executive side must be established. That goes so far that one may well wonder where all those ministers that

are to attend the many regular meetings are to come from.²⁶ The schedule would be very tight also for the Commission's representatives at the different levels. A solution could in the meantime be sought by having the partnerships adapt to the needs in practice, i.e. streamline their structures on the executive side.

The structure on the parliamentary side, on other hand, would be lightened compared with the current situation by the disappearance of the JPA and its committees, which would entail a considerable loss in parliamentary activity and thus the supervision – and also the legitimacy – of the executive side. Furthermore, the contribution of the diffused parliamentary customs, which should not be underestimated, and thus an essential component of good governance, would disappear. The EP could of course expand the parliamentary committees and increase the frequency of their meetings through one of their cooperation schemes with regional parliaments such as the PAP. This however would only represent a unilateral parliamentary activity outside the Agreement to be concluded, which would not have the legal basis under international law that the Cotonou Agreement provides at this time. This would in turn attenuate the legitimacy of the parliamentary committee and in so doing reduce its legitimising capacity for the executive side. A solution, which would at least retain the current level, could be as follows:

- The Parliamentary committees of the EPAs could take over the function of the current regional meetings of the ACP-EU JPA. The danger of excessively narrow trade policy would not exist, because the sole EPA at hand attests to a very broad understanding of trade policy, as reflected in the denomination of its trade and development committee.
- The partnerships must have a fully-fledged parliamentary component that must be clearly above the current level of the EP delegation for relations with the PAP. A joint parliamentary representation with one representative from each State of the partner organisation should be provided on a distinct legal basis in each partnership, thus, e.g. with 54 AU representatives (55 after the full

²⁶ Already under the current ACP-EU relations, participants point out that this is more than a casual remark: For want of participation by a sufficient number of competent ministers, the Joint Council is often not capable during its sessions to deliberate on urgent questions and to take decisions, let alone see to their implementation.

accession of South Sudan) and 54 (or 55) members of the European parliament. This assembly should meet at a frequency whereby twice a year would suffice, and have the right to draw up its own rules of procedure. This would in turn enable the assembly to establish committees, which are indispensable for efficient parliamentary work. The partnerships or associations with Central America, which includes the Caribbean, and the Pacific do not yet have adequate parliamentary support with their own legal basis. The existing bilateral delegations are in this respect just as insufficient as the Euro-Latin America Parliamentary Assembly. The EP could make it clear already at this time that it would refuse to approve a partnership agreement without an independent parliamentary component. The existing partnership agreement with the AU and the association agreement with Central America must be expanded with the corresponding rules, if the loss of parliamentary participation is to be avoided when the Cotonou Agreement expires.

c. ACP solidarity

Even if the requirements described above are met, one element will disappear if the Cotonou Agreement comes to an end without a replacement, an element which on occasion has played a role in the past: the element of cross-continental solidarity, whether between ministers, or between representatives. This solidarity building has generally not led to great elation on the European side, because it is essentially solidarity between representatives of the ACP States against a suggestion from the European side. The lesson, that a common front of opponents impresses also the EU representatives, who from the point of view of many an ACP State appear to be all-powerful, could be put to practice in the rules of procedure of the JPA, with voting according to separate houses. This provided an insurmountable barrier against undesirable results. This form of solidarity building is however not necessarily linked to a majority of represented continents. Such manifestations of solidarity can be organised also in three parliamentary bodies that are independent of each other, if people wish to do so.

The cross-continental solidarity against the former European Economic Community was probably the decisive factor behind the ACP group as it was created in the Georgetown Agreement. ACP States may nurture similar feelings against the current EU. It is altogether possible, that in preparing for 2020, the ACP States will come to the conclusion that it is still in their interest to have a cross-continental structure at their disposal. The EU will have to adjust accordingly to such an eventuality.

V. Proposals

The ACP side has, on the proposal of its General Secretary, Mohamed Ibn Chambas, set up a committee at ambassador level, which is to analyse their interests and make proposals.²⁷ The chairman of the seven-member committee is the current Ambassador Gomes from Guyana.²⁸ Furthermore, an international expert was commissioned to produce an expert opinion.²⁹ This expert opinion is financed by the United Nations Development Programme (UNDP) and is to be submitted on 9 April 2012.³⁰ The Council of Ministers of the ACP Group will consult the result in Vanuatu in May/June of this year and take stock of the state of negotiations on the EPA and EDF. Finally, the new concept of an ACP Trade and Investment Bank will be tabled, i.e. an undertaking to be erected jointly with the EU. The ACP Group would hold 51% of the shares, and private investors could also acquire stakes. A summit of ACP heads of state and of government in Equatorial

²⁷ <http://www.ecdpm-talkingpoints.org/the-acp-and-europe/>

²⁸ The committee on the “Future Perspectives for the ACP Group” was established in January 2010 with Ambassador Gunessee from Mauritius in chair, cf. Footnote 2, supra, Strategy for..., Paragraph 216.

²⁹ Prof. Mirjam van Reisen of the University of Tilburg. Cf. also the reference in Footnote 2 supra, and other relevant publications such as EU ‘Global Player’, The North-South Policy of the European Union, 1999 and her presentations over many years (1996-2002) The Reality of Aid, An independent Review of International Aid, ICVA, EUROSTEP, Judith Randel and Tony German (eds.), Development Initiatives. She is also the director of “Europe External Policy Advisors” (EEPA), a Brussels think tank.

³⁰ This and the next item of information stem from an interview with Obadiah Mailafia, chief of staff of the ACP General Secretary, conducted on 9 March 2012.

Guinea in December 2012 will go over the results of these works and decide on the organisation from the ACP side or, go further and make proposals for the re-organisation of relations with the EU, and even beyond, i.e. the re-organisation of the worldwide framework. What cannot be processed in 2012, will be completed at the latest by the next ACP summit in 2014, so that it can be submitted to old and new partners in the world.

The Committee of Ambassadors is evidently examining the following four options at this time:³¹

1. Cooperation with new strategic partners beyond the EU;
2. Opening the ACP Group to least developed countries and small and vulnerable economic areas;
3. Opening the ACP Group to the North African States so as to comprise all of Africa;
4. Regional A-C-P pillars under one ACP umbrella which would be used to concentrate on regional needs, but also to broach general matters that concern all regions.

A somewhat different presentation of possible scenarios is as follows:³²

1. Continue as before;
2. Give up the ACP configuration;
3. Strengthen the ACP group, by giving consideration to the states of North Africa, Nepal, and eventually also states such as Brazil;
4. Establish an ACP customs union.

The third of these scenarios is the one mainly discussed.³³ This and also other options deemed realistic all depend on a continuation of the ACP Group in a more or less altered form. The options can moreover be combined. To succeed, it will in any event be necessary for the ACP headquarters in Brussels to be vested with independent powers, which have been sorely lacking hitherto; for a general secretary with the necessary mandate and independence to

³¹ Cf. Footnote 2, supra, Renewal and..., Paragraph 56, as well as Strategy for..., Paragraphs 213 to 219. Cf. also Global Changes, Emerging Players and Evolving ACP-EU Relations, ECPDM 25th Anniversary Seminar, September 2011, pp. 32ff, www.ecpdm.org/pmr19

³² Cited from the aforementioned interview with Obadiah Mailafia, Footnote 29.

³³ This is done in rudimentary form by the publication cited in footnote 1.

exercise those powers; and for the ACP headquarters to be made independent from EU (co-)financing. This would create an international, capable interlocutor with whom the EU or other partners could cooperate efficiently.

The first phase of the EPA negotiations, which involved all ACP states, and which were shaped decisively by the then General Secretary Goulongana, could be seen as an example of how to organise the headquarters. The ensuing upgrading of the headquarters would politicise the entire ACP union, which is redefining its weight in the world.

Should the ACP signals go in this direction, it will hardly be possible for the EU to do away with the arrangements that the other side wishes to maintain. In point of fact, the time should be used to engage in consultations on the European side as to whether something more can be made from this unique cooperation between North and South worldwide. A cooperation involving already 106 states, which is expanding globally, could represent a framework that could be used for purposes that go far beyond the hitherto core issues of development policy.³⁴ The mistrust with which the USA, for instance, is following the activities of this organisation, to which it does not belong and on which it has no direct influence, speaks volumes. This may hold substantial potential that has been used little hitherto. The EEAS could be the right forum for conducting such consultation, even if its just created structures had to be adapted further for that purpose.

Two events should make the EU think:

- After the entry into force of the Lisbon Treaty, the EU engaged in an attempt to improve its status and in particular its right to speak in the UN General Assembly. The venture would all but fail owing to resistance especially from the Caricom Group. Instead, it was merely postponed, to be crowned with success only a year later, after better preparation;³⁵

³⁴ This is echoed also in the two afore-cited (Footnote 2) documents of the ACP Secretariat, where moreover reference is made to the moral authority of the ACP Group, stemming from the fact that 45 LDCs make it the union with the majority of the poorest countries in the world; Renewal and ..., Paragraphs 19, 20, Strategy for ..., Paragraph 224.

³⁵ UNGA Resolution 65/276 on Strengthening of the United Nations System: Participation of the European Union in the Work of the UN.

- After the collapse of the climate summit conference in Copenhagen, where the EU had in vain put cooperation with the USA, China and India to the fore, a near breakthrough was achieved at the 17th Conference of the Parties in Durban, thanks in large measure to the successful preparation with developing countries. It is indicative nonetheless, that the Durban Alliance did not emerge from direct negotiations by the EU with the ACP side, but had to be forged through arduous and numerous individual arrangements.³⁶ This can be gauged both from the lack of a negotiating partner vested with powers to speak for the ACP side, as well as from the position of South Africa, the host country, which was more inclined to assume the position of an emerging country, comparable to that of India.

Other topics for possible cooperation at world level are available, e.g. in improving the effectiveness of the aid provided, in the field of food security, in the fight against the proliferation of land mines and their disposal, in the tourism sector, and in the form of international governance and the global financial architecture.³⁷

In a multilaterally organised world, the period particularly after 2015, when the success of the millennium goals will be assessed, will not be lacking issues for which careful preparation by as great a number of states in their unique North-South dialogue will be of the utmost importance.

An initial concrete reaction from the EU can be observed. Whereas an embarrassing silence has for some time reigned in the EP's development committee on the question put to the representative of the EEAS as to who is responsible for ACP issues in his department,³⁸ the head of that department is now co-chairman, alongside the competent head of Unit of the Commission, of an informal working group set up in September

³⁶ Cf. the Agences Europe conference from 1 to 13 December 2011, pp. 14 and 15. An analytical presentation is provided by Susanne Dröge, *Climate Talks in Durban, Successful Diplomacy but no Progress on Climate Protection*, SWP Comments 6, February 2012, p. 3. She makes it clear that the "Durban Alliance" is between many developing countries concerned and not an institutional connection between the EU and the ACP.

³⁷ Cf. Footnote 2 supra, *Renewal and ...*, Paragraph 25, as well as *Strategy for...*, Paragraph 139.

³⁸ Cf. Footnote 3 supra.

2011 to deal with the issues at hand. Other members are to be appointed by the Commission and the Council Secretariat.³⁹

V. Conclusion and recommendations

The Cotonou Agreement can expire in 2020 without replacement, if no structure of equivalent quality is set up by then. This would make it possible to set the historically emerged and to a large extent randomly organised relations between the EU and former colonies of some of its Member States on a new, more logical and geographically rational basis.

The following steps must be taken in order to arrive at an equivalent structure:

- In connection with the negotiations for the next multi-year financial framework, the European Development Fund should be integrated in the EU budget (without using this as a pretext to cut funding).
- Relations with Africa, the Caribbean and the Pacific Islands are governed by two-tier agreements, which include the conclusion or expansion of strategy partners as a general framework and for which the EPAs currently being negotiated, constitute a specific enhancement (compliant with WTO rules).
- The strategic partnerships must be provided with an adequate parliamentary component, at least equivalent to the current level achieved by the ACP-EU JPA.

The current developments in the countries of the southern Mediterranean show the need to review historically emerged structures. The North African and Arab revolutions and uprisings require rapid political reaction from Europe. The future of the

³⁹ Interview with Elisabeth Pape, Head of Unit at the Commission in DG DEVCO, on 28 November 2011. She is the other co-chair of the aforementioned working group. The Council Secretariat had actually ceded its tasks of such nature to the EEAS when the latter was created. Nevertheless, the Member States apparently insisted on a participation by the Council Secretariat.

Cotonou Agreement could be influenced by the new organisations of relations of the EU in this part of the world. There are however less dramatic reasons for a review of relations with the ACP states. This must in any event take account of the point of view of the ACP and should avail itself of hitherto untapped potential from the European view, whereby the classic goals of the eradication of poverty and integration in the world economy must naturally continue to be pursued. The relevance of the EU on the world stage could be enhanced through intensified cooperation with a reformed ACP Group. A new, well-founded global cooperation by the EU with a reformed ACP Group, that has managed in particular to act on the international stage with capable, authorised representatives, would open up numerous new fields for worldwide cooperation. It is consequently in the EU's interest to see the works on reforming the ACP group run their successful course. Support for such works must not mean any relapse into paternalistic or colonial structures. In this respect, it is necessary to break with the past and many a negative experience through an offer of a real partnership in replacement. The preparation and the time selected for such an offer are very delicate matters. The EEAS would be the right place to tackle them.