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THE EUROPEAN UNION AND THE COTONOU PARTNERSHIP AGREEMENT

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Abstract

This paper examines the important relationship that exists between the European Union and the group of countries from the African, Caribbean and Pacific Island regions. By creating preferential trade deals and becoming the major contributor to international development, the European Union has sought to assist poorer states within these regions to develop into wealthier and more advanced economies. The European Union has done this through a series of international agreements, most recently through the Cotonou Partnership Agreement.

The Cotonou Partnership Agreement has a number of objectives; not only to provide financial aid and developmental assistance, but also to enhance and promote democracy, the rule of law, and human rights within member countries. Through mechanisms established under Treaty law, the parties to the Cotonou Partnership Agreement have been able to monitor and review the effective provision of development aid during the life of the Agreement. The Cotonou Partnership Agreement is a 20-year agreement that has built in five-yearly review procedures, and 2015 signals the third and final review. This final review will determine where the Agreement has succeeded and where it has failed, and it will identify areas in need of improvement to ensure maximum benefit for all parties during the remainder of its term.

By taking a qualitative approach, this paper will argue that the Cotonou Partnership Agreement provides a model for future international relations based on democratic principles such as accountability and transparency.

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I Introduction

The Cotonou Partnership Agreement (**Cotonou Agreement**) is a trade agreement between the European Union (**EU**) and African, Caribbean, and Pacific Island (**ACP**) states. Global governance literature helps to explain the core elements of the Cotonou Agreement as an international agreement that has recognised the importance of openness of processes, and the need for flexibility and adaptability. The built-in review process established by the Cotonou Agreement is a unique tool under international law that provides the parties with an opportunity to critically address and respond to issues arising out of the Agreement during its term. The third and final review of the Agreement, and the final opportunity for the parties to achieve the Agreement's goals, is taking place this year.

This paper is divided into three main parts. Part one will provide a normative evaluation of democracy, together with a descriptive analysis of the theoretical basis of global governance. Consideration will be given to the common factors between democracy and global governance as well as what a combined application of democracy and global governance might look like. Part one will also explain the importance of democracy on the international stage and provide insight into the dangers of international relations without democratic controls and oversight. Part two provides a descriptive analysis of the Cotonou Agreement. Part two will examine the historical relationship between the parties, and the requirement for the Agreement itself. Part three will assess the constitutional and democratic aspects of the Agreement in light of the normative assessment in part one.

II Democracy and Global Governance

Events in the global sphere towards the end of the 20th century and the first two decades of the 21st century have provided an opportunity to rethink and reinterpret our understanding of the role that democracy plays in global, regional, and domestic politics and policy agendas.

Global movements such as the Arab Spring “demonstrate the sacrifices individuals are willing to make in the struggle for democracy [and] the Occupy Movement raises the question of who has a voice and access to power in a democracy.”¹ Events such as the Arab Spring and the Occupy Movement highlight a shift towards a greater demand for transparency, openness and accountability of decision-makers and political elites. The role and usefulness of democracy is subject to debate. It has been argued “the nature of democracy is undergoing radical changes in quite divergent directions [with some theorists arguing] that the spread of capitalism is contrary to democracy, while others argue that the intersections of capitalism and democracy provide a fruitful means of advancing individual and collective interests globally.”² The question remains though, what is democracy, and what does it mean in the 21st century. Secondary to this is the question of how important democracy will be in the globalised world of international trade and partnership agreements

¹ A E Cudd and S J Scholz *Philosophical Perspectives on Democracy in the Twenty-First Century: Introduction* (ed, Springer, New York, 2014) 1 at 1.

² *Ibid* at 4 - 5.

where fundamental democratic tenets are routinely sacrificed for economic development and enhancement.

One interpretation of democracy is that known as value democracy. On this understanding, “the state should engage in democratic persuasion by expressing the values of freedom and equality that underlie the right to freedom of association, expression, and conscience in the first place.”³ Values of freedom and equality are essential elements of democracy and are vitally important when applied in the international arena. Democratic values such as those allowing citizens to express themselves work in the international arena because states should be free to associate and conduct relations freely. Individuals and organisations can also be seen as citizens of the international arena, and they must also be allowed to have input into the regimes that govern them and determine acceptable conduct.

Under traditional views of the international political system, states are the primary actors who maintain all the power required to govern and control international relations. However, global governance is used to define a range of activities and actors. It has evolved and developed alongside globalisation. Hall and Bevir summarise the concept of global governance. Global governance, they state, “remains a disputed term, covering a new theoretical lens, depictions of a new world, and varied policy agendas.”⁴ The depictions of a new world are based on ideas of cooperation and greater international integration while taking into account the vast range of differing political, theoretical and ideological beliefs that exist among the relevant actors. Global governance provides a different perspective to the traditional model of international relations and law. Global governance provides a forum for “scholars to rethink their theories and policy actors to modify their policies.”⁵ Robert Keohane makes the point that “[g]lobalization depends on effective governance [but] [e]ffective governance is not inevitable.”⁶ Global governance has evolved from the combination of states, organisations, rules, procedures and legal norms and “is something that happens; no one ... actually does it.”⁷ Interpretations of global governance highlight that while governance on an international level does occur, it does not develop in a coherent manner. Avant, Finnemore & Sell examined the dynamics of global governance in their article. They suggest that “[n]othing is ever governed once and for all time [and] [g]lobal governance ... is a dynamic process.”⁸

Much of international law and relations are conducted in relative secrecy, away from the scrutiny of those the decisions affect most. However, by integrating domestic democratic principles into the fabric of global governance, I suggest it is possible to enhance the legitimacy of international institutions seeking to exert authority and influence on the world stage. Democracy enhances international law and creates a more open and transparent

³ Emily R Gill “Democracy A Paradox of Rights?” in A E Cudd and S J Scholz *Philosophical Perspectives on Democracy in the Twenty-First Century: Introduction* (ed, Springer, New York, 2014) 1 at 16.

⁴ M Bevir and I Hall “Global Governance” in M Bevir (ed) *SAGE Handbook of Governance* (SAGE Publications Ltd, London, 2011) at 356.

⁵ Ibid.

⁶ Robert O Keohane “Governance in a Partially Globalized World – Presidential Address” (2000) 95 *The American Political Science Review* 1 – 13 at 1.

⁷ D D Avant, M Finnemore, & S K Sell “Who governs the globe” (Cambridge University Press, Cambridge, 2010) 1-31 at 1.

⁸ Ibid at 17.

system that is vital to ensure the legitimacy of international organisations and states seeking to impose different agendas. The application of democratic principles to some of the theories of global governance would result in the creation of a stronger and more established set of standards that would enable review and critique of international governing regimes to take place.

One such imagined view of what a more democratic transnational process may look like has been described as ‘Global Experimentalist Governance’, as theorised by De Búrca, Keohane and Sabel. They believe that because of the diverse range of actors on the international field, there are “[n]ovel forms of regulation [that] are developing alongside more traditional forms of international law.”⁹ The authors further argue that global experimentalist governance (GXG) comprises five key elements, and these five elements are very persuasive in describing what a more democratic international governing arrangement might look like. The ideal GXG regime – comprising essential elements of democracy – entails five important steps from the five elements.

“First, initial reflection and discussion among stakeholders with a broadly shared perception of a common problem, resulting in second, the articulation of a framework understanding with open-ended goals. Third, implementation of these broadly framed goals is left to ‘lower-level’ or contextually situated actors who have knowledge of local conditions and considerable discretion to adapt the framework norms to these different contexts. Fourth, continuous feedback is provided from local contexts, allowing for reporting and monitoring across a range of contexts, with outcomes subject to peer review. Fifth, goals and practices should be periodically and routinely re-evaluated and, where appropriate, revised in light of the results of the peer review and the shared purposes.”¹⁰

If implemented and adhered to along the lines of what de Búrca, Keohane, and Sabel propose, agreements and governing arrangements could obtain significantly greater legitimacy in the eyes of citizens and outside observers.

As globalisation in the 21st century continues, more complex international agreements are created, covering a wide range of policy areas and subject matter. Open governance processes, such as those provided for under the Cotonou Agreement, help to create legitimacy and accountability. To enable the development and implementation of international agreements, clear structures and processes are required to monitor and determine their effectiveness. Traditional governance models do not provide complete processes to deal with a changing international environment. Governance at the international level “is made difficult by the erosion of the nation state and by the increasing number of relevant actors with diverse and often conflictual interests and identities.”¹¹ Martinelli recognised the need for institutional accountability for those making decisions for individuals and states around the world. Touching on the very purpose of the EU’s development goals, he continues that global governance “defines a complex set of global norms concerning the entire world as a single system in various ways [such as] the peoples

⁹ G de Búrca, R O Keohane, and C Sabel “Global Experimentalist Governance” (2014) 44 *British Journal of Political Science* 477-489 at 477.

¹⁰ *Ibid* at 478.

¹¹ A Martinelli “Global Governance, Power Accountability and the European Union” (2001) *Sociological Bulletin*, 50 1 at 16.

of the world as a single constituency ... entitled with equal rights and responsibilities to whom decision-makers must be accountable[.]”¹² In line with this statement, the goals of the EU and the United Nations as described in the MDG and EU treaties are easily applied to the enhanced role that democracy plays in the Contonou Agreement.

While globalisation has resulted in the expansion of wealth for a number of individuals and states, the benefits of globalisation are not distributed equally throughout the world. This inequality results in a “great majority of [the world’s poorest countries being] at risk [of having] limited ability to tap into the advantages of globalisation and equally limited capacity to avoid or negotiate away from some of its disadvantages.”¹³

Various reasons for poorly performing third world states exist, including weak government institutions within developing countries. Developing states have traditionally had highly centralised governments “that have expanded to constrict the activities of non-state actors ... [and] pursued policies and strategies that weakened their societies and economies.”¹⁴ With serious disparities existing between the developed and developing countries in a range of key areas, and even in countries where authoritarianism was prevalent, “[d]emocratization ... did not noticeably put an end to these problems.”¹⁵ Theorists of global governance seek to provide avenues in international relations and law to counter some of the prevalent national administrative and democratic weaknesses throughout the developing world by creating more open and transparent processes.

Authors have sought to define aspects of global governance and create a succinct set of principled ideals with a defined set of purposes. Primarily, “[g]lobal governance signals a particular interest in the management of transnational issues by international organizations and other non-state actors, as well as by sovereign states.”¹⁶ Bevir and Hall propose that global governance serves three main purposes, being that it:

Recasts theoretical perspectives that dominate the study of international relations[,] makes sense of seemingly new practices and the political responses they produced[; and] sets agendas for change in international institutions, states, and non-state actors in the practices of international relations.¹⁷

Bevir and Hall present a number of different interpretations about aspects of global governance, which can assist in the general understanding of why it is necessary to apply those principles to international law and international relations. Importantly, the

¹² Ibid at 23.

¹³ J Hoós *Global Governance* (ed, Akadémiai Kiadó, Budapest, 2006) at 88.

¹⁴ Ibid at 101.

¹⁵ Ibid.

¹⁶ A Cutler “Private Power and Global Authority: transnational Merchant Law in Global Political Economy (2003) *Global Political Economy*, Cambridge University Press, in M Bevir and I Hall “Global Governance” at 352.

¹⁷ Above, n 4 at 352.

purpose is to challenge prevailing theories to present alternative pathways to assist in the integration of third-world economies into the global economy.

David Kennedy acknowledges that as the study of global governance grows, the reality of how little most know about how they are governed will become apparent. Comparisons of the mystery of global governance can be helpfully drawn with the uncertainty that was the EU in its relative infancy. Critics of global governance are wary of being overly optimistic about the benefits that global governance can provide. Caution is urged because international law already contains a plethora of rules and regulations. Kennedy supports this view where he says in a 2008 article, that we “often imagine that the world is an anarchic struggle or a deregulated market over which we have managed to throw but a thin net of rules.”¹⁸ However, he continues that international law is not loosely regulated, but “law and regulation at every turn.”¹⁹

Despite moves towards greater importance for non-state actors, states remain the most important and powerful actors in international law. In this environment, global governance operates to create a new legal order for ensuring order and stability.

Keohane argues that in an increasingly globalised world, “[e]ffective governance is not inevitable.”²⁰ The leap from state-centred governance to global governance may appear to be a natural progression, but it requires significant input from the variety of actors who would benefit from a more globally-governed world.

K Abbott & D Snidal put forward that international law can be implemented through the use of hard law and soft law. Hard law refers to “legally binding obligations that are precise ... and that delegate authority for interpreting and implementing the law”.²¹ Hard law is used by international actors as a way to “reduce transactions costs, strengthen the credibility of their commitments, expand their available political strategies, and resolve problems of incomplete contracting.”²² By contrast, the authors describe soft law as beginning “once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation.”²³ Softer forms of governance can be described as rule-making through regulation outside of the normal international treaty law processes that are the tool traditionally used by the international community. Abbott & Snidal suggest that “international actors choose

¹⁸ D Kennedy “The Mystery of Global Governance” (2008) 34 Ohio Northern University Law Review 827-860 at 846.

¹⁹ Ibid.

²⁰ R O Keohane “Governance in a Partially Globalized World – Presidential Address” (2000) 95 The American Political Science Review at 1.

²¹ Ibid.

²² K W Abbott & D Snidal “Hard and Soft Law In International Governance” (2000) 54 International Organisation 421-456 at 422.

²³ Ibid.

softer forms of legalized governance when those forms offer superior institutional solutions.”²⁴ Hard law is necessary, as it provides certainty necessary for international relations to be conducted, whereas soft law mechanisms allow parties to respond to developments as they arise that may have not been contemplated at the time of drafting the original agreement.

There are arguments for and against both hard and soft law, but in the global governance sphere, flexibility and openness can prove to be an advantage in achieving specific goals. Soft law is beneficial in the field of global governance because international law is a constantly developing and evolving field, often dealing with new and unpredictable issues as they arise. Abbott & Snidal believe that soft law is beneficial in international law for a number of reasons, but principally for dealing with the uncertainty that arises out of legalised agreements. Uncertainty is a significant issue for international organisations and states, and soft law provides options for reducing the risk associated with overly fixed or rigid rules. The authors suggest that by using soft law mechanisms “states can reduce the precision of their commitments”.²⁵ While there is always the danger that with uncertainty comes increased risk, “when circumstances are fundamentally uncertain – that is, when even the range and/or distribution of possible outcomes is unknown – a more precise agreement may not be desirable.”²⁶ The type of law chosen for an international agreement is important, particularly within a global governance model where there a range of actors, including non-traditional international actors, exercising governing responsibilities.

Global governance continues to develop in line with existing international legal rules and standards. While it “cannot be ruled out that global government can develop [at the moment] there is no such a government, that is above the national state.”²⁷ Whether global governance is effective, both in general and in terms of the EU’s development policy with ACP countries, the role of global governance is certainly vital to the wider global economy. Hoós states that there are four main roles that global governance plays in the global economy. First, global governance is necessary for regulation purposes. Secondly, it helps with allocation of global goods to be distributed among the global community. Thirdly, it assists in the distribution of income, from developed states to developing ones. Finally, global governance helps assist in the stabilisation of the macro-economy to aid in global economic stability.²⁸ As economic security and stability is central to a well-functioning international system, governance of economic matters is central to many international agreements.

²⁴ Above, n 22 at 421.

²⁵ Above, n 22 at 442.

²⁶ Ibid.

²⁷ Above, n 13 at 113.

²⁸ Above, n 13 at 125.

One of the key challenges to establishing effective international arrangements involving a range of parties and actors is maintaining legitimacy of processes and the support of those whom a particular arrangement is designed to benefit. With the spread of globalisation and networks to govern international agreements, there are increased “attempts to develop new theories of international relations and new agendas to regulate, control, and preserve transnational flows and the global commons.”²⁹ Increased discussion over how to best reform and regulate the world is central to global governance and globalisation. Ideas range from amending existing international institutions to creating a global assembly with the power to make globally binding laws. Such a globalised society is difficult to envisage at this present point of international law, so focus is placed on how far global governance has developed international law from traditional state-centric understandings. Global governance “refers to a range of new theories, practices, and agendas associated with informal processes and activities of governing”³⁰; it provides a different approach to the operation and conduct of international law.

III The Cotonou Partnership Agreement

The Cotonou Agreement provides an example of how a more democratic international agreement should look and how future agreements could build on the example set by the Cotonou Agreement to create a more democratic international legal system. I will outline below the history between the parties, the key aspects of the Agreement and how the Agreement represents a crucial development in the way that international agreements are conducted.

A The history of the ACP countries, their relationship with the EU and the development of the Cotonou Agreement

Launched in 1959, the European Development Fund (EDF) is the key mechanism by which developmental aid is provided to ACP countries. The EDF provided a starting point for relations between the EU and ACP countries. The deficiencies in the way aid had previously been provided were sought to be rectified under the Agreement. Like the EU itself, the Agreement’s legal foundation is in international treaty law.

A brief history of the ACP countries and their interactions with the EU assists with understanding the position of the present day relations that constitute the ACP-EU agreements. The basis of the relationship between the EU and ACP countries is the historical colonial ties that these countries share with European states. Under the Treaty of Rome, signed in 1957 laid the foundation for financial and trade cooperation between the then European Economic Community (EEC) and former colonies. The Treaty recognised the

²⁹ Above, n 4 at 563.

³⁰ Above, n 4 at 562.

special status of non-European countries and territories “which have special relations with [the signatories to the Treaty]”.³¹ Furthermore, the Treaty affirmed that the main purpose of the association was “to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole.”³² Although the arrangement was arguably designed to principally benefit the European powers, it allowed for greater financial, technical and trade cooperation with the general aim of developing the economic and social infrastructure of the specified countries under the agreement.

A more developed set of conventions were signed and ratified between 1975 and 1989 between the European Community and ACP states. Known as the Lomé Conventions, they “marked the beginning of cooperation between the EC and ACP group of countries.”³³ The Lomé Conventions provided the basis of EU-ACP development cooperation until the end of the 20th century. However, the European acknowledged that the various Lomé Conventions had failed to achieve their goals for a number of reasons, and that further work was needed.

In a Green Paper on relations between the EU and the ACP, the Commission noted areas for improvement necessary for the success of the ongoing partnership. The Green Paper stated that aid from the European Community “unquestionably help[ed] to improve living standards”³⁴ but “it has had failings, which a critical analysis of the results of ACP-EU cooperation ... identified at three levels.”³⁵

The Green Paper sought to explain the relationship as it existed towards the end of the 20th century and provide a way forward. The Commission divided its explanation into two main parts. First, highlighting events and the relations previously, the Commission described part one of the paper as ‘A World in Turmoil’. It summarised various factors influencing the relations to date, including global changes affecting relations between the parties, experiences during previous cooperation and dealings, and limiting factors to the relations. Part two of the Green Paper acts as a blue print for future relations between the EU and ACP states going into the 21st century.

When it came to assessing the EU’s aid policies, the Commission applied several evaluation criteria. Developed in line with criteria defined by the Organization for Economic Cooperation and Development’s Assistance Committee, the Commission broadly defined

³¹ Part Four, Art 131, Treaty of Rome (opened for signature 25 March 1957, entered into force 1 January 1958).

³² Ibid.

³³ Z A Malik “The Cotonou Agreement: An Assessment” (2011) 27 *Journal of European Studies* 2 at 125.

³⁴ Commission of the European Communities “Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century - Challenges and options for a new partnership” (20 November 1996) COM(96) 570 final at iv.

³⁵ Ibid.

the main aims necessary to determine whether the provision of developmental aid was successful. The Commission viewed the pertinence of a programme, in line with existing global problems as extremely relevant. The efficiency of programmes was a further criteria designed to measure whether activities under a certain programme were the most appropriate and to consider the results of those activities. Effectiveness of aid referred to the relationship between the results obtained and the specific objective(s) of a particular project. Next, the Commission measured the impact of a programme, between specific and overall objectives of development. Finally, sustainability of aid programmes is assessed to establish which results could be obtained at the completion of an aid programme.³⁶

Applying that criteria, the failings as described by the Commission in part one of the paper were as follows: First, the framework within which the EU's development operations were carried out lost its substance and was only partly put into practice. For example, it was difficult to implement operations because often ACP states had "little institutional capacity and ineffectual public administration with the result that partnership is limited to day-to-day resource management"³⁷ as opposed to more meaningful development issues. Secondly, the Commission noted that evaluation reports concluded cooperation had matched objectives and needs, with relatively high effectiveness, but that "the state of the institutions and economic policy in the recipient country have often been major constraints."³⁸ In its paper, the Commission was especially critical of ACP countries' institutions and lodged much of the blame for failings on these institutions. Finally, in terms of financial and technical cooperation, the Commission believed that because some financial resources were granted automatically, there was little encouragement for ACP governments to display genuine political commitment towards the principles of the aid conventions. The Commission also stated that there had been an undesirable drift towards development instruments dictating policy and that "a lack of flexibility has meant ... cooperation does not adjust easily to a rapidly changing political and economic scene and is slow to produce new political initiatives reflecting the concerns of society ... and the desire to make aid more effective in the long term."³⁹ Overall, the Green Paper argued that EU aid was not achieving maximum benefit because of a lack of appropriate resources within ACP states.

Various failings were identified by the EU not only as the cause of difficulties in the EU-ACP relationship, but also as a barrier to further effective development. Difficulties included "patchy results."⁴⁰ Patchy results could be attributed to "assumptions about the ACP countries' institutional and political capacities that have not been fulfilled."⁴¹

³⁶ Above, n 34 at 14 – 15.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Above, n 34 at v.

⁴⁰ Above, n 34 at 11.

⁴¹ Above, n 34 at 12.

Part two of the Green Paper looked at how EU-ACP relations would develop in the 21st century. The paper went to significant lengths to develop processes to ensure that future trade and economic development would not be exposed to the same difficulties that previous trade agreements had faced.

In particular, the Commission looked at new ways for encouraging growth and more effective development opportunities. The future of aid, according to the Green Paper, would be varied and would be used to support a range of programmes to enhance life in a number of areas in ACP countries. Importantly for globalisation, the Commission acknowledged the complexity of the aid programme could result in less transparency of the processes involved in the delivery of aid to ACP countries. It pointed towards a need to develop better practices in specific areas of financial and technical cooperation and assistance. One question that was asked was whether there should be a single source for the provision of funds or if multiple smaller sources were more appropriate. This was highlighted by arguing that using a number of instruments, “which all have different purposes, procedures and methods of operation inevitably makes the EU’s policy for each individual country less transparent.”⁴² This could occur because “the complexity of the system often impede[d] access to the various financing and technical assistance.”⁴³ Further issues were identified as prohibitive including the joint management of aid. The Commission again pointed to occasions where countries with weaker institutional and administrative processes in place would require greater supervision and assistance. An alternative and more efficient system was clearly needed.

Acknowledging the findings contained in the Green Paper, the Commission recognised the need for better oversight and greater reporting measures to ensure the effective provision and utilisation of aid and development support to ACP countries. The recommendations proposed by the Commission displayed many of the core concepts that are central to the theory of Global Governance, and which were adopted under the Cotonou Agreement.

While identifying a number of issues with existing aid, the Cotonou Agreement opened the door for a clearer and more accountable delivery of aid, with built in systems to monitor and review ongoing progress over the 20 year period of the Agreement. Arguably the Cotonou Agreement was vital for the overall success and development of democracy in the ACP states with less-developed democratic systems.

B The evolution of Cotonou

⁴² Above, n 34 at 69.

⁴³ Ibid.

The Cotonou Agreement is a 20-year agreement between the EU and the so-called ACP states. It is an agreement designed to enhance the economic positions of the ACP states with EU assistance. The Agreement is not a standard aid treaty. It has a range of provisions and requirements that are designed to not only improve the economic positions of ACP states, but to also enhance and promote democracy. Critically, the Agreement itself is subject to a number of oversight and monitoring provisions that enable both parties to review and revise any aspects of the Agreement that may not be achieving their objectives. To ensure that it is meeting its objectives and targets, the Agreement has been reviewed every five years since its inception in 2000.

Ensuring the effective and proper delivery of aid and economic assistance is vital to the success of international aid programmes. As set out under Part one above, the theorists behind GXG set out five key requirements which they deemed vital to creating a regime based on open deliberation and consultation with all relevant stakeholders. The Cotonou Agreement provides a useful example of GXG operating in practice. The built in review and monitoring structure of the Cotonou Agreement aligns closely with the five key features that make GXG an ideal mode of governance in international relations and global politics. Arguably the regime established under the Cotonou Agreement contains the five key elements of GXG (that is, 1. inclusive participation in non-hierarchical process, 2. articulation of agreed common problem, which is open ended, 3. devolution to local actors, 4. continuous monitoring and 5. revision with peer review) and is an example of how discussion, the creation of a broad framework, implementation of goals at all levels, continuous feedback and reporting, and effective opportunity for review can result in more efficient and effective global treaty regimes.

The Cotonou Agreement “is the most comprehensive partnership agreement between developing countries and the EU.”⁴⁴ In order to achieve this comprehensive partnership, the Cotonou Agreement is founded on three distinct, but related pillars: development cooperation; political cooperation; and economic and trade cooperation.

The Joint Parliamentary Assembly, established under Part 2, Article 17 of the Cotonou Agreement is vital in ensuring that the democratic legitimacy of the Agreement, and the decisions made by the parties, is maintained. Under Article 17, the Joint Parliamentary Assembly is “composed of equal numbers of EU and ACP representatives [and] shall be ... members of the European Parliament and ... members of parliament ... of each ACP State.” It is given a very clear role to ensure the democratic processes as contained in the wider Cotonou Agreement are adhered to. The role of the Joint Parliamentary Assembly, as a consultative body, is divided into five parts, which are to:

⁴⁴ Directorate General for International cooperation and Development, European Commission
<https://ec.europa.eu/europeaid/regions/african-caribbean-and-pacific-acp-region/cotonou-agreement_en>.

“Promote democratic processes through dialogue and consultation; facilitate greater understanding between the peoples of the European Union and those of the ACP States and raise public awareness of development issues; discuss issues pertaining to development and the ACP-EU Partnership; adopt resolutions and make recommendations to the Council of Ministers with a view to achieving the objectives of [the Cotonou Agreement].”

While not able to directly legislate and make binding decisions, the existence of the Joint Parliamentary Assembly, with its role as a consultative body, helps to increase the transparency of the Cotonou Agreement process for citizens of both parties.

Article 1 of the Cotonou Agreement sets out the primary objectives of the partnership between the EU and ACP countries. It states that “[t]he partnership shall be centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and gradual integration of the ACP countries into the world economy.”⁴⁵ The type and nature of the objectives set out under Article 1 provides the tone for the environment in which the parties entered into the Agreement. It is highly aspirational, but recognises the need for input from a range of actors to ensure the Agreement’s success.

To achieve the Agreement’s goals by 2020, the parties recognised that a solid foundation of fundamental principles was required to achieve certainty of rules and processes. Assisted by the fact that the EU itself is a creation of treaty law, Article 2 states that the policies and objectives contained in the Cotonou Agreement will be exercised by both parties on the basis of a number of fundamental principles. These principles acknowledge the equality of the partners to the Cotonou Agreement while giving to ACP states the power to “determine the development strategies for their economies and societies.”⁴⁶ The Cotonou Agreement is a significant development for the EU in its relations with ACP states; the previous agreement for preferential trade between the EU and former European colonies had major deficiencies, whereas the Cotonou Agreement has built-in mechanisms to identify and address deficiencies at all levels of the partnership.

C Assessment and Review Processes

This part of the paper examines the important assessment and review processes contained in the Cotonou Agreement. Arguably, it is this feature that elevates the Cotonou Agreement from a traditional international trade agreement, with rigid controls and restrictions, to an agreement that is flexible and open to the changing needs of the parties. Having a clear review procedure provides certainty to parties that the Agreement’s conditions and requirements will be met. The five-yearly review mechanisms are designed to ensure that

⁴⁵ PARTNERSHIP AGREEMENT between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (signed 23 June 2000), article 1.

⁴⁶ Ibid, Art 2.

goals and objectives are being met, and if not, to understand why not. Article 95 provides that the Agreement “is hereby concluded for a period of twenty years, commencing on 1 March 2000.”⁴⁷ Section three of Article 95 sets out the procedure to be followed by both parties prior to the five-yearly review to determine what areas are in need of amendment. It states that either party must notify the other “not later than 12 months before the expiry of each five-year period of any review of the provisions they desire to make with a view to a possible amendment of the Agreement.”

Identified as crucial to ensuring the success of the Agreement and meeting the wider principles and aims of the Cotonou Agreement, Article 96 provides an appropriate consultation procedure that fulfils the Agreement’s objectives in the areas of human rights and democratic principles of good governance. It also provides for an open and transparent dialogue between the parties with a view to resolving any disputes or disagreements that may arise as quickly and efficiently as possible.

There have been two completed revision periods, in 2005, and 2010. The third and final revision is in the process. The outcome of each revision, with reports and analysis, has helped to determine the areas in which the Cotonou Agreement has been successful, the areas in which it has not been successful, and to measure improvements.

From the signing of the Agreement in 2000, until its first revision in 2005, significant developments in the global environment occurred, and the EU experienced a period of enlargement. The 2005 Cotonou Revision was concerned with two Articles in particular. These related to political dialogue contained under Article 8, and sanctions as contained under Article 96. Despite specific focus upon these two sections, “[t]he basic aim however was quite simple and that was to ensure that a greater effort was made and more time used to seek to resolve differences between the parties over perceived breaches of the essential elements before the concerned party ... moved to ending consultations and imposing ... sanctions.”⁴⁸ Until the 2005 revision, there was little linkage between articles 96 and 8. However, following the revision the link was made “explicit and obligatory so that all avenues for dialogue under Article 8 [had] to be exhausted before a move to the more formal Article 96 consultations.”⁴⁹

Specific changes arising out of the 2005 revision included increased attention to security, migration, and climate change, particularly in light of events such as September 11 and the War on Terror. This proves relevant because it highlights the changing international political and economic landscape and the requirement for the various actors to be able to adapt to

⁴⁷ Above, n 45, Art 95(1).

⁴⁸ J Mackie “Continuity and Change in International Co-operation: The ACP-EU Cotonou Partnership Agreement and its First Revision” (2008) 9 *Perspectives on European Politics and Society* 2, at 147.

⁴⁹ *Ibid* at 147-148.

change. Through this revision, the Cotonou Agreement shows both foresight that a rigid and inflexible arrangement would not be successful and how effective the review procedures could be. The review process also proved that Cotonou Agreement's "three-pillar structure ... remains entirely relevant to changing concerns."⁵⁰ Mackie states that the "fundamentals of Cotonou, at least on aid management and political dialogue, have ... proved to be resilient and sufficiently flexible to cope with change."⁵¹

The second revision, concluded in 2010, provides a more detailed analysis and revision of the Cotonou Agreement. 2010 was the midpoint in the life of the Agreement and enough time had passed to determine whether the Agreement was still a valid tool, going into the final ten years. In 2005, the parties sought to extend the political dimensions of the Agreement in response to the changing international situation. With these revisions implemented, the 2010 revision was "aimed at addressing regional integration and differentiation by recognizing the continental dimension as well as regional organizations and the African Union as important actors."⁵²

Importantly, the second revision of the Cotonou Agreement coincided with the revision and entry into force of the Lisbon Treaty. This was important because the Lisbon Treaty restructured the EU's external relations policy and removed provisions from the TFEU of importance to EU-ACP relations. For example, Article 179(3) of the Treaty under the European Community rules read that the "provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention." By not including Article 179(3), the EU removed one of the main methods used to finance the Cotonou Agreement because "this provision was taken as a guarantee for the extrabudgetary status of the European Development Fund ... that finance[d] the Union's development assistance under the [Cotonou Agreement]."⁵³ Without the preferential treatment built into the EU's constitutional framework that the former colonies had been accustomed to, the mechanisms built into the Cotonou Agreement became even more vital to ensure effective delivery of developmental aid.

The 2010 revision of the Cotonou Agreement "strengthened the democratic and parliamentary dimension of the [Agreement]."⁵⁴ The 2010 revision expanded the range of actors involved in EU-ACP relations that could be consulted in the preparation of strategy papers during review processes. Subsequent to the 2010 revision, a range of actors from both the EU and ACP groups are now included in consultation processes. Another significant addition was the widening of subject matter that could be discussed by the Joint

⁵⁰ Above, n 48 at 154.

⁵¹ Ibid.

⁵² S Bartlet, "ACP-EU Development Cooperation at a Crossroads? One Year after the Second Revision of the Cotonou Agreement" (2012)17 European Foreign Affairs Review 1 at 2.

⁵³ Ibid at 3.

⁵⁴ Above n 52 at 9.

Parliamentary Assembly. This meant that the Joint Parliamentary Assembly was given more power in terms of providing greater oversight into the operational aspects of the Cotonou Agreement. From a global governance perspective, these amendments helped to also enhance the institutional legitimacy of the parties responsible for the decision-making on both sides of the Cotonou Agreement.

Legitimacy aspects under the Cotonou Agreement arguably are still not what could be considered acceptable under a domestic constitutional regime, however, they could be considered appropriate in the context of global governance. Robert Keohane argues that in the context of global governance, legitimacy should not be confused with wider ideas of justice. He argues “legitimacy expresses a threshold value, in a non-ideal world, for the conditions under which an institution has the right to rule.”⁵⁵ In terms of the Cotonou Agreement and looking at the institutions responsible for its implementation, if applying a threshold value of legitimacy that is a mix of domestic and international criteria, the Joint Parliamentary Assembly provides an avenue for legitimacy to be ensured. In addition to the EU and respective ACP countries’ own accountability and legitimacy processes, the mechanisms of the Cotonou Agreement can be seen as enhancing the democratic processes.

Resulting from the restructuring and reorganisation of the EU in 2010, a new institution, the European External Action Service (EEAS), was established with responsibility for bilateral relations with ACP countries. The overall goal of the EEAS was to “ensure consistency between the different areas of the Union’s external action and between those areas and its other policies.”⁵⁶ The EEAS also implemented administrative changes with the objective of streamlining the delivery of aid and development funding. However, while the Commission remained responsible for the management of external relations cooperation, the EEAS was tasked with ensuring overall political coordination of the EU’s external action, ensuring consistency and effectiveness of the Union’s external action.”⁵⁷ This reorganisation of EU institutions meant that the EU was arguably much better equipped moving into the second half of the 20 year agreement to respond and adapt to changing situations and global events while protecting not only the EU member states’ interests, but also ensuring increasing involvement with the needs and requirements of developing countries.

In addition to these positive steps taken to ensure better management of the Cotonou Agreement and external relations generally, there was a view that the ACP countries could do more to utilise the benefits and maximise opportunities provided under the Agreement. As Bartlet points out, for the ACP countries “it is therefore important to reflect upon its

⁵⁵ R Keohane “Global governance and legitimacy” (2001) 18 *Review of International Political Economy* 1 at 100.

⁵⁶ Council Decision of 26 July 2010 establishing the organisation and function of the European External Action Service (2010/427/EU), Art 3.

⁵⁷ *Ibid*, Art 9.

statute to be ready for a more general debate on the future of the ACP-EU relations before the expiry of the [Cotonou Agreement] in 2020.”⁵⁸ As a group, the ACP presently consists of 79 states. While this makes it the largest group of developing states in the world, with the potential to exercise considerable diplomatic pressure on the international stage, it has never gone beyond cooperation with the EU under the Cotonou Agreement. The secretariat of the ACP states provides the platform for such further steps to be taken, but as of the 2010 revision, no further action had been taken.

D A Review of Cotonou – at the midpoint

After the 2010 review, there was wide consensus that the Cotonou Agreement was, on the whole, achieving its objectives. Further, there was broad consensus was that “the [Cotonou Agreement] represented a fundamental break from the past of ACP – EU.”⁵⁹ Where views differed was over the motivations behind the break from previous cooperation. These views ranged from “a more pragmatic and realist approach to cooperation, an attempt of the EU to reassert itself at the global level or a drive to make the EU’s development partnerships more consistent with its ... vision based on liberalism and democratisation.”⁶⁰

Keijzer and Negre conducted interviews with representatives of some of the ACP countries to gauge opinions and feedback from within the ACP group on the impact the Agreement had on their individual states. The authors asked for reflections from stakeholders about the Agreement’s three-pillar structure. In their interviews, it was shown that in practical terms, the two main articles that constitute the political dialogue pillar appeared to lack interconnectedness. The authors found that “the EU alone tends to take initiative regarding the use of [regular political dialogue under] Article 8, and owing to Article 96’s reputation as the ‘sanction article’, the EU is judged as being more interested in influencing ACP countries’ governance than in conducting a genuine political dialogue.”⁶¹ Despite some criticism, it was found that political dialogue under the first pillar did, to some extent, achieve the EU’s goals of advancing human rights and governance policies throughout ACP states.

Review of structures and processes are necessary to ensuring that best practice is maintained at all times. Reviews have resulted in changes to the Cotonou Agreement. Changes brought about under the 2005 and 2010 revisions of the Agreement revealed that the ACP-EU Partnership Agreement had “to be contextually responsive to changing development issues with a view to attaining poverty reduction.”⁶² Amendments sought to strengthen political features of the agreement so that when any violation of the Agreement

⁵⁸ Above, n 52 at 25.

⁵⁹ N Keijzer and M Negre (2014) 21 *South African Journal of International Affairs* 3 at 283.

⁶⁰ *Ibid.*

⁶¹ Above, n 59 at 287.

⁶² P I Gomes “Reshaping An Asymmetrical Partnership: ACP-EU Relations From An ACP Perspective” (2013) *J. Int. Dev.* 25 at 718.

occurred, there would be exhaustive and intensified political dialogue. This amendment was considered a victory and “a major gain from the ACP’s perspective in helping to prevent democratic stability and governance being given a purely Eurocentric orientation.”⁶³

With a view to maximising the opportunities under the Cotonou Agreement, Gomes provided his view of possibilities for the final review of the Agreement. The main focus of this remains the reduction and eradication of poverty throughout the ACP states. Gomes also stated that the revisions of 2005 and 2010 “have shown [the Agreement’s] capacity to resolve by compromise, contrasting, if not conflicting, political and economic demands in such areas as good governance, [and] democratic stability[.]”⁶⁴ This is arguably a significant vote of confidence for demonstrating how global governance when applied in conjunction with international law to further democratic principles and ideals can result in a functioning and responsive international treaty regime.

However, despite a number of attempts to create greater equality in international relations, it is not always successful. Criticism of the Cotonou Agreement does highlight the disparity in power between the EU and ACP countries. Studies conducted during the first 10 years of the Agreement “seem[] to suggest that despite its emphasis on partnership, the patterns of asymmetrical relations of the previous century have been reinforced.”⁶⁵ Justification for this view is based on the EU taking “an interventionist approach founded on the principles of free trade and neo-liberal orthodoxy, which has forced ACP countries to surrender important elements of their policy autonomy and economic ideologies.”⁶⁶ Critiques continue to portray the EU, not as an equal partner with the ACP states, but as yet another dominant imperial power imposing its will upon a weaker group.

In direct contrast to the positive light in which developments under the Cotonou Agreement have been portrayed, M Carbone suggests that the few attempts that have been made by the parties to promote norms “for instance, democracy and human rights, democratic participation, gender equality, regional integration, and sustainable development – have resulted, in some cases, in a blatant gap between rhetoric and reality [and in others] in rather paternalistic overtones by the EU.”⁶⁷ Carbone’s view is supported by others such as Andy Storey who, writing in 2006, argued that in its dealings with ACP countries, the EU may not be acting a normative power, “but rather out of an old-fashioned *realpolitik* defence of ... self-interest[.]”⁶⁸ Storey further sets out that a problem in EU relations with African and other ACP countries is that the type of governance that is being promoted by the EU “is a

⁶³ Ibid, at 718-719.

⁶⁴ Above, n 62 at 724-725.

⁶⁵ M Carbone “Rethinking ACP-EU Relations After Cotonou” (2013) J. Int. Dev. 25 at 748.

⁶⁶ Ibid.

⁶⁷ Above, n 65 at 749.

⁶⁸ A Storey “Normative Power Europe? Economic Partnership Agreements and Africa” (2007) Journal of Contemporary African Studies 24 at 342.

particular model of ‘good governance’, narrowly focused on specific norms concerning liberal democracy and market economics.”⁶⁹ While the subject of Storey’s article was more focused on general trade relations between African states and the EU, and outside the scope of the Cotonou Agreement, it does demonstrate a degree of separation from admirable goals to the effective delivery of them.

E The Cotonou Agreement – 2015 and Beyond

In line with its five-yearly revisions, 2015 marks the year for the third and final review of the Cotonou Agreement. This review “is seen more as opportunity to reflect on the prospects of the EU-ACP cooperation framework before the Cotonou Agreement expires in 2020.”⁷⁰ A number of parties, including academics, various EU institutions and ACP members are looking at what the most appropriate arrangement to replace the Cotonou Agreement should be, and what form it should take.

As a starting point, Article 95(4) of the Agreement states that “[e]ighteen 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 relations.” As negotiations and the outcome of a 2015 review have yet to be concluded, it is only possible to speculate as to what recommendations may come out of that revision, as well as what may be considered the most appropriate way forward for the EU and the ACP countries during the last quarter of the Agreement.

In a move that could be significant for the future of the ACP countries, the EU has divided the responsibilities in its dealings into continental groups, as opposed to a single relationship with the ACP group. If ACP countries were to be associated with their geographical regions moving forward, this could mean that the ACP group would “appear as an obsolete relic of history that ought to make room for a new and more rational arrangement of European external and development policy, satisfying functional criteria[.]”⁷¹ Moving away from the traditional relationship between the EU and former colonies provides a unique opportunity to examine the winding down of an international agreement with its own governance arrangements and how parties will make appropriate provisions for relations after its cessation. Carbone concludes his assessment by stating that while “politicisation of the EU-ACP partnership [has] generated significant tensions between the two parties ... the occasional pursuit of common interest have produced some important results.”⁷² Beyond 2020, the governance arrangements set up under the Cotonou

⁶⁹ Ibid at 343.

⁷⁰ Above, n 65 at 749.

⁷¹ D Nickel “What after Cotonou? The Future Cooperation between the EU and the African, Caribbean and Pacific (ACP) States” (2012) SWP Research Paper, German Institute for International and Security Affairs.

⁷² Above, n 65 at 752.

Agreement could provide a pathway for greater democratic international governing regimes.

In 2013 the European Parliament commissioned a Policy Briefing from the Parliament's Directorate-General for External Policies of the Union.⁷³ The Directorate-General advised that, in keeping with wider opinion, a reform of the EU-ACP relations was necessary to maintain relevance. From the perspective of global governance issues, the Briefing asked "what are the common values and interests of the ACP group and the EU and how can they be incorporated into the partnership that may emerge after 2020."⁷⁴ Three options were presented as potential alternatives to the existing relations framework, each of which would require its own degree of governance arrangements to be managed effectively.

Option one involves complete dissolution of the ACP-EU partnership, and replacement with individual regional agreements. The Briefing suggests that this option appears to be the one favoured by the EU. The ACP group does not, according to the European Parliament, prefer this option. From a governance point of view, if the partnership did come to an end in 2020, "substantial political and technical work will be needed in order to adequately manage it."⁷⁵ It is further pointed out that if a complete dissolution of relations was to take place, "the goal ... would be to establish the political, legal and institutional mechanisms necessary to allow the transfer of all those elements of the ... partnership that want to be preserved[.]"⁷⁶ Global governance would play a major role in ensuring those institutional mechanisms continued to operate in a democratic and accountable manner. This critically shows the EU's view that the ACP states need continued and ongoing support from the EU. To some extent the EU is displaying a degree of arrogance and placing emphasis on the areas of its relations with ACP states that are not working as effectively as they could. On this view, the benefits of the Cotonou Agreement are obvious but require continued EU involvement.

Option two would be a blend of continuing an overarching EU-ACP framework, but with strengthened regional structures. Regional structures with greater powers could provide a platform for closer integration amongst those member states and the opportunity to create greater political and democratic ties. Closer relations at the regional level could provide for greater coordination of developmental goals, high-level EU-ACP relations could focus on "[t]he provision of global public goods – sustainable development, climate change."⁷⁷ The final option, from a global governance perspective provides an interesting alternative and, if pursued, could also provide a new model for a regional institution exercising decision-making authority. The leaders of the ACP countries recognise the fact that, together, they

⁷³ ACP-EU relations after 2020: Review of options, Directorate-General For External Policies, Policy Department (2013) DG EXPO/B/PolDep/Note/2013_77.

⁷⁴ Ibid at 4.

⁷⁵ Above, n 73 at 7.

⁷⁶ Above, n 73 at 8.

⁷⁷ Above, n 73 at 9.

are able to exercise greater pressure, and achieve better results for their emerging economies.

Commitment to greater integration to create a stronger negotiating stance was codified under the Sipopo Declaration⁷⁸ under which the Heads of State and Government of the ACP group “recognize[d] the importance and urgent need for a systematic and comprehensive process to shape a more dynamic, innovative and cohesive ACP Group by which to engage the European Union ... in 2015.”⁷⁹ It remains to be seen whether this goal will be fulfilled during the 2015 negotiations, but if successful it “could allow the ACP group to correct what it perceives as unbalances within the ACP-EU partnership”⁸⁰

Another institution that has commented on the future of the EU-ACP relations is the European Centre for Policy Development Management (ECDPM). ECDPM has provided a critical assessment on the future of ACP-EU relations. In its assessment, it highlights the challenges of global governance in the 21st century, and the role that the EU-ACP has to play. The document summarises a speech by Geert Laporte in 2014, who spoke at ACP Day in Brussels questioned what the ACP could contribute in the emerging world order. The ECDPM summarises Laporte’s speech where he argues that, by 2014, there are several illustrations that show the declining importance of the ACP-EU cooperation. This included the carving up of the ACP’s various spheres of influence. Additionally, it is clear from Laporte’s speech that global governance could help to organise the focus of the ACP to provide a more cohesive and integrated group capable of implementing meaningful reforms. As a result, the ECDPM recommended several points to the ACP Group to enhance its global position. These include the need:

“(i) to focus on the debate and avoid spending time analysing past successes of the ACP, (ii) to build a stronger internal coherence to the group (iii) to do less better, with areas such as ... renewable energy, bio-diversity and fisheries as possible areas of common interests among ACP countries ... (iv) to mobilise intra-ACP financial resources themselves, and (v) make sure that ACP is “alive and kicking” beyond the Brussels bubble.”⁸¹

Should the ACP move towards an arrangement of closer integration exercising greater governance, GXG can provide helpful guidance on how to transition from a group of states who are a junior partner in an international agreement, to a fully functioning global governor.

The Cotonou Agreement, developed as an international aid treaty, has become an example of a new form of international governance. The parties involved in the agreement have

⁷⁸ Sipopo Declaration ‘The Future of the ACP Group in a Changing World: Challenges and Opportunities’ , 7th Summit of ACP Heads of State and Government Sipopo, Equatorial Guinea, 13 – 14 December 2012, ACP/28/065/12 [Final].

⁷⁹ Ibid, Art 65.

⁸⁰ Above, n 73 at 10.

⁸¹ European Centre for Policy Development Management “The future of ACP-EU relations post-2020 – An overview of relevant analysis by ECDPM” (2014) Version 1, at 6.

established mechanisms of review and increased accountability. By working together as a single entity, the ACP group of countries have created a constitutional-like governing organisation that is responsible for the direction and agenda setting of the ACP group in its relations with the EU. The recognition of enhanced participation is vital to the ACP's success in achieving maximum benefit out of the Cotonou Agreement as it limits the ability for corruption and misappropriation of much needed development aid.

IV GXG and the Cotonou Agreement

As outlined above, according to De Bürca, Keohane and Sabel, an ideal-type of a regime based on the principles of GXG contains five essential steps/ elements. I argue that these steps are present in the Cotonou Agreement and this helps to establish the Cotonou Agreement as “an institutionalised transnational process of participatory and multilevel problem solving.”⁸² I will now consider the extent to which GXG elements are present in the Cotonou Agreement, and whether there is any room for improvement under any of these elements.

A Reflection and discussion among stakeholders

The first condition requires an initial reflection and discussion among the key stakeholders who share a common perception of a common problem. The negotiation stages of the Cotonou Agreement took place against a backdrop whereby “only a few ACP countries ... managed to improve their development level significantly through using Lomé benefits and facilities.”⁸³ In this environment, both ACP countries and the EU recognised that a new form of trade and development treaty was required in order to improve the development levels of ACP countries. This recognition of an arguably failing aid regime resulted in extended negotiations and “after eighteen months of negotiations ... minimum consensus was reached on the new [aid] package and the Cotonou Agreement was signed.”⁸⁴ I suggest that as a result of the broad understanding and agreement between the parties this element of GXG can be shown as being satisfied under the Cotonou Agreement's processes.

A further condition of the first element is that discussion must be built around a broadly shared common problem. Clear evidence of a common problem can be established by examining the text of the Agreement. Article 1 codifies this central problem by interpreting the Agreement's objectives. Principally, the common problem to be addressed can be found in the objective article of the Agreement. The parties' ultimate objective is that “of reducing and eventually eradicating poverty.”⁸⁵ It is clear that significant discussion took place between the parties, who looked to past experiences to identify the main problems in the existing treaties which needed to be overcome. Therefore, the first criterion under the GXG regime framework is satisfied.

⁸² Above, n 9 at 477.

⁸³ K Arts “ACP-EU Relations in a New Era: The Cotonou Agreement” (2003) 40 CMLR 95-116 at 96.

⁸⁴ Ibid at 97.

⁸⁵ Above, n 34.

B Articulation of a framework understanding with open-ended goals

Under an ideal-type GXG regime, the second criterion that must be fulfilled is the articulation of a framework understanding with open-ended goals. During the negotiation stages of the Cotonou Agreement, prior to its entry into force, both the EU and the ACP countries expressed the desire “to create more flexible arrangements and a future option to change parts of the package[.]”⁸⁶ The ultimate goal, as stated above is the reduction and ultimate eradication of poverty amongst the ACP countries. The second criterion relies on the existence of open-ended goals as part of the Agreement. It is difficult to dispute that the reduction and ultimate eradication of poverty is not an open-ended goal. This goal forms the basis of the entire agreement that both parties must consider when negotiating and implementing policy agendas.

C Implementation of broadly framed goals by local actors

Once objectives and goals have been set, it is necessary for the relevant local actors throughout the ACP countries to implement these goals. In order for this criterion to be satisfied, implementation of agreed goals must be carried out by “contextually situated actors who have knowledge of local conditions and considerable discretion to adapt the framework norms to these different contexts.”⁸⁷

The third criterion of GXG evident in the Cotonou Agreement is the devolution of responsibilities to local actors. For example, Article 4 provides that non-State actors will be consulted, informed and provided with appropriate resources and support to assist in the fulfilment of the objectives of the Cotonou Agreement. Local actors will also “be provided with capacity-building support in critical areas in order to reinforce the capabilities of these actors.”⁸⁸ Additionally, non-state actors will “be provided with financial resources ... in order to support local development processes.”⁸⁹ Here the Agreement specifically recognises the need for actors at the local level to be involved in the implementation of the Agreement’s objectives as a key element to achieving the eradication of poverty throughout ACP countries.

By framing Article 4 in such broad terms, the parties recognise that to implement the agreement from a high-level position would be impractical and the support of actors ‘on the ground’ is vital to ensuring its success. On this basis I suggest that the third feature of GXG is strongly present under the Cotonou Agreement’s framework.

D Continuous feedback allowing for reporting and monitoring, subject to peer review

Feedback and monitoring of effectiveness is vital for any initiative to determine its overall success. This is especially true in international relations, and with the Cotonou Agreement. Continuous feedback provided by local actors allows for governments to report and monitor

⁸⁶ Above, n 83, at 98.

⁸⁷ Above, n 9 at 478.

⁸⁸ Above, n 45, Article 4.

⁸⁹ Ibid.

the ongoing programmes under the Cotonou Agreement. This allows the parties to assess successes or areas that may be in need of further development. Feedback, reporting and monitoring, and peer review are all integral aspects of the Cotonou Agreement.

Monitoring is led by The Committee of Ambassadors, comprised of representatives from each EU member state and the Head of mission representing each ACP state. Article 16(2) states that the Committee “shall monitor implementation of this Agreement and progress towards achieving the objectives set therein.” This is a high-level monitoring group that reports to ACP governments and the EU on whatever issues it deems necessary to achieve the Agreement’s objectives. The monitoring and review specific element the GXG criteria is not as distinct as the other elements, but it can be included as being a part of the fifth and final element that would help constitute an ideal-type GXG regime.

E Goals and practices periodically re-evaluated and revised where necessary

Linking with the fourth criterion of GXG, the fifth criterion is perhaps the most important feature of the Cotonou Agreement, and establishes it firmly as an ideal-type GXG regime, as envisioned by De Búrca, Keohane and Sabel. Re-evaluation and revision under the Cotonou Agreement is contained primarily under its 5-yearly revision processes. Each revision of the Cotonou Agreement focused on different aspects of the Agreement that needed greater attention. For example, “the first revision ... in 2005 mainly extended the political dimension of the partnership to security aspects.”⁹⁰ As Mackie states, “[a]ny international agreement is based on a snapshot analysis of a continuously evolving relationship between the parties.”⁹¹ The relationship between the ACP states and the EU can aptly be described as one that is continuously evolving.

Supporting the continuously evolving view, the 2010 revision was “aimed at addressing regional integration and differentiation by recognizing the continental dimension as well as regional organizations ... as important actors.”⁹² The different focus of each revision demonstrates both parties recognising areas that need to be enhanced or modified to maintain the continued successful operation of the Cotonou Agreement. Each review responds to developments over the previous five years and places the Cotonou Agreement in a very strong position to be recognised as an example of GXG in action.

I argue that the Cotonou Agreement closely aligns with the values and ideals of a GXG regime based on the presence of the five elements to create a GXG regime, and that these five features operate together “constitutes a form of governance that fosters a normatively desirable form of deliberative and participatory problem solving.”⁹³

V The Cotonou Partnership Agreement – Democratic or not?

⁹⁰ Above, n 52.

⁹¹ J Mackie “Continuity and Change in International Co-operation: The ACP-EU Cotonou Partnership Agreement and its First Revision” 9 *Perspectives on European Politics and Society* 2 at 144.

⁹² Above, n 52.

⁹³ Above, n 9 at 478.

This paper has sought to establish the EU's position in the international context as a significant actor that is seeking to establish new modes of global governance regimes to advance the principles of democracy, respect for the rule of law and human rights. Of as much relevance today as it was almost 25 years ago, Krämer argued for the need of the EU to not only act, but also provide leadership on a range of international issues. Krämer argued that:

"There are transnational environmental problems. Pollution of the Atlantic Ocean, the North, the Baltic or the Mediterranean Seas, air pollution, the disappearance of fauna and flora species, and other environmental problems cannot be resolved by national or regional activity alone. International conventions are not fully enforced; they lack the necessary authority on the one hand effective enforcement procedures on the other."⁹⁴

Despite writing before the conclusion of a number of significant EU treaties and other international agreements, Krämer recognised the need for an organisation that was empowered to provide greater leadership on a number of important issues in a way that international law did not offer clear guidance on. Bruno De Witte and Anne Thies helpfully explain the importance of Krämer's statement. De Witte and Thies suggest that there are two possible meanings that can be taken from this. "one for preferring ... EU action over separate action by its Member States ... and another for preferring EU action over the adoption of international conventions."⁹⁵ As a result of the EU's position as a quasi-federal supra-national organisation, it offers a unique forum for leading global policy movements.

The Cotonou Agreement is similarly in a unique position to allow the ACP group of states to transform itself into its own global governor. Through the Cotonou Agreement itself, the parties have been operating in an environment that provides for the basic elements of a democratic governing organisation, but the opportunity exists to form something greater than a group of states bound by more than just former colonial ties. The importance of global governance has been recognised from a sociological point of view, especially the need for greater governance leadership from states and organisations outside the traditional global north area. Chase-Dunn et al support the view that greater global governance from outside the global north would assist with the development and expansion of global governance, furthering democratic principles. In their article, Chase-Dunn et alia point out that "the existing institutions of global governance can scarcely be considered democratic[, and] [c]ore national polities located in the global north dominate global governance institutions that affect the peripheral and semiperipheral countries of the global South."⁹⁶ The ACP group is therefore well positioned to seize the idea of global governance

⁹⁴ L Krämer "Community Environmental Law – Towards a Systematic Approach" (1991) 11 Yearbook of European Law 151, at 151.

⁹⁵ B De Witte and A Thies "Why Choose Europe? The Place of the European Union in the Architecture of International Legal Cooperation" in B Van Vooren, S Blockmans, and J Wouters (eds) *The EU's Role in Global Governance: The Legal Dimension* (Oxford, Oxford, 2013) at 23.

⁹⁶ C Chase-Dunn, B Lerro, H Inoue, and A Álvarez "Democratic Global Governance Moving From Ideal to Reality" (2013) 43 International Journal of Sociology, at 42.

and provide an example for the global south as capable of organising itself in a way that has mostly been led by institutions located in the global north.

Chase-Dunn et al suggest solutions to democratic deficits on the international stage, with particular attention to the role that periphery and semiperiphery states can play in reducing the deficit.⁹⁷ The authors offer an interesting opinion on how to level the existing power imbalance between north-south countries, and what a future global governing system could look like. They state it is necessary to create a global civil society. Following this “comes the capacity to have a world parliament that is truly representative of the world’s populations.”⁹⁸ At this point, it is arguable that the authors depart from the general consensus about the realistic future of global governance. A number of authors concede that while desirable, perhaps the most effective way to utilise global governance is a combination of a blend between national and international law. However, there is some merit and applicability to the ACP case that certain social movements could help to reduce the North-South inequality challenges. One such movement is known as the global justice movement “that includes all those who are engaged in sustained and contentious challenges to neoliberal global capitalism, propose alternative political and economic structures, and mobilize poor and relatively powerless peoples.”⁹⁹ Using these ideas as a basis for development, the ACP group could take the existing structures that it has established, such as the Joint Parliamentary Assembly, and provide a platform for advocacy and policy development to the benefit of the global south.

A number of theories and ideas are presented under the heading of global governance. Theoretical or proposed governance modes, such as GXG have a number of admirable goals. Goals that include: the reduction of the democratic deficit that is apparent in the international system, increase transparency, and enhance the legitimacy of international organisations exercising governing authority on the international stage. The EU represents a form of regional and international governance not seen elsewhere in the world. It has an advanced set of rules and laws that clearly set out its powers and limitations. However, room still exists for the improvement of the EU’s own governing arrangements, so as to provide a better example of a truly democratic global governor.

Anne Marie-Slaughter provides an insight into the growing number of networks that have emerged in the 21st century that have governance responsibilities. For what should be obvious reasons, one of the main areas where global governance has an important role to play is in the regulation of the global economy. Slaughter identifies a number of regulatory networks and explains that each different network “has specific aims and activities, depending on its subject area, membership, and history, but taken together, they also

⁹⁷ Ibid at 45.

⁹⁸ Ibid at 46.

⁹⁹ Above, n 96 at 49.

perform certain common functions.”¹⁰⁰ Here a number of parallels can be drawn between the ACP member states, with specific developmental aims and with shared historical background. Slaughter continues that the aims of these networks are varied and provide a great deal of support for members of the networks. For example ‘[t]hey expand regulatory reach ... build trust and establish relationships among their participants that then create incentives to establish a good reputation ... exchange regular information about their own activities and develop databases of best practices [and] offer technical assistance.’¹⁰¹

Co-operation between ACP states in its joint partnership with the EU has meant the development of stronger and more effective methods for cross-border decision. An advantage for the ACP group is that, thanks to decades of joint co-operation between them and the EU, they have formed themselves into their own semi-governing network. While the Cotonou Agreement achieves a great deal at addressing development issues and bringing about democratic ideals and think to the developing world throughout the ACP region, the ACP group faced a number of challenges, which as Slaughter points out that, “in a world in which a major set of obstacles to effective global regulation is a simple inability on the part of many developing countries to translate paper rules into changes in actual behaviour, governments must be able not only to negotiate treaties but also to create the capacity to comply with them.”¹⁰² As the Cotonou Agreement demonstrates, aspects of the agreement worked well, and with revisions, changes that needed to be made were identified. Additionally, Slaughter identifies the democratic deficit as a governance issue that the EU must constantly address in its governing processes. This is an issue that the ACP must address as it moves closer to the expiry of the Cotonou Agreement. A paradox exists between needing more government on a global and regional scale on the one hand, and citizens and scholars who, on the other hand, “don’t want the centralization of decision-making power and coercive authority so far from the people actually to be governed.”¹⁰³

The ACP group could also look to the idea of the disaggregated state, advanced by Slaughter. Using the disaggregated state theory as a starting point, it could provide an appealing alternative to the loose governance arrangements that have been established under during the ACP’s partnership with the EU. Slaughter describes the disaggregated state theory “as simply the rising need for and capacity of different domestic government institutions to engage in activities beyond their borders, often with their foreign counterparts.”¹⁰⁴ Despite being relatively simple in its description, the idea of the disaggregated state is important because it recognises the need for cooperation to achieve objectives that may be too large or difficult for any one state or institution to achieve on its

¹⁰⁰ A-M Slaughter “Introduction” in *A New World Order* (Princeton University Press, Princeton, 2004) 1-35 at 3.

¹⁰¹ Ibid at 3-4.

¹⁰² Above, n 100 at 4.

¹⁰³ Above, n 100 at 8.

¹⁰⁴ Above, n 100 at 12.

own. By creating what are called 'horizontal networks' Slaughter states that networks would consist of a range of actors, from high-level officials addressing interstate issues, to regulators and officials. Crucial to the success of any post Cotonou Agreement would be the successful establishment of mechanisms that would enable the exchange of both ideas and best practice between members to continue advancing the developmental interests of the ACP group, for the benefit of citizens, who are living in some of the world's poorest states.

VI Conclusion

Long-time recipients of assistance and aid by traditional European powers, the African, Caribbean, and Pacific Island nations have enjoyed preferential trade deals in an attempt by those European powers to boost the economies and assist with the overall development of each recipient state. A number of conventions and treaties have been entered into throughout the 20th century as a way of providing such assistance.

When the Cotonou Agreement was signed in 2000, the EU and ACP countries were seeking a new way of interacting and cooperating so that the ACP states could more effectively and efficiently benefit from the relatively large amount of aid that they received from the EU. Controls were built into the Agreement as a means of providing the oversight required to ensure that aid was being delivered to where it was most needed and reviews were taking place so that if objectives or priorities changed, financial aid and developmental assistance could be diverted elsewhere.

Significantly, under the Cotonou Agreement, the EU and the ACP states agreed on a number of terms that sought to ensure that democracy and human rights were respected and central to all aspects of the trade agreement. These terms provided an idealistic and principled aspect to an economic treaty arrangement. The Agreement also includes a number of provisions specifying the appropriate dispute resolution process should disagreements between the parties occur. Importantly for global governance, which seeks to advance democratic ideals of accountability, transparency and legitimacy of international institutions, the Agreement's procedures ensure that accountability is maintained to those most impacted by the decisions made by the parties to the Agreement. The Cotonou Agreement has resulted in enhanced cooperation among ACP countries and has set the stage for a 21st century that will see more powerful and influential groups conducting international relations in a way that achieves substantial outcomes, but which is also open and transparent.

I have argued that the Cotonou Agreement is a model for how international agreements can be drafted and implemented with transparency and openness. Implementing international agreements where a core element is to enhance the legitimacy of organisations that would otherwise seek to exert authority and control will help create a more democratic

international legal system. GXG shows how the Cotonou Agreement is a unique arrangement in international law and I consider that as a result of its democratic nature, the Cotonou Agreement has made significant achievements in line with its stated objectives.

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