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Preface

*Hans Peter Bull
President of the German Section
of IIAS*

Every year the International Institute of Administrative Sciences holds an international conference or congress which is attended by senior public administration officials and by academics from all over the world; the institute's national sections are responsible for organizing the event in their countries. In 1983 the Federal Republic of Germany last hosted the international congress of the IIAS, which was held at the International Congress Centre in the divided city of Berlin. The board of the German Section considered it appropriate to host such an international event again after more than twenty years, not least to illustrate the most recent developments in the German administration and administrative sciences going far beyond the works of Max Weber. Within the framework of development co-operation, Germany also supports institution-building and administrative reform. It was possible to send out invitations to Berlin, because the Federal Ministry of the Interior provided considerable funding. Hence, the third Specialised International Conference of the IIAS was held again in Berlin, this time in the old centre of the capital city at the Maritim proArte Hotel, from 20 to 23 September 2005.

The conference's main topic, which was suggested by the board of the German Section and approved and defined in greater detail for the working groups by the IIAS' bodies, was "Public Administration and Private Enterprise: Co-operation, Competition and Regulation". Compared with the topics of the congress in 1983 the focus has clearly shifted: While in 1983 the topics discussed were "The Public Enterprise as an Instrument of State Policies" (topic 1 of the congress), "The Administration of Metropolitan Areas" (topic 2) and "Aspects of International Administration" (topic 3) emphasizing an etatistic perspective, the focus now rests on the relationship between two areas, which, from the outset, are treated more or less equally. The topic of the 2005 conference reflects the change in the perception of the state which has taken place over the last few decades: The state is no longer (primarily) seen as an institution unilaterally governing, managing and controlling social circumstances, but as one "player" among others who exert power of differing legitimacy, compete with one another and need to co-operate in many different areas.

The reports of the conference's four working groups and the overview given by the general rapporteur clearly illustrate that below the level of state theory a great variety of differentiated discussions took place and that interesting results were achieved by making the general statements more practical. Many examples of implemented or planned reforms of public administration, of co-operation with public enterprises and the regulation of markets clearly demonstrate that theory and practice can only be successful if both sides try to exactly describe reality and jointly strive for effective reforms. Even though some problems we are facing today may be depressing, it is encouraging to see examples of the great commitment undertaken by state administrations and private enterprises to find solutions.

The developments in individual regions were analysed in a number of panel discussions: "North American Approaches and Methods of Co-operation between Public Administration and Private Enterprise" (USA, Canada and Mexico), "Contracting-out in Local Governments – Outcomes, Limits and Challenges" (Asia-Pacific Panel), and

“Administrative Reform and the Reduction of Bureaucracy: An Ongoing Challenge for Public Administration and Private Enterprise” (Germany).

More than 350 people from 54 countries participated in the conference. Both the meetings of the working groups and the panel discussions were characterized by interesting presentations and lively debates. The Braibant Lecture given by Ignacio Pichardo Pagaza, former President of the IAS, and the celebrations on the 75th anniversary of the IAS with contributions on the institute’s history met with great interest.

The side programme started with a reception at the invitation of the Federal Ministry of the Interior and Deutsche Bank AG in its Berlin premises and ended with a visit to the asparagus and pumpkin farm in Klaietow near Potsdam. Many participants also got an impression of Berlin and its surroundings with many historic buildings and memorials.

A selection of the conference’s presentations will be published in the International Review of Administrative Sciences. The publications of IAS can be found on its website at www.iasiisa.be.

The German Section wishes to thank all participants for coming to Berlin and the IAS secretariat for its constructive co-operation during the conference. It will continue to be committed to a fruitful international exchange of information and experience.

Prof. Dr. Hans Peter Bull, Hamburg
President of the German Section of IAS

Prof. Dr. Hans Peter Bull, the President of the German Section of IAS, was Federal Commissioner for Protection of Data Privacy (1978-1983) and Minister of Interior of the federal Land Schleswig-Holstein (1988-1995). He was also a lecturer at the Faculty of Law at the University of Hamburg and now he is Professor emeritus.

Final Report on the IAS Berlin Conference 2005

Theme: Public Administration and Private Enterprise: Co-operation, Competition and Regulation

*Luiz Carlos Bresser-Pereira,
General Rapporteur*

For three days the participants of this IAS Berlin Conference discussed the relations between the state organization, civil society organizations, and private enterprises. Most of the discussions were held under the general title of PPP – public private partnership – but it is important to emphasize that this expression was used during the conference in a broad sense. On the other hand, the attitude of the participants in relation to such partnerships was mixed. While some participants – mostly young people – suggested that partnerships are the future, I would say that most expressed resistance to the view that partnerships are a kind of general solution to all problems. On the contrary, it was stressed that decisions should follow on a case by case method.

Papers were distributed among four workshops according to the corresponding sub-topics: I – Co-operation and Partnership; II – Regulation; III – Public Services; IV – National Governments in a Globalized Economy. I participated in the four workshops as actively as I could. The presentations were competent and stimulating, offering questions rather than ready-made solutions – questions that stirred thinking. At the end, I also did not have an answer to all questions, but could elucidate two basic questions: (1) Who are the partners? (2) How can we increase state capacity through partnerships?

(1) Who are the partners?

From the beginning of the conference three things became clear:

First, in the provision of public services, partnership today is not just a two fold public-private relation, but a three fold relation: state, third sector, and business enterprises.

Second, although public administration remains responsible for services, its provision does not follow a classical, hierarchical pattern but it is rather characterized by networks among the public, private, and associative or public non-state sectors. When we speak of governance we mean governance networks. There is a change from the focus on free-standing organizations to organizations operating in networks or clusters. In such cases, an important concern is the degree of embedment of each organization, e.g., the dependence relationship of each organization within various types of networks, notably because we can think in ‘mixed networks’ involving cooperation of government, firms, and third sector. In each network we are able to visualize links between the actors that extend the embedment of the network. There are conflicts but the outcome of balancing and mixing is eventually an increase in competency. Organizational and individual actors share projects, common mental representations and preferences, etc., which allow for collective anticipation of needs, training in the work situation, coordination of know-how teams, and the collective resolution of problems.

Third, in the associative sector it is important to distinguish the non-profit service organizations from the social accountability or political advocacy organizations. While the former have an increasing role in the supply of social and scientific services – such as hospitals, museums, universities, research centers, the later play an increasing role in making public services more accountable to society, in making democracy more participatory.

(2) How can we increase state capacity through partnerships?

The central concern of the conference was with partnership, and the underlining question was: Do public-private-associative partnerships imply the withdrawal of the State or not? And the general answer that I was able to detect is that partnerships only make sense if they are part of a general process of labor division through which public administration can outsource services to public non-state or non-profit organizations with the aim of reducing costs for taxpayers. In other words, partnerships are a technical question concerned with how to provide public services more efficiently. When this is not the case, but the aim is to reduce the role and size of the state, we are in the field of politics and - in democracy - the decision will be taken by voters.

The two political decisions that each society is supposed to make in these matters are: What are the social and scientific services that the state is supposed to provide freely, or almost freely? What are the monopolistic or quasi-monopolistic public services (utilities) that the state is supposed to provide directly or through state-owned enterprises?

Once a decision is taken, for instance, that health care should be offered universally by the state, the technical decision is to know if it should be provided directly or through partnerships. The general tendency today is to opt for the second alternative, although each case will be a different case. If the service is contracted out, it will be contracted with non-profit organizations, which will be closely kept under control by management contracts, competition for excellence among organizations offering the same kind of service, and through social accountability mechanisms.

In public services, a distinction will have to be made between services that are financially self-sustaining, and services that will require a continuing subsidy of the state. In both cases if the service is privatized or part of a PPP project, it is important to know whether the service is a competitive one or monopolistic, and, if monopolistic, how easy or difficult it will be to set reasonable prices.

In the case of services that are not self-financed, we have a situation in which *stricto sensu* PPP applies: a business enterprise will share with the state the cost of the investment, and the contract will involve continuing payments by the state to complement the firm's revenues. PPPs, understood essentially in this way, have been effective for building and maintaining highways, which - although monopolistic - may include having reasonable prices set administratively. In other cases, *stricto sensu* PPPs must be viewed with caution. To use them to avoid incurring a public deficit was not viewed as a legitimate practice.

In the case of public services that are self-sustaining but monopolistic, the probability that they would imply cost reduction or efficiency gains was viewed as disputable. In several circumstances prices increased instead of decreasing after privatization. The prediction that regulatory agencies will be able to set the correct prices is highly dubious. In the case of non-monopolistic markets, however, such as the cell-telephone system, privatization and regulatory agencies are a good alternative.

In the table below we summarize these four cases.

	Contract	Probability of cost reduction	Example
Not self-financed social, or scientific service	Management contract	Positive	Health care, universities, museums
Partially self-financed public service	PPP	Case by case	Highways construction and operation
Monopolistic fully self-financed public service	Concession/ Privatization	Negative	Water Supply
Competitive fully self-financed public service	Concession/ Privatization	Positive	Cell-telephone system

Today, there are strong pressures on privatization and PPPs – pressures that respond to ideology and to interests. Local governments as well as developing countries are often forced to adopt such solutions. World Bank and IMF offer developing countries the possibility of investments without additional public deficit (public sector borrowing requirements) provided that the public service is privatized, or, if it is not self-sustaining, subject to a PPP.

The privatization of public services is directly tied to the creation of regulatory agencies. Conservative economists were critical of regulation of poorly competitive markets such as drugs or transportation, arguing that the risks of capture could outnumber the costs of private firms' collusion. Yet, when the opportunity for privatization appeared in the 1980s, regulatory agencies were viewed as the perfect solution provided that they were independent. During the conference, in the discussion of regulatory agencies, independence was always stressed but a distinction was made between administrative and substantive independence. There was no disagreement on the need for administrative independence. Also, the use of management contracts was not viewed as an impediment. Yet, in relation to substantive independence, it was stressed that it should be limited to price and quality setting, not concerned with policymaking which should be a prerogative of parliament or the executive branch. In setting prices, regulatory agencies should be made accountable to society through parliamentary review and through social accountability mechanisms.

The German Panel

The conference included a German Panel that began with severe criticism of the German state, thought to be too bureaucratic. The representative of the state responded by drawing attention to the actions that were being undertaken to de-regulate and de-bureaucratize the state. Yet, what became evident in the debate was the need for a more general approach to state reform in Germany. Germans are committed to their social system, which is central to them. Thus, the question is how they will reform the state; how they will make it more efficient, less bureaucratic, without losing social solidarity. To copy the American social system is not an alternative. Yet, we can see a response to that question in the model of public management reform, particularly in the form adopted by social-democratic governments, such as Great Britain during the last labor administration, New Zealand again during the present labor administration, Sweden, and even Brazil under the Cardoso administration. Yet, such an encompassing model of state reform will only be viable

if it involves a major agreement between senior bureaucrats and businessmen on the need of an efficient state.

Global Governance

Governance was discussed in several panels and was the subject of a special panel on global governance sponsored by the United Nations. Yet, it was clear from the panelists that there is a major difference between national and local governance, which is an increasing reality, and global governance, which remains more or less an ideology.

Globalization is characterized by economic competition among nations. However, it is often said that globalization involves the demise of the state. The nation-state would become so interdependent and unable to formulate policies alone, that it would become irrelevant. This view is considered highly exaggerated. On the contrary, globalization requires stronger, more capable states that are able to support their respective enterprises in global competition. The agreement between nation-states represented by the European Union is not a signal that the nation-state is disappearing, but an indication that Europeans have decided to get more united to counteract the effects of globalization.

It is possible to speak of global governance if we think in terms of the system that mankind is building around the United Nations. At national level, governance is a process of sharing power with civil society: thus, it is a form of participatory democracy; it is a way towards deliberative democracy. At global level, we cannot speak of participatory democracy. But we can speak of a system to avoid war and create cooperation among nations which is present in the agreements established through the United Nations.

IIAS 75th Anniversary Panel

The Conference ended with a panel in which several speakers elaborated the contribution that the Institute has historically given to public administration at world level. A center for debates, for scientific enquiry, for publication of books and of a high-level academic journal, for documentation – I believe that with this 2005 Berlin Conference the IIAS gave a demonstration of its continuing vitality.

Luiz Carlos Bresser-Pereira is professor of economics at Getúlio Vargas Foundation (São Paulo) since 1959. He was visiting professor, giving regular graduate courses of development economics, at the University of Paris I (1978) and of political theory of modern democracy at USP's Department of Political Science. He was also visiting fellow at the École d'Hautes Études en Sciences Sociales, Oxford University, and at USP's Institute of Advanced Studies. While keeping his academic activities, from 1963 to 1982 he was vice-president at the Grupo Pão de Açúcar. In 1983, with the election of the first democratic governor to São Paulo – Franco Montoro – he became president of the state bank of São Paulo, and two years later, chief of staff of the governor. In April 1987, in the aftermath of the Cruzado Plan crisis, he accepted being Finance Minister of Brazil. The economy returned to order, but having no conditions of implementing the required fiscal adjustment, he left the ministry at the end of that year. Since July 1999 he is fully dedicated to the academic life.

Co-operation and Partnership of Public Administration and Private Enterprise: economic opportunities, constitutional ramifications and political objections

*Ian Thynne,
Rapporteur Workshop I*

Overview

The Workshop recognised that for decades public administration has cooperated with private enterprises which have been able to contribute technical and economic know-how and financial means to the production or provision of goods and services of public significance. Such cooperation has occurred in various areas of activity, including public transport, energy supply, telecommunications, waste disposal and reprocessing, among others. Some kinds of cooperation have led to the privatisation of public tasks. But in many cases, mixes of public and private activity have been retained or established as the key bases on which goods and services are produced or provided in the public interest. Accordingly, public authorities are now sharing significant expertise, knowledge and power with private enterprises as well as with various civil society organisations, with the boundaries or "frontiers" between the public and private sectors increasingly becoming more fluid and permeable. This development opens many opportunities for improvement in public infrastructure and for economic growth and social development. But it also provokes important questions about the extent and means by which the legitimate private interest in making profit or serving particular social causes or concerns can be balanced against the equally legitimate public interest in the equitable and accessible provision of services to a community, based on the underlying right of the democratic organs of government to direct the performance of public services.

The Workshop sought to address this balancing in the light of the experience of practitioners and academics of different disciplines -- economic, legal and political -- and to consider the conditions under which the opportunities and possible disadvantages might be harmonised.

Goods, services, roles, tasks, and relationships

It was acknowledged in the Workshop that goods and services consumed or used in a country can be produced, provided, owned, regulated and/or facilitated by various mixes of public and private activity involving organisations of the state, market and civil society. The arrangements adopted are illustrative of different approaches to the management of public affairs.

One approach has the state directly involved in the production and provision of a wide range of goods and services. Extensive state ownership of the means of production and provision serves to regulate and facilitate the economic and social life of a country, such that the market and civil society are severely constrained by and subordinated to the state. The extreme case is a communist state: an all-embracing state in which the market is essentially non-existent and civil society is poorly developed and tightly controlled.

An alternative approach is to leave the production and provision of goods and services very much to the market and civil society, subject to a sparing degree of state regulation and

facilitation. State ownership is minimal and thus of little significance in terms of production, provision, regulation and facilitation. The classic case is that of a liberal-conservative state: a limited, non-interventionist state with an established and largely self-regulating market and a freely formed and active civil society.

The arrangements in most countries and systems are situated between these extremes, with varying mixes of the state, market and civil society -- hereafter “state” and “non-state”. There are numerous possibilities. For example:

- state ownership of land and the non-state production of food through the use of that land under a lease and payment-for-use agreement;
- state production and non-state provision of electricity, with state facilitation in the form of financial support for the provider being complemented by consumer charges;
- non-state provision of telecommunications on a profit basis via consumer charges, within a framework of state regulation;
- state regulation of the non-state production of health care equipment and pharmaceuticals, along with state facilitation by way of a subsidy to the producers and/or the users or consumers; and
- state facilitation of the non-state provision of selected levels of education through the direct financing of non-state providers and/or by giving users a voucher to cash in with the providers.

Similar examples could be cited for most other goods and services.

In turn, there are various possibilities for the tasks of policy formulation, implementation and evaluation which are involved in each of the roles of ownership, production, provision, regulation and facilitation. Thus, for example:

- the state’s ownership of land, production of electricity, and regulation of telecommunications could all be based on both state and non-state advice (as aspects of policy formulation) and subject to state and non-state reviews (as aspects of policy evaluation);
- the state’s regulation of the non-state production of health care equipment and pharmaceuticals could be achieved by a considerable degree of self-regulation on the part of the non-state producers (as an aspect of policy implementation); and
- the state’s facilitation of the non-state provision of selected levels of education could be affected by the findings of both state and non-state reviews (as aspects of policy evaluation).

Again, similar examples could be cited for other goods and services.

The arrangements in practice are often complex and multi-dimensional. They usually involve an array of organisations, as influenced by the roles and tasks and by the goods and services to which they relate. They are all dependent on some kind of relationship – involving a degree of cooperation or partnering -- between or among state and non-state organisations, groups and individuals.

Three broad types of relationships can be distinguished. One is super-subordinate, while the other two are coordinate. Each has a set of distinctive features.

One relationship is a command relationship. This is a superior-subordinate relationship. It is based on an order or some kind of formal requirement (certification, registration, standard, etc), with imposition and compliance being key elements. It might be depicted figuratively as involving an “imposing glare to which people respond submissively”.

A second relationship is an exchange relationship. This is a coordinate relationship. It is based on a contract, with offer and acceptance being key elements. It is captured by two people “shaking hands”.

A third relationship is an associational relationship. This too is a coordinate relationship. It is based on an accord, with give and take being key elements. It involves people “rubbing shoulders” or “walking arm-in-arm”, depending on how close or intimate the relationship is.

In the context of state and non-state activity and interaction, each of these three broad types of relationships usually involves the exercise of legal and/or non-legal power, the distribution or sharing of information, and the use of financial resources. The power, information and financial dimensions inevitably affect the structure and dynamics of the relationships in each case.

A host of questions

It was appreciated in the Workshop that the matters addressed above raise numerous questions. It was also appreciated that possible answers can often only be provided or suggested in specific cases and on the basis of empirical research of the kind found in many of the papers presented in the Workshop. Important basic sets of questions include:

Goods and services. What types of goods and services are most amenable to cooperative interaction, partnering or the like involving state and non-state organisations? What, if any, public interest requirements need to be met when cooperative interaction focuses on public goods or on toll goods of prime necessity to the public? Are there particular goods and services which will always, or should always, involve some form of state regulation or facilitation, if not ownership, production or provision?

Roles and tasks. What combinations of roles and tasks usually underlie cooperative endeavours involving state and non-state organisations? In what, if any, circumstances is an extreme disaggregation of roles and tasks likely to be found -- when production, provision, ownership, regulation and facilitation are all organisationally separated in terms of their policy formulation, implementation and evaluation components? Does a reduction in state ownership, production or provision in favour of non-state activity often, or always, result in an increase or realignment in the regulatory or facilitatory activities of the state? Does the movement from state to non-state ownership, production or provision necessarily signal a decline in state capacity or responsibility concerning a particular area of activity?

Relationships. In what circumstances, in what ways, and with what consequences do command relationships feature in cooperative endeavours involving state and non-state organisations? For what goods and services and associated roles and tasks are exchange relationships and associational relationships between state and non-state organisations particularly relevant? Are contracts as the basis of exchange relationships equally applicable to

the purchasing of advice, action and reviews? Is a reasonably long-term cooperative relationship involving state and non-state organisations best underpinned by a contract or an accord? To what extent should mixes of state and non-state activity that are underpinned by contracts and accords be subject to parliamentary and judicial review processes?

Types of organisations. What types of state organisations are able, and/or tend most readily, to enter into cooperative relationships with non-state organisations -- ministries/departments, executive bodies, statutory bodies, constitutional bodies, government companies, government foundations, government trusts? To what extent, and in what ways, do the legal-structural foundations of different types of state and non-state organisations influence, if not dictate, the kinds of relationships which they enter into? Are the kinds of relationships influenced by, or dependent on, the sorts of goods, services, roles and tasks involved?

Constitutional, political and economic considerations. What are the implications of cooperative relationships between state and non-state organisations for state sovereignty and the rule of law? To what extent, and in what ways, is the development of cooperative relationships between state and non-state organisations influenced by the federal or unitary basis of a state, and/or by the parliamentary or presidential basis of the executive? Who within the state are the main drivers and supporters of cooperative relationships being forged -- key politicians, senior administrators and advisors, particular political parties, special interest groups? What are their motivations and related arrangements in terms of public choice, transaction cost and principal-agent issues and concerns. What are the opportunities, problems and concerns inherent in levels of economic development and the nature of market conditions? What support is forthcoming from financial institutions and other facilitatory bodies for small enterprises and NGOs to get involved in cooperative ventures with state organisations?

Papers and discussions

The papers presented at the Workshop were grouped for discussion as follows (see Annex I below for presenters' names and paper titles):

Theories, Models and Principles -- Papers 1, 2, 3, 4.

Public Sector Reform and Privatisation -- Papers 5, 6, 7.

Legal Issues, Risk and Operational Considerations -- Papers 8, 9, 10, 11.

Sub-National Experience and Cases -- Papers 12, 13, 14.

Sectoral Experience and Cases -- Papers 15, 16, 17, 18, 19, 20, 21, 22.

The wide-ranging presentations and discussions canvassed a number of issues and concerns that are central to the way in which cooperative alliances and associated relationships are forged and maintained between the public and private sectors in various policy arenas and at various levels of organised activity. Some of the issues are of underlying conceptual and theoretical importance, while others have a more specific, practical or applied focus and bases. Six are highlighted here as being of particular relevance to the questions and associated matters which are outlined above and which guided and informed the proceedings.

First, it was acknowledged very clearly that the state in its various guises remains a key actor in the management of public affairs, but with its roles having been recast and

refocused in keeping with the increased governance involvement and capacity of market and civil society organisations, groups and individuals. The state is now very much a facilitator, a warrantor in terms of enabling or empowering others to act, a scene-setter, and a legitimising force, with the need to think and act strategically as it seeks to develop and draw on talent in the market and civil society for public purposes and public benefit.

Second, there is continuing logic in considering the operational significance of function and place configurations in the management of public affairs, with a focus of interrelated developments involving various forms of subsidiarity. Presented cases and examples illustrated, for example, the increasing extent to which innovative alliances are being forged and valuable experience is being acquired in the management of inter-organisational and inter-sectoral relationships at the sub-national level of government. There is thus considerable merit in research and practical attention being focused on the forms and dynamics of local/community governance, politics and management.

Third, as various functional and territorial initiatives are taken in the name of subsidiarity, decentralisation and/or partial privatisation, there is an increased recognition of two interrelated tensions which have long been a feature of public management but which are assuming even greater significance as governance systems become more diversified and pluralistic. One is the tension between the integrative forces of government and the expectations of increased organisational autonomy. The other is the tension between vertical relationships based on hierarchies and command systems and horizontal relationships based on exchange and associational arrangements. These tensions are complicated by the forces, expectations and relationships being criss-crossing and multi-dimensional. They need to be managed with great skill and care.

Fourth, the more governance arrangements involve inter-organisational alliances within and across sectoral boundaries, the more their study can be approached from various network perspectives. Such perspectives include the idea not only of organisations as networks in themselves, but also of organisations in networks, of networks of organisations, and of networks as organisations. Organisations in networks comprise the use of command, exchange, associational and other kinds of relationships. Networks of organisations require network facilitators, managers, brokers and the like. Networks as organisations could well need or led to the development of new legal forms which could differ significantly from the various public and private law arrangements presently adopted within and beyond government.

Fifth, developments involving public-private mixes and related forms of service delivery are extending beyond e-governance to m-governance as mobile phone technology becomes more sophisticated and more accessible. These developments require the introduction or refinement of laws, processes and procedures to enhance the efficiency and effectiveness of information dissemination and exchange, while also maintaining appropriate standards and levels of security. New opportunities and challenges are emerging for greater degrees of management flexibility and responsiveness. These will build on, but also depart from, the foundations and experience of e-governance in recent years.

Sixth, means of fostering responsible and legitimate government and governance remain of fundamental importance. Notions of role-responsibility, probity-responsibility and accountability-responsibility give rise to a number of interrelated requirements for organisations. The requirements are that roles and tasks be specified as clearly as possible and accompanied by an appropriate grant of legal power; that relevant ethical standards be agreed on; that appropriate mechanisms of accountability be put in place; that roles and tasks actually

be performed in accordance with agreed ethical standards and other relevant expectations; that accountability mechanisms actually be invoked in relation to the performance of roles and tasks; and that accounts rendered in the performance of roles and tasks actually be in keeping with agreed ethical standards by being full, frank, open and in good faith. These requirements are applicable to all forms of organisational activity, with inter-organisational alliances across sectors posing special challenges for those involved.

Concluding comment

The Workshop provided a valuable opportunity to explore the above matters through a combination of theoretical, empirical and country-based lenses, with more questions being asked and more issues being raised than could be dealt with in the time available. Much more work remains to be done in this area of governance, involving comprehensive empirical studies informed by relevant concepts, models and theories.

Régulation: concept et mise en œuvre. Expériences comparées des agences de régulation dans différents Etats

*Michel Franc,
Rapporteur de l'atelier II*

Monsieur le Président,
Monsieur le Rapporteur Général,
Mesdames et Messieurs,

L'atelier n 2 avait pour thème d'étude: «la régulation: concept et mise en œuvre. Expériences comparées des agences de régulation dans différents Etats».

Organisé en 5 sessions, l'atelier a recueilli 18 contributions. Ces contributions étaient riches et les débats tout autant. La synthèse est donc difficile. Nous tenterons de la faire autour de trois séries de conclusions. Puis nous terminerons ce rapport en esquissant quelques remarques sur le bon usage de la régulation.

(I) Première série de conclusions

L'atelier ne s'est pas attaché à donner une définition de la régulation, mise à part la présentation originale proposée par B. Du Marais sur l'évaluation d'un «modèle européen» des régulateurs.

Il ressort cependant des débats et travaux quelques convergences de vue *sur ce que n'est pas la régulation*.

Ce n'est pas la loi du marché: la régulation peut en garantir l'accès et la libre organisation mais elle le contrôle et doit le corriger.

Ce n'est pas non plus la loi exclusive de l'Etat. L'Etat encadre et fixe les objectifs de la régulation – quand il s'agit d'une régulation publique et non d'une autorégulation – mais il délègue certaines de ses attributions et fonctions à des instances dites indépendantes: les régulateurs.

La régulation n'est pas non plus l'absence de réglementation ou de normes. C'est une autre forme de réglementation, moins marquée par la contrainte et l'unilatéralisme et faisant appel à des directives ou des recommandations plus souples et élaborées différemment de la réglementation traditionnelle, ce qui ne va pas sans difficultés d'insertion dans la hiérarchie classique des normes juridiques.

S'il est difficile de tenter une définition de la régulation, il est plus aisé de constater dans tous les pays étudiés et qui regroupent des économies de niveau de développement différent et de traditions juridiques et culturelles originales une floraison assez spectaculaire d'autorités régulatrices.

Certaines causes communes peuvent être avancées.

Est-il nécessaire ici, devant vous, de rappeler les conséquences des tendances lourdes de l'évolution de nos sociétés exposées à la mondialisation: montée en puissance de l'économie de marché et importantes privatisations dans certains pays, comme le montrent les

rapports de nos amis chinois et parallèlement retrait plus ou moins marqué des Etats nationaux sur des fonctions de souveraineté?

Ce développement des institutions régulatrices n'est sans doute pas l'application d'un modèle préétabli mais il ne faut pas négliger la référence, dans de nombreux pays, aux «agences» américaines et britanniques et, en particulier, dans les pays membres de la Communauté européenne aux objectifs et aux exigences des autorités et de la réglementation communautaires. Dans leurs contributions nos amis belges, finlandais, grecs, italiens et polonais l'ont bien montré et il en va de même pour la France.

S'agissant du domaine de la régulation, beaucoup de contributions ont insisté sur son application dans le secteur économique, en particulier dans le secteur de la production et de la distribution des services d'utilité collective organisé en réseaux et souvent assurés par des entreprises publiques. C'est ici qu'entre en scène le couple «privatisation – régulation». De nombreux travaux ont été consacrés au rapport historique entre privatisation et régulation, la première entraînant la seconde. La régulation apparaît alors comme un mode d'organisation des marchés où les opérateurs historiques, souvent des monopoles d'Etat, doivent faire face à des opérateurs privés entrants. Mais dans ce «jeu de miroir» entre privatisation et régulation on ne saurait oublier – et certains des rapports l'ont souligné – le processus inverse: la régulation conduisant à la privatisation. Dans un premier temps, les opérateurs historiques, souvent monopoles d'Etat, entrent dans le champ de la concurrence régulée avec un statut inchangé mais leur comportement économique, de plus en plus calqué sur celui d'un entrepreneur privé, peut entraîner sinon légitimer leur privatisation progressive.

Mais on ne saurait limiter ainsi le champ de la création d'autorités régulatrices. Elle s'est développée – parfois même avant de concerner les services d'utilité collective en réseaux - dans des secteurs dits «sensibles», dès lors que sont en cause des libertés publiques ou les droits des citoyens, dans les domaines de la communication audiovisuelle, de la protection des données personnelles face à l'informatique et aux écoutes téléphoniques ainsi que pour renforcer les garanties offertes aux consommateurs en matière de produits alimentaires et de produits de santé. Dans ces cas - même si l'approche concurrentielle n'est pas absente - l'objectif est la séparation institutionnelle et fonctionnelle avec l'Etat et l'administration classique.

(II) Seconde série de conclusions

Au delà des appellations qui sont diverses – Agence, Conseil, Haute-autorité, Autorité, Commission – on peut retenir l'existence de missions et de fonctions voisines et de statuts comparables. On retrouve en effet plus ou moins affirmés et plus ou moins complets selon les pays étudiés, les éléments suivants:

- 1) une absence de subordination hiérarchique au Gouvernement,
- 2) un pouvoir de réglementation délégué par l'Etat ou partagé avec les secteurs régulés, mais un pouvoir qui apparaît souvent subsidiaire ou du moins très limité et à vocation technique très marquée,
- 3) un pouvoir de décision important. Ce sont des décisions individuelles portant sur l'organisation du secteur, ses conditions d'accès, l'attribution de certains droits (agrément, licences, autorisations, ...) pour intervenir et agir sur le marché et dans le secteur,

- 4) un pouvoir de sanction et de contrôle des acteurs du secteur. Les sanctions allant des sanctions pécuniaires aux sanctions administratives (suspension ou retrait des autorisations ou licences),
- 5) un pouvoir de médiation dans les litiges entre opérateurs et un pouvoir de recommandation, d'incitation, à la portée juridique incertaine, qui fait penser à une «magistrature d'influence» pour reprendre l'expression de P. Gonod,
- 6) une autonomie plus ou moins forte sur le plan budgétaire et financier. Le financement de ces autorités allant d'allocations budgétaires de l'Etat (mais dont l'usage est exempté de certains contrôles traditionnels) à l'existence de ressources propres provenant de redevances sur les autorisations délivrées ou pour services rendus.

Le point le plus délicat est celui de l'*indépendance* des régulateurs. A quels critères peut-on admettre qu'une institution dispose de la liberté de décider et d'agir pour lui permettre d'assurer sa mission?

Certains participants ont insisté sur la nature juridique et le niveau des textes qui crée le régulateur. Une loi votée par le Parlement sacralise davantage l'autorité régulatrice qu'une décision gouvernementale. Tout cela est encore plus net si la Constitution les prévoit comme c'est le cas en Grèce pour les autorités veillant à la défense des libertés publiques.

La reconnaissance d'une personnalité juridique distincte de l'Etat n'apparaît pas essentielle et crée peut-être autant de problèmes qu'elle en résout.

Au delà de ces aspects formels, la plupart des auteurs s'accordent pour retenir deux critères déterminants: la collégialité et le statut des dirigeants. Il n'y a d'autonomie réelle que si l'on est en présence d'un collège de décideurs nommés dans des conditions évitant toute suspicion de choix exclusivement politiques. Et, si le choix doit être fait par le Parlement ou le Gouvernement, il convient de faire appel à des personnalités compétentes détachées à la fois du monde politique et des acteurs du secteur concerné. Tout aussi importantes sont la durée du mandat des dirigeants – qui doit être suffisamment longue – et l'impossibilité d'y mettre fin avant le terme, sauf cas exceptionnels et strictement définis.

(III) Troisième série de conclusions

Il demeure certains problèmes mal réglés et certaines insuffisances.

Le contrôle et la responsabilité des régulateurs sont l'un de ces problèmes.

Tous les intervenants s'accordent sur la *nécessité* et les *difficultés* du contrôle.

Indépendamment du contrôle juridictionnel – qui s'exerce plus ou moins efficacement sur les décisions, notamment les décisions individuelles évoquées précédemment – ce qui suscite discussion et tâtonnements dans la mise en œuvre ce sont les contrôles portant à la fois d'une part sur la bonne gestion, la bonne «gouvernance» des régulateurs et d'autre part sur l'adéquation de leur action aux missions qui leur sont confiées.

Les autorités régulatrices peuvent devenir – en raison de leur création récente – des exemples d'organisations administratives efficaces mais elles peuvent également dériver vers

des bureaucraties autonomes d'autant plus difficiles à limiter qu'elles s'abriteront derrière le paravent de leur indépendance.

Sans entrer dans les détails il y a une certaine convergence de vues sur l'importance d'un contrôle de bonne gestion administrative et financière confié à des institutions elles-mêmes indépendantes: juge financier ou des comptes et organismes d'audit et sur l'opportunité d'un contrôle, plus délicat à concevoir, comme nous l'ont montré nos amis brésiliens, sur la pertinence et l'efficacité de la régulation par rapport aux objectifs fixés. Un tel contrôle devrait pour l'essentiel être davantage d'origine parlementaire que gouvernementale.

Parmi les problèmes posés par les autorités régulatrices celui de leur succès c'est à dire de leur multiplication – qui n'est pas sans évoquer un phénomène de mode - a retenu l'attention. Le foisonnement des régulateurs obscurcit le paysage institutionnel et complique la compréhension par les opérateurs eux-mêmes du cadre de leur action et surtout par les usagers du contenu de leurs droits. Bien plus, la coexistence d'autorités sectorielles «verticales» et d'autres à compétence générale et «transversale» (les autorités en matière de concurrence, par exemple) ne va pas sans créer des difficultés de fonctionnement, voire des conflits d'attribution comme l'a montré, à partir de l'exemple belge, Franck Naert.

Certaines autorités régulatrices en sont conscientes. Et l'on voit se développer des formules souples de coordination entre régulateurs et une sorte d'«inter-régulation» informelle qu'il convient sans doute d'encourager. Cette dernière observation me conduit à quelques remarques finales sur le bon usage de la régulation.

(IV) Conclusions

- 1) La régulation ne doit pas être indissolublement liée à la privatisation. Comme l'a souligné Enrique Saravia il ne faut pas juger la régulation sur le bilan de la privatisation et surtout ne pas faire de la régulation le «bouc émissaire», pour reprendre la formule d' Aristide Police, des échecs voire des scandales de la privatisation.
- 2) Pour éviter ces critiques, la régulation ne saurait se limiter à affirmer et garantir la concurrence. Ce premier objectif ne doit pas occulter les autres. Et il faut sans cesse se poser la question de savoir qui doivent être finalement les bénéficiaires de la régulation: les opérateurs économiques certes mais aussi les *consommateurs et les citoyens*. Au delà de la baisse des tarifs ou des prix – qui sont d'heureuses conséquences – il faut prendre en compte d'autres objectifs comme l'accès aux services, la qualité de ceux-ci et la sécurité des usagers. Il convient aussi d'organiser la participation de ces derniers à l'élaboration des politiques de régulation et à leur contrôle. Mais c'est, il faut le reconnaître, plus un souhait qu'une réalité.
- 3) Les autorités régulatrices présentent des caractéristiques communes. Mais ces caractéristiques ne constituent pas un modèle. Et il faut se garder d'un modèle unique et généralisable. Beaucoup d'intervenants ont insisté – et ils ont eu raison – sur la nécessité de prendre en compte les traditions juridiques et culturelles nationales et les acquis existants (je fais allusion aux pratiques d'autorégulation dans certains pays comme la Finlande en matière de sécurité électrique et aux particularités de la mise en œuvre de la régulation dans les Etats fédéraux).

Ceci ne signifie pas que la dimension pertinente de la régulation soit nécessairement *l'espace national*. Dans un monde d'économies de plus en plus interdépendantes, il est des secteurs où les «inter-régulations» nationales vont s'imposer.

- 4) La régulation est-elle une nouvelle forme d'action des pouvoirs publics et des relations entre l'Etat et la société?

S'il en est ainsi l'Etat sera-t-il réduit à être le «fédérateur des régulateurs»? Les politiques publiques, l'action publique ne peuvent se limiter à la seule démarche régulatrice et doivent prendre en charge d'autres objectifs et assumer d'autres ambitions.

La régulation a une dimension plus statique que dynamique. Derrière le mot régulation il y a les mots *harmonie* et *équilibre*. Ce sont des mots très forts et d'ailleurs très beaux mais ils ne répondent pas à eux seuls à d'autres exigences du corps social que traduisent les mots *progrès* et *avenir*.

Enfin, Mesdames et Messieurs, cet atelier n'aura peut-être pas réussi à définir la régulation mais aura plutôt tenté d'en mesurer les avantages et les limites. Les travaux de l'atelier – dont j'ai essayé de vous restituer la qualité – montrent que la régulation est sans doute l'expression encore incertaine d'une *mutation du droit* et par là même l'illustration de sa vitalité.

Je vous remercie de votre attention.

Competition, Co-operation and Conflict in the Field of Public Services

*Beate Weber,
Rapporteur Workshop III*

Let me first of all thank the moderators who led our sessions during the last three days: Alejandro Carillo Castro, Christoph Reichard and Imre Verebelyi. We had most interesting reports from Europe, Asia, Africa and Latin America - thanks to all the participants.

All over the world it is expected that public services have to be provided reliably and responsibly

- at any time and in the short, middle and long-term,
- to everybody equally well, independently of social position,
- and that they are produced at reasonable costs and offered at reasonable prices.

The production and distribution of these services must take common values into account, social cohesion, employment and environmental consequences to support a sustainable development.

People are interested in the quality of the service and not so much in the ownership of the provider - but there are core activities where they clearly want public institutions to be responsible for the provision of the service. Water is crucially and very decisively meant to be a matter for public institutions - according to a study provided from Canada. Auxiliary services, like construction and maintenance of public buildings and roads, seem to be less controversial.

There are different sorts of pressure on public services not to remain merely in public responsibility but to be opened to the market and thereby to competition, e.g.

- to be liberalized,
- to be provided in public-private partnership or
- to be completely handed over to the private sector.

This is due to de-regulative efforts in law and the reduction of bureaucracy. WTO, the World Bank, OECD and the EU are pushing through common strategies, decisions and legislation. For Europe the Lisbon Strategy provided the most important background.

But there is also pressure from other sides: bad practices and inefficiencies or fiscal stress lead to changes.

The role that the state should have is of crucial importance: there are those who would argue that the state (at national, regional and local level) should withdraw from these activities and leave them totally to private providers - supposing that the world would then be a better one. But - as one of the participants quoted: this is also a matter of morals as these questions touch the lives of our citizens directly.

However, it must be clear that public service provision is not of itself bad, nor is private enterprise necessarily good - as there can be mismanagement, excessive spending, corruption, failures, e.g. poor or even bad service on both sides. That is why the demand for change should compare the comparable and then take the right decision. Local government must not be forced to privatize but must be given the possibility to take the decision itself.

In countries where the state guarantees the provision of service its role is meant to be rather strong, only accepting the challenges of the market, improving its competitiveness and increasing co-operation with adequate partners (be they private or public), but mainly maintaining the responsibility, not privatizing.

There are many steps towards more market orientation. The line goes from

- internal modernisation based on benchmarking
- own unit with public or private law status
- contracting out

towards more co-operation in different forms either in public cooperatives or in public-private partnerships.

The recommendation in all cases clearly was to judge the issue case by case to find the most adequate solution.

Interesting studies have been presented that try to give information about the success achieved in relation to liberalization, privatization and regulation. Indicators have been developed that showed that regulation has to accompany possible steps towards liberalisation. The quality of the service is mainly influenced by respecting rules of competition and internal efficiency - no matter who the owner or provider is, public or private. Deregulation therefore is not a necessary step to achieve good services - it might even be the contrary.

In some countries there are organisational and educational efforts to improve the local authorities' and their partners' - either private enterprise or non-governmental organisations - competencies to fulfil the common tasks. Enabling the service-providing bodies and modernising traditional procedures is a crucial point - even in the most sophisticated administrations, this is a necessary step.

Two other important issues that can raise conflict concern the political will behind public services:

- 1) Political bodies decide on the type and quality of the public service and the amount of money that has to be spent to fulfil the task properly. If there is a private partner the question of how to maintain public influence over time arises - there is at least doubt, if not concrete negative experience, that even the best contracts can be hindered by having bad results from unsatisfactory providers.
- 2) The decision on the price/ the fees to be paid is nearly always taken from the public - see the development of energy prices in Europe over the last years after liberalisation!

The most difficult problem arises in cases of failure: who takes the risk and who is financially responsible? There are serious doubts and negative experiences that the risk is really taken away from the public the more steps have been taken towards privatisation. The risk does not seem to have been privatized at all. In a case of bad management another private provider might not be available at all under reasonable conditions so the service must be guaranteed by the public authority. However, the latter might have lost the expertise in the

meantime for providing the service properly, not being able to finance professional personnel without receiving fees itself. Public authorities already have great problems in working with and monitoring the privatized service according to the rules set in contracts or treaties.

Another conflict arises if the economic effect is unsatisfactory for the private provider - as is the case at the moment for a private contractor who built a road tunnel in northeast Germany (Rostock) - then the State is asked for compensation immediately. Thus the risk stays with the public in nearly every case - as these services remain in the public interest.

There were many good reasons in our debate that led to a very clear main line: to monitor existing conditions of the provision of public services very carefully, improve the situation by enabling the concerned bodies to act efficiently, use every possibility to become more market-oriented (which requires an agreement on standards and best practices among public providers to be able to properly compare) and look at possible reliable partners - but do not lose control.

It was a wonderful idea of IIAS to organize this conference because our theme really goes to the heart of our daily conflicts being responsible for providing public services. The scientific research that was transmitted was very helpful in assisting us to take the right decisions.

Beate Weber is Mayor of the City of Heidelberg, Germany.

Regulatory Powers of National Governments in a Globalized Economy

*Claudius Bamidele Olowu,
Rapporteur Workshop IV*

Overview

Of the workshops organised for the 3rd Specialised International conference on ‘Public Administration and Private Enterprise: Cooperation, Competition and Regulation’, this fourth workshop has the fewest number of papers. Nevertheless, these papers raise a wide-ranging set of issues that span both the theoretical and normative issues as well as the pragmatic and empirical challenges raised by globalisation for national and sub-national governments. In all 12 papers are being presented at the workshop including a paper that was written and submitted to the IIAS secretariat but whose author has not been able to make it to the meeting. I have included this last paper because it has important bearing on the ideas that are being discussed in this workshop on ‘Regulatory Powers of National Governments in a Globalized Economy’.

Globalisation, the rapid movement of goods, financial and human capital across national boundaries has been greatly facilitated by modern transportation and information and communication technologies. However, it is well known that its impact has been asymmetric on the countries of the world – it has generally tended to reward the rich and already powerful countries with robust public and private sector capacities while further marginalizing the weak and poor ones. The United Nations recently issued an important publication on *Global Inequality* and argues, among other things, that ‘asymmetric globalisation has become an important source of rising inequality in the world’¹. The challenge of ensuring that globalisation works for a national economy has tended to rest on the capabilities of national systems of governance to take advantage of the opportunities presented by globalisation while minimising its costs on its citizens and economy. This is the context in which the various papers discuss the regulatory powers of national governments in a globalized economy.

The papers have been grouped into four according to the sets of issues raised by the authors. The first group of issues are the conceptual and theoretical issues. This is followed by authors who analyse the policies adopted by national governments to attract and retain foreign domestic investment, regarded as the best indicator of positive management of globalisation. The third set of authors discuss the challenge for reforming national institutional mechanisms – public policies as well as implementational organs of the state – the bureaucracy. The final set of authors discuss and assess global governance issues. I shall review each of these groups briefly.

Conceptual/Theoretical Issues:

The two authors in this group focus on the implications of globalisation for the state. They assess whether global organs - both public and private – are eclipsing age-old state institutions. Both come down firmly on the side of the state. Margrit Seckelmann in the paper,

¹ United Nations (2005) *The Inequality Predicament* Report on the World Social Situation 2005, New York, Economic and Social Affairs Department, p.5

‘No Alternative to Statehood – on the Concept of Global Governance’ argues that ‘...(global) governance needs governments or stakeholders (of which the state is primary). In the same vein, Kalu. N. Kalu underscores the fact that globalisation has been mainly superficial in terms of its reach. It has brought about transcultural migration without transcultural integration as all immigrant communities (especially in the United States, although the phenomenon is not limited to that country) continue to live in separate, self-contained homogenous cultures. Not even the huge cross-cultural communication has metamorphosed into an homogenisation of cultures. He contends that globalisation remains ungovernable without states, which are still the only sovereign organs.

It is important to note that neither of the two authors raised other issues that are core to the state regulation debate – their capacity to regulate and the limitations of regulation for state actors as well as the nature of regulation and deregulation in the framework of globalisation and political and economic liberalization. These are issues that the literature of regulation raises. At least one aspect of this argument may be relevant here...there is the contention in the literature that political liberalization in poor countries ensures that the rich and powerful capture political power and use this to promote regulatory policies that might be inimical to fundamental state interests of promoting the welfare of all citizens². Indeed, Transparency International included this as one of the most serious challenges – together with the influence of money and lobbyists in politics – of political corruption in rich as well as in poor countries.³

Globalisation’s Impact on National Economies: Role of National Policies

Two country case studies are reviewed by the second set of papers – Brazil and Iran. In the paper on Brazil’s public policies for attracting FDI, Carla G. Costa of Portugal shows how successful Brazil has been in attracting FDI in the Latin American region and the world standing currently at 20% of GDP. Two generations of reforms were involved. The first generation reforms focussed mainly on liberalizing trade and privatising public enterprises while the second set of reforms focussed on social security, administrative and fiscal reforms. The latter generation of reforms not only ensures that FDI is attracted but also protects the national economy from its negative effects. Namini also assesses the positive and negative effects of FDI in Iran which has also succeeded in increasing inflows from US\$24million to US\$120Million between 1998 and 2003. Both countries have succeeded in shifting FDI from natural resource extraction to service and infrastructure sectors. The lesson from these two country experiences is that successfully attracting, channelling and retaining FDI requires progressive and intelligent policy making and strong political will at the highest levels.

Reforming National Institutional Mechanisms – Policies, Strategies & Implementation

The third set of papers therefore focus on the institutional reforms that are required to ensure that a national economy effectively regulates globalisation. The three authors present three interesting cases. The first, Kudo, reviews the experience of Japan in reforming and revitalising first its public sector through privatisation and NPM-type measures; and then turning to the private sector and regional and local government followed by human resource development reform programmes. All of these were done to ensure that Japan remains a major global economic player. Psychogios and Michalopoulos demonstrate amply that two management cultures exist in Greece and often constantly clashing with one another thus

² This problem is discussed in Robinson, M & G. White (1998) Eds *The Democratic Developmental State: Politics and Institutional Design* Oxford, Oxford University Press

³ Transparency International, *Global Corruption Report 2004* (Special Focus on ‘Political Corruption’), pp. 19-31

making public sector modernization an extremely difficult challenge. Their research shows fortunately, that an increasing number of senior officials – both Ministers and senior managers – are giving support to such innovations as Total Quality Management (TQM). They proposed a Contingency model of institutional innovation in Greece. It is a model that most other countries would find interesting, if not applicable. The third paper, by Onu is based on an assessment of efforts at introducing the principles of public-private partnerships in Nigerian tri-level federal government system. The assessment is on the critical side as the author seems convinced that several forces militate against the modernization of the Nigerian administrative system, much along the lines of the arguments of the two Greek authors we last reviewed. Taibi also reviews the modernization of human resources management in Algeria much along the same lines.

Global Governance Challenges confronting National Governments at Regulating their National Economy

The final presentation raise a lot of perceptive issues, based on solid empirical analysis. First, Antonio Tavares analyses the EU Packaging Waste directive. He looks at the three possible options under the directive and tries to find out which of these is the most efficient among *hierarchical, market and voluntary approaches* allowed by the directive. He finds that the voluntary approach is not inefficient by nature but only by the approach or strategy used to adopt it. Mr. Jaek Czaputowicz of Poland argues that globalisation translates effectively into multi-level governance with national governments becoming effectively local, sub-sovereign governments. He then tries to find out how this plays out in terms of the three dominant management approaches: bureaucratic, new public management and good governance, with the latter defined by the European Union as encapsulating a management system marked by openness, participation, accountability, effectiveness and coherence. The final paper opens up an important issue – the decision by the donor community (reinforced in July 2005 at the G8 summit in London) to double official aid to poor countries to ensure that these countries achieve the Millennium development goals (MDGs). This is clearly an important response to the issue of growing global inequality raised by the UN report cited earlier. The presenter, Mr. Stockmeyer, is unfortunately not going to be able to present the paper but a proxy in the person of this author has been arranged. The important point raised by Albert Stockmeyer is that massive aid might do more harm than good if it does not target assisting the development of national capacity, which has eroded in many countries – especially in the Africa region. The tendency for donors to be hasty for results and thus create PIUs—Project Implementation units – can actually undermine the development of national capacity which usually takes a long time to mature and manifest.

All the papers in these workshop sessions raised important issues that are at the heart of understanding how countries can become effective players in the global economy.

Post-Conference Note: Workshop Presentations & Discussions

Three of the papers slated for this workshop sessions were not discussed at the meeting. These were the Iran paper and another one on Algeria. On the other hand, the paper by El Nagar, which was not discussed in the pre-meeting summation, was presented. The highlights of the most important issues raised during the meeting itself are presented below.

All in all, there were 10 presentations made up as follows:

Day 1: Globalization & the Nation -State

- Session 1—M. Seckelmann/K.Kalu
- Session 2---C. Costa/H. Kudo

Day 2: Revitalizing State Regulatory Powers

- Session 3: N. Michalopoulos/H. Naggar
- Session 4: Tavares/Czaputowicz/Stockmayer (presented by Ndorukwigira)/Andrews

Day one: sessions 1 & 2:

The four presenters made the following observations:

- Globalization has led to the emergence of multi-level governance with national governments becoming one out of many other several other actors—civil society, multinationals, regional and sub-regional entities.
- National governments have in most countries been weakened by globalization compared with earlier notions of the Westphalian state. States have responded by cooperating (at times competing) with one another in regulating business to promote the public good.
- Global governance has ideological overtones but the key challenge for most countries is how to build a dynamic, developmental state that is sensitive to social concerns.
- It is this latter preoccupation that motivates national competition for FDI & skilled HR and also for public sector reforms.
- In seeking to attract FDI, national governments must also be alert to the motivations of foreign investors and incorporate these into their plans.
- National governments must pay attention to stimulating local or domestic as well as social capital in attracting FDI.
- Below the nation-state, sub-national entities at regional/local levels are making their impact felt on citizens.
- Globalization is not only impacting on the economy but, even more importantly, through large cross national migration, it is changing societal composition, state politics and policy.

Day two: sessions 3 & 4:

- National political and administrative cultures play an important role in determining the response of countries to global management reforms.
- Globalization, multi-level governance and the national regulatory response to globalization through regulation must be incorporated into training programmes.

- More and better-refined research on the relationship between globalization & state regulation are also needed.
- Especially in situations where national governments are weak and have been further weakened by donor inspired reforms - as in many developing countries - partnerships must embrace not only public and private sectors but also nations. Efforts to enhance the capacity of the state must also incorporate building the capacity of civil society and parliaments who can drive the reform process, domestically.
- Public sector strengthening (PSS) in poor societies is essential if the private sector is to emerge as an engine of growth. The problem though is that PSS takes substantial time to build and rebuild.
- Governance is not only about processes but akin to government in that power, legitimacy and accountability are also critical.

Conclusion

On the basis of these rich discussions, the following conclusions emerged:

- 1) The emergence of new regional organizations in the age of globalization have been marked by three things:
 - state weakness vis-à-vis big business;
 - growing importance of civil society organs in governance at different levels;
 - reforms aimed at revitalizing state regulatory role.
- 2) A moot question is whether we have the appropriate governance and financing mechanisms that guarantee both growth and equality. We probably do not and we should.

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List of Papers

presented at the IIAS Conference 2005

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Sub-topic I: Co-operation and Partnership of Public Administration and Private Enterprise: economic opportunities, constitutional ramifications and political objections?

Sous-thème I: Coopération et partenariat entre le secteur public et l'entreprise privée: opportunités économiques, obstacles politiques et incidences constitutionnelles?

Rapporteur: Ian Thynne

- I.01 Regina BIRNER & Heidi WITTMER (UNITED STATES), *Better Public Sector Governance through Partnership with the Private Sector and Civil Society: the case of Guatemala's Forest Administration*
- I.02 Michel CASTEIGTS (FRANCE), *Développement durable et reconfigurations de l'action collective: de la coopération public-privé au management territorial stratégique*
- I.03 Koenraad DE CEUNINCK, H. REYNAERT, K. STEYVERS & T. VALCKE (BELGIUM), *Private Actors in Public Environments: paradox or partnership in an NPM era for local government?*
- I.04 Ulrich DIETZ (GERMANY), *Mobile Government and Mobile Network Operators – Is Cooperation Possible?*
- I.05 Bobuin John GEMANDZE (CAMEROON), *Co-operation and Partnership, a Strategic Approach to Public sector Reform in Francophone Africa: case study of Cameroon*
- I.06 David GIAUQUE & Thierry GAILLARD (SWITZERLAND), *Partenariats entre secteurs public, privé et associatif: une affaire de valeurs et d'adhésion*
- I.07 Gerhard HAMMERSCHMID, Günter KLOIBHOFER & Renate MEYER (GERMANY), *Public Private Partnerships as Means to Manage Large Cities – Current Experiences from the City of Vienna*
- I.08 Christian Ludwig HUMBORG (GERMANY), *Highway Provision. The Battle between Private and Public Competence and Interest*
- I.09 Yuko KANEKO (JAPAN), *Process and Procedure of Privatization in Japan: comparison between the past case and that of Japan Post*
- I.10 Markus KSOLL (GERMANY), *Vertical Integration and Privatisation in the Railway Sector*

- I.11 Jermain T.M. LAM (HONG-KONG), *Opportunities and Challenges of Public Private Partnership : the case of Hong Kong*
- I.12 Pierre LE FRANCOIS (CANADA), *Le défi des parties prenantes à un partenariat public-privé : concourir à l'intérêt public tel que perçu par le citoyen*
- I.13 Andreas LIENHARD (SWITZERLAND), *Public Private Partnership (PPP) in Switzerland. Experiences – Risks – Potentials*
- I.14 H. Ian MACDONALD (CANADA), *Public-Private Partnerships: old wine in new bottles?*
- I.15 Ignazio Maria MARINO & Antonio BARONE (ITALY), *The «Responsible Governance» of Risk in the European Union*
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- I.17 Ngoc Hien NGUYEN (VIETNAM), *The State of Vietnam and Private Enterprises*
- I.18 Mujwahuzi NJUNWA (TANZANIA), *Strengthening Tanzania's Public Administration through Public-Private Partnerships (PPP)*
- I.19 Giuseppe PENNISI (ITALY), *Public Policies as a Structure of Opportunities in Partnership between Public Administration and Private sector: recent theoretical developments and an operational framework for public management training economic analysis*
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- I.21 Vinay SHARMA (INDIA), *Enhancing Efficiency and Achieving Development Objectives through the Cooperation and Partnership of Public Administration and Private Enterprise*
- I.22 Baozhong SU (CHINA), *Governmental Incentives in the Privatization of Infrastructural Facilities in Rural China*
- I.23 Franz THEDIECK (GERMANY), *Le Partenariat Privé Public dans le domaine des transports en Allemagne: l'influence de la politique et du droit Européen*
- I.24 Olga VIDLAKOVA (CZECH REPUBLIC), *Public Private Partnership in the Czech Republic*
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Sub-topic II: Regulation: the concept and enforcement experiences made by regulation agencies in different states

Sous-thème II: Régulation: concept et mise en oeuvre. Expériences comparées des agences de régulation dans différents Etats

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- II.02 Bertrand DU MARAIS (FRANCE), *Le « triangle d'or de la régulation »: proposition d'un modèle d'évaluation des schémas institutionnels de libéralisation des services collectifs dans l'UE*
- II.03 Jean-Pierre DUPRAT (FRANCE), *La régulation des régulateurs*
- II.04 B.S. GHUMAN & Akshat MEHTA (INDIA), *Deregulation of Telecommunication Services in India : assessing the role of Telecom Regulatory Authority of India*
- II.05 Pascale GONOD (FRANCE), *Les instances de régulation dans le secteur de la communication audiovisuelle en France et en Allemagne – étude comparée*
- II.06 Waldemar HOFF (POLAND), *Regulation in Poland. The Pains of Implementation*
- II.07 Hannele ISOLA-MIETTINEN (FINLAND), *«Functioning, Reliable and Safe Communication Markets» – Law and Authorities in Markets?*
- II.08 Panagiotis KARKATSOULIS (GREECE), *Setting up Independent Regulatory Authorities in Greece*
- II.09 Chiu-Lan LIN (CHINA), *Juvenile Correctional Policy Enforcement: Taiwan Case*
- II.10 Ram Kumar MISHRA (INDIA), *Regulation in India: conformance and performance*
- II.11 Frank NAERT (BELGIUM), *The Uneasy Cohabitation between Sectoral Regulators and General Competition Authorities. The Case of Belgium*
- II.12 Regina Silvia PACHECO (BRAZIL), *Regulatory Agencies in Brazil: genesis and indistinctions*
- II.13 Aristide POLICE (ITALY), *The Unbearable Lightness of being «neutral». The Case of Italian Regulatory Agencies*
- II.14 Enrique SARAVIA (BRAZIL), *Experiences of Regulation in Argentina and Brazil. The Institutional Framework and the Political Stage*
- II.15 K.V. SARVESWARAN (INDIA), *Enforcement with Humane Touch: the success story of a debts recovery tribunal in India*

- II.16 Epaminondas SPILIOTOPOULOS (GREECE), *Les agences régulatrices des marchés en Grèce*
- II.17 Jari STENVALL, Timo AARREVAARA, Risto HARISALO & Veli-Pekka NURMI (FINLAND), *Electrical Safety Governance in Finland: effectiveness by collectively and commercially handled inspection operations*
- II.18 Libo ZHAO (CHINA), *The Exploration and Analysis of Main Body of Chinese Public Service's Multiplication and Regulations*

Sub-topic III: Competition, Co-operation and Conflict in the Field of Public Services

Sous-thème III: Concurrence, coopération et conflit dans le domaine des services publics

Rapporteur: Beate Weber

- III.01 Pierre BAUBY, Michel STASSART, Christian DE VISSCHER & Frédéric VARONE (FRANCE, BELGIUM), *Liberalisation, Privatisation and Regulation of Services of General Economic Interest (SGEIs) within the European Union: a comparative perspective*
- III.02 Cecilia CADENA INOSTROZA, Christine MARTELL & Jae MOON (MEXICO), *A Comparative Study on Community-based Nonprofit Organizations for Social Service Delivery in the US and Mexico: tow different paths?*
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- III.04 Hsiu-Chu HONG (CHINA), *Competency Development across Different Local Authorities in Taiwan: competition, cooperation and conflict in the field of public services*
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- III.07 Mashupye Herbert MASERUMULE & Matome Biegy MATHOLE (SOUTH AFRICA), *Franchising in the South African Public Sector: a service delivery improvement option or profiteering scheme?*
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- III.09 Dang Son NGUYEN (VIETNAM), *Public Administration Reform Strategy in Ho Chi Minh City Viet Nam*
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Sub-topic IV: Regulatory Powers of National Governments in a Globalised Economy
Sous-thème IV: Pouvoirs de réglementation des Etats nationaux dans une économie mondialisée

Rapporteur: Claudius Bamidele Olowu

- VI.01 Christina Windsor ANDREWS (BRAZIL), *The Legitimacy of the Private Sector vis-à-vis the Public Sector: a multi-country comparative case study*
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- VI.03 Carla Guapo COSTA (PORTUGAL), *How Can Public Policies Attract Direct Foreign Investment? The Case of Brazil*
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