Accountability, transparency and citizen participation: the quest for European public ethics standards

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Let me start off with a special thank you to Mme Ferreira for hosting me here today on your beautiful campus. Your university is a comparatively young one but from what I have read and observed it encompasses all of the wonderful qualities of youth and notably those of dynamism and ambition.

You emphasise the promotion of excellence in everything you do from undergraduate to Doctoral level but I have to say that your summer academic offering – described in English on your website as Sea, School and Sun - sounds particularly enticing. I would also like to thank my friend Manuel, the Ombudsman of the Basque country, for helping to arrange such an interesting itinerary for me in this wonderful part of the world.

When we did begin to plan this visit however, no one had anticipated the very changed world in which it would be taking place. The unanticipated is now real, the unimaginable is no longer so. Russia's invasion of Ukraine has plunged us back to a time we thought consigned to history, as though we never truly believed that history does indeed repeat itself, that old narratives, old prejudices, old dreams of domination and control can one day emerge again to destroy. The embers remain, and without constant vigilance, they can be reignited. The recent histories of the Basque country and of my own country, Ireland, are testament to that.

As millions flee, as thousands are killed and wounded, as Ukraine cries out to the world for help and their President humbles us with his courage, we struggle to chart a path forward.

War presents us at the most basic level with stark, black and white realities. Death is not a grey area. It is both unambiguous and definitive. But at other levels, as political leaders struggle with this war, there is little that is quite as black and white. A cloud of grey constantly hovers.

As you know, much of the dominant narrative concerns NATO/Russian tensions, and the prospect of EU membership for the Ukraine. How can we, as ordinary citizens, seized with sadness for the people of Ukraine and terror at what might be just around the corner for the rest of us in Europe, frame this narrative in a way that makes sense, that allows us to come to terms with what should or might happen.

It is difficult. Even those who would normally find much on which to agree, who share similar

world views struggle to reach consensus. Let me give you an example.

Luuk van Middelaar is a historian and political philosopher and a former political adviser to the president of the European Council. He has written several well received books on the European Union.

Timothy Garton Ash is also a historian and a political writer and his books have focused on the contemporary history of central and eastern Europe.

Both men are highly regarded as authorities on Europe, neither viewed as maverick or extreme.

Yet in the space of a few days last week – writing in the UK's Guardian newspaper - both men gave opposite views of how matters should proceed when it comes to the place of Ukraine in the EU. The difference can be overstated, as both men were thinking tactically as to how best to resolve the conflict but the divergence was there nonetheless.

Garton-Ash, while recognising that full membership would take years to agree, called on the EU immediately to make Ukraine a candidate country.

Van Middelaar, in contrast, warned against what he considered to be the reckless promotion by some leaders of a possible fast track for the Ukraine, suggesting that not alone would it inflame the current conflict but would raise false hopes.

Garton Ash wrote:

 "Ukraine has already done for most Europeans – who sit safely inside NATO, the EU or both – this great service: to wake us up, at last, to the dangerous world we're in. The transformation of German policy in particular, and the resolute determination of the German chancellor, Olaf Scholz, and the French president, Emmanuel Macron, to build a Europe with all three dimensions of power – military as well as economic and cultural. This, too, we owe to the Ukrainians' determination to resist Putin's war of recolonisation. So this is what Ukraine [Link] has done for Europe. What will Europe do for Ukraine?"

While Van Middelaar wrote:

"NATO's and the EU's promises to Kyiv since 2008 and 2014 are primary sources of conflict. Is this the best moment to feed the distrust of an opponent in full rage, and to add complexity to a situation already filled with dangerous ambiguities? Amid such high tension, diplomatic formulas of "long-term perspective" or "perhaps one day" are counterproductive. It is tragic but, at best, such statements have come too early. At worst, they will be another false promise."

At Versailles last Friday, EU leaders essentially adopted the Van Middelaar approach. Ukraine will not be getting a quick visa to candidate status.

Garton-Ash is certainly right however when he talks about the Ukrainian invasion as being a

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wake-up call but I see it as a wake -up call about so much more than defence and security.

It reminds us rather of a Europe that is as precious as it is fragile, of the Union as an epic achievement that must forever be nurtured even in its smallest spaces. We have at times been careless of our freedoms, of our commitments to others, of the fundamental moral underpinning of this Union.

For many decades, those born within the EU have been lucky enough not to know war directly. As the EU grew successfully over the years from its core of six to its present size, including the epoch-defining expansion to Eastern Europe in 2004, so did its innate confidence in itself and its much talked about 'values'.

It has not always lived up to those values. The refugee crisis tested, and continues to test, the words and principles espoused in our Charter of Fundamental Rights and our treaties. It cannot be allowed to go unnoticed that there is a stark difference between the justifiable welcome to Ukrainian refugees and that given to those fleeing other brutalities in regimes just a bit further away.

Rule of law questions within the EU's borders are not treated as absolute issues, as black and white and stark and clear, but are subject rather to the vicissitudes of politics, national self-interests, and short-term thinking.

The rush in recent weeks of some European businesspeople, former politicians and others to divest themselves of certain Russian interests – either shamed or sanctioned into it – is also testament to a complacent acceptance within the Union of greed, an indulgence in the pursuit of capital without adequate thought given to the legitimacy that some of those connections bestowed on a regime that is now slaughtering children.

Those individual connections, those individual investments or positions, might have seemed too inconsequential to challenge or to forbid, but how can we in Europe ever claim ignorance of the ultimate role that seemingly inconsequential, small acts played in our history when they too were left unchallenged.

But what the EU has built is remarkable nonetheless. For many years the EU and its predecessor the EEC defined itself as a peace project, citing the aftermath of WWII and keeping nations at peace through trade and a sharing of sovereignty. Later it became unfashionable to refer to the EU's main achievement and raison d'être as being peace. Younger generations did not have WWII as their foremost reference point. They saw - and only knew - the EU as a place in which they could move around, live and work freely. The EU became, essentially, unremarkable .

What is happening in Ukraine reminds us that there is *nothing more important* than building and maintaining democracies. There is *nothing more important* than building societies in which people can go about living ordinary or extraordinary lives without ever having to think of conflict, without ever having to fear persecution. There is *nothing more important* than defending our

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values. Europe's raison d'être is indeed still a peace project.

As one commentator recently put it: *" When targets of Kremlin atrocity call out to "Europe" for help , they are appealing not to a geographical space but to an idea. They are talking about security through the rule of law and democracy."*

It is this that spurred Ukraine - in the middle of the first week of war - formally to apply for EU membership. It is this that spurred Georgia and Moldova to follow suit days later. And it is this that led so many refugees from Afghanistan, Syria and elsewhere to come to Europe to try to build their lives here. Yes, the EU is wealthy but its wealth lies not in money alone but in those things that money simply cannot buy.

There will be a time for deeper reflection about how we let societies become corrupted by oligarch money, about how economic concerns overlaid other concerns when it came to energy supplies, about how many politicians around Europe have embraced Putin and what he stands for.

For the moment, however, we can be thankful for the essential unity of the EU's response, and take heart in the response of ordinary people all over Europe, and indeed the world, who are reaching out to help Ukrainians while still recognizing our humanitarian obligations to those that do not always resemble us culturally or politically.

The Freedom House Index, which measures the state of democracy across the world, spoke in a recent report about: *"the false narrative that democracy is in decline because it is incapable of addressing people's needs. In fact, democracy is in decline because its most prominent exemplars are not doing enough to protect it."*

There is much in this. Witness the United States, a country that most of us do generally associate with democratic values. Just over a year ago the political centre of American life was attacked by a group of its own citizens loyal not to a foreign despot or ideology but to the then President of the United States.

And that event, rather than being a wake-up call for US democracy acted further to polarise American civic and political life. Trump continues to wield enormous influence over the Republican Party with major donors still contributing to what may become a 2024 election bid.

But the erosion of US democratic values, the polarisation of its politics, did not begin with Trump. He was its symptom, not its cause.

Decades of allowing small acts to go unchallenged, decades of allowing the 'revolving door' between big business and politics to continue, decades of allowing the monetisation of public life to become normalised, of failing to prevent the huge gaps between the two major parties from reaching a point of no return made the emergence of someone like Trump- in effect – inevitable.

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We need to draw lessons from all of this. We need to banish the grey clouds that hover over our thinking and talking about democratic values and start to imagine and to live those values practically and concretely, just as millions of Ukrainians have been forced now – not just to imagine – but to live their days in the starkness of war and of death.

The US has provided a wake-up call but so too did Brexit. The drama surrounding the UK decision to leave put the EU on the average person's mental map. Consideration was given, for many for the first time, to what EU membership meant and we have seen what the UK – another increasingly polarised democracy - has lost in leaving the Union. The horror of Putin's war in Ukraine has further cemented the EU as a tangible entity in its own right, not only because of the measures it has agreed to support Ukraine, but because its values – when concretely lived - have been thrown into sharp relief with what surrounds it.

One way of further strengthening this democratic union is through meaningful citizen participation in the EU's democratic life.

There is currently a formal attempt to make this a reality. The ongoing Conference on the Future of Europe has brought citizens together to debate the challenges and priorities of the EU of tomorrow.

The conference, which started in May last year, was the first of its kind on this scale. It has been described as leading to a "roadmap" for the European Union, "empowering" citizens, and heralding the beginning of a "truly European public space".

Two clear trends have emerged. First, people want the EU to be more active on adherence to the rule of law, the climate crisis, protecting fundamental rights and issues around public health. Second, citizens want the EU to actively involve them in decision-making.

Experience shows us that behind the facade of a big idea there can often be little substance. The mere fact that an action or event is taking place is presented as evidence that change is happening. The Conference should be treated as the first step in involving citizens - in a structured way - in EU decision making. This is easy to talk up but difficult to do in a meaningful way - as we saw with the European Citizens' Initiative which has failed to become a living, working tool of citizen participation.

The EU is built on strong democratic foundations but its distance from citizens remains its Achilles heel. People want to be able to shape the world they live in but when it comes to the EU, they are not sure how to.

One might ask – in the midst of this major crisis – what role if any an Ombudsman's office, either at regional, national or European level can play. What have the frequently dry issues around public administration to do with geopolitics? I would suggest that at the heart of the work of every Ombudsman is a commitment to the nurturing and reinforcement of democratic values, that we are here, to put it simply, to help to keep the good guys good.

The office of the European Ombudsman was established with the Maastricht Treaty, which also created EU citizenship. The office is intended to act as a bridge between the EU citizen and the EU administration that makes and executes laws and decisions that affect all of our lives on a daily basis.

We get complaints from citizens, businesses, and organisations covering issues such as access to documents, lobbying transparency, conflicts of interests, contract disputes and fundamental rights issues. A recent complaint from Spain came from an environmental NGO who wanted the European Commission to give access to detailed statistics, provided by Spain, on substances in pesticides.

In addition to dealing with complaints, I have the powers of own-initiative.

This allows me to monitor in a proactive manner that EU institutions are acting in a transparent and accountable manner. I can, for example, open inquiries on issues that I might not have received any complaints on but which I find grounds to look into. This is a powerful tool which can be used both to tackle systemic problems in the EU administration and to alert EU institutions to an issue that they should be paying more attention to. For example, making sure that keeping citizens' needs at the heart of any use by the EU administration of Artificial Intelligence, or ensuring that the EU borders agency – Frontex - is adhering to its fundamental rights obligations.

We also look for ways in which we can be helpful on other major EU issues. The EU, for example, recently agreed a EUR700bn recovery fund to help Member States recover after the pandemic. It is currently negotiating legislation to regulate Big Tech companies. It has set itself the target of being carbon-neutral by 2050. A European Defence Fund became operational last year and the EU has agreed to strengthen public health policies following COVID-19.

Many of these major policies areas have global reach which is why Brussels is a major lobbying centre for those who want to monitor or influence EU policy making in those areas. The war in Ukraine, with its implications for fuel supplies, the environment, security and defence among other vital areas will also shape the Brussels lobbying world. This makes it essential that the EU's ethics and accountability rules are robustly enforced, and move with the times - for example, a relatively new matter for the EU administration concerns the recording of work-related phone, text and instant messages.

In recent years I have put a major focus on the challenge of 'revolving doors' between public and private sectors, on lobbying transparency and legislative transparency because those matters go to the heart of EU decision making and are therefore vital to the EU's accountability and democratic legitimacy. Citizens need to know how laws are made and who or what is influencing the making of those laws.

Of critical importance in this domain is legislative transparency in the Council, where Ministers from your member state and from every member state debate and agree proposed legislation.

As things currently stand, it would be difficult for any of you in this room to find out the position of the Spanish or of any other government on a draft EU law as they are not automatically recorded. You cannot easily go to an accessible website in the middle of the EU legislative process – or even after the legislation is agreed - and find out what position your government is taking. On the other hand, the position of MEPs are public.

This allows national governments, if they wish, to 'blame Brussels' for anything remotely unpalatable coming out of the EU. This is not good for EU democracy as it feeds into the idea that the EU is something 'done' to them and over which they have no say.

The lack of transparency also provides a powerful argument for people who are against the EU, thus obscuring the reality that the EU is a strong democracy, but with processes that necessarily involve much debate and compromise. EU citizens are capable of understanding that and should be trusted to do so.

At times like this, we look back at our mistakes, we examine the myriad factors that have led to this war. At a European level many commentators have wondered at our own complicity, our own carelessness, our own complacency. We forget that the phrase 'never again' did not mean that the horrors of WWII would not happen again but was rather a fervent hope that they would not. It is said that the human mind is programmed for optimism, an optimism in this case that continued even as Putin's troops and the Russian of machinery of war positioned themselves – in plain sight – on the borders and within the borders of Ukraine. It was also such blind optimism that led to the Covid pandemic being worse that it could have been.

But no one in Europe willed either event, rather it was an accumulation of small actions and inactions, of a failure to imagine, of a failure even to see what now looks so blindingly obvious, that was at fault. The good guys let down their guard but will now hopefully learn the lessons from having done so. The pandemic and this war have also brought out the best in the EU, demonstrated the need for unity, for the integrity of its actions, and for eternal vigilance.

Conclusion

We are currently living in dark and uncertain times. In such times, we tend to pare our lives down to the essentials - families and loved ones. We take stock of what have, and we cherish and protect it.

We should do the same at the European level. Take stock of what we have, cherish it, protect it and continue to make it as robust as possible so we can hand it down to you, our future generation.

We owe it to Ukrainians, to live up to their vision of Europe.