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May 30, 2024

Institute of Criminological and Sociological Research
Belgrade (Serbia)

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Preface

THE “MULTIFACETEDNESS” OF EU ENLARGEMENT AT INTERNATIONAL, EUROPEAN AND NATIONAL LEVEL

1. An Overview of the “Multifacetedness” of EU Enlargement

The Conference of Jean Monnet Chair “Promoting Public Awareness on Enlargement Policy, EU Values and the Western Balkans’ Accession” (EUVALWEB), held on May 30, 2024, at the Institute of Criminological and Sociological Research in Belgrade, provided a forum for discussion of the Union’s enlargement policy and how it affected both the accession States’ and the member States’ national laws. Countries who were first applicants and later admitted to the negotiating process for integration as Union members have always been concerned with the question of “adaptation” of national legislation to the Union *acquis* or alignment with the accession criteria. However, in 2004 with the expansion to ten States, which Bulgaria and Romania joined in 2007 as part of a single accession procedure, there was a real big bang in the European integration process. Enlargement took on the characteristics of a cross-cutting external action policy of the Union¹, closely entwined with both the foreign policy and the neighbourhood policy², highlighting a “multifacetedness” at the international, European, and national level.

1.1 ... at International Level

The idea of a “multifacetedness” of the Union’s enlargement at the international, European and national level stems from the fact that the issues related, in general, to enlargement, and to membership in particular, have clear implications inside and outside the Union. In the first sense, enlargement entails institutional and regulatory changes to its legal system, which are the subject of adaptations to the accession treaties, affecting also and above all its political and economic balances. In the second sense, the “advancement” of the Union by hundreds of kilometres, to the western border of Russia and the Black Sea, redefines the geo-political imperatives of its agenda. As is pointed out, until then, integration had been the European response to every major change in the geopolitical constellation of Europe³. However, the 2004 and 2007 enlargements, leading

¹ See T. RUSSO, *Allargamento e Membership dell’Unione europea*, Napoli, 2024, p. 57 ff.

² The doctrine has mostly focused on the European Neighbourhood Policy to emphasise how it is a branch of both enlargement and foreign policy, pursuing the goals of both Union policies. See E. TULMETS, *Policy Adaptation from the Enlargement to the Neighbourhood Policy: A Way to Improve the EU’s External Capabilities?*, in *Politique européenne*, Vol. 2, 2007, pp. 55-80. Furthermore, see A. MISSIROLI, *The EU and Its Changing Neighbourhood: Stabilization, Integration and Partnership*, in R. DANNREUTHER (ed.), *European Union Foreign and Security Policy. Towards a Neighbourhood Strategy*, London-New York, 2004, pp. 12-26; C. GEBHARD, *The ENP’s Strategic Conception and Design: Overstretching the Enlargement Template*, in S. WOLFF, R. WHITMAN (eds.), *The European Neighbourhood Policy in Perspective: Context, Implementation and Impact*, London, 2010, pp. 89-112. However, after the accession of the Eastern European countries, and much more so with the Western Balkans, enlargement is thought to have evolved into a strategy for the future of the European Union and its neighbours that incorporates several functions and instruments.

³ In this sense, F. TASSINARI, *Why Europe Fears Its Neighbours*, Santa Barbara, 2009, p. 4.

to the sharing of borders directly with countries that, at the time, were not considered potential members, led the Union to make them an offer of cooperation aimed at fortifying its neighbourhood with the development of specific instruments and strategies. The Union started to use various association agreements to control the internal policies of States outside its borders in order to stop the spread of security issues from neighbouring countries. This marked the relationship between enlargement and neighbourhood that had grown significantly after the last “round” of accession processes⁴. In addition, in advancing the borders, the Union externalised their management as a common responsibility of all member States and future members. It has also prioritised the extension of the objectives of the European Area of Freedom, Security and Justice (FSJ) to ensure democracy and respect for the rule of law in the legal systems of all States⁵, even irrespective of the prospect of accession. As a result, the European Union’s enlargement has taken on the significance of a strategic policy that shapes and reshapes its external relationships, going much beyond the simple admission of new members⁶.

But the “multifacetedness” of the international dimension of enlargement can also be seen as the next step in the reunification of Europe. After the enlargement to the East, first the Community and then the Union experienced a “multiformity” of action, promoting international cooperation and involving a multiplicity of actors, including universal and regional organisations, and international actors⁷. This has been clear since the 2004/2007 enlargement, but it was even clearer in relation to the Western Balkans region for their stabilisation, association first and accession later. Nowadays, it is evident when considering the three former Soviet States, already part of the Eastern Partnership under the neighbourhood policy, as well as recipients of the Union’s foreign policy interventions and, currently, the accession process⁸.

⁴ Enlargement to the East would have brought about the need to fortify the neighbourhood, leading the Union to develop extra-territorial activities with the inclusion of measures, from different policy areas, aimed at influencing the internal policies of neighbouring states for reasons of the Union’s internal security. According to B. BRUNS, D. HAPP, H. ZICHER, *Introduction*, in ID. (eds.), *European Neighbourhood Policy. Geopolitics Between Integration and Security*, London, 2016, pp. 1-21, in part. p. 10, “[t]hrough initiatives that are executed beyond the EU’s external borders, the EU is becoming an extra-territorial actor that is trying to involve the third countries in the implementation of such projects”. Furthermore, see B. BRUTTS, D. HAPP, *EU Extra-Territorialization and Securitization: What Does It Mean for Ukraine and Belarus?*, in B. BRUNS, D. HAPP, H. ZICHER (eds.), *op. cit.*, pp. 139-159.

⁵ See, among others, M. ANDERSON, J. APAP, *Changing Conceptions of Security and their Implications for EU Justice and Home Affairs Cooperation*, in *CEPS Policy Brief*, Vol. 26, 2002, pp. 1-16, in part. p. 11; J. APAP (ed.), *Justice and Home Affairs in the EU: Liberty and Security Issues after Enlargement*, Cheltenham, 2004, as well as B.H. JØRGENSEN, *Cross-Border Cooperation and EU Enlargement*, in L. HEDEGAARD, B. LINDSTRÖM, P. JOENNIEMI, A. ÖSTHOL, K. PESCHEL, CE. STÅLVANT (eds.), *The NEBI Yearbook 2001/2002*, Berlin-Heidelberg, 2002, pp. 197-211.

⁶ According to T. MEHLHAUSEN, *European Union Enlargement. Materials interests, community norms and anomie*, New York, 2016, p. 14: “Enlargement shall not be reduced to granting full membership to a non-member but encompasses various forms of cooperation between the EU and a third state”.

⁷ See the Common Position, *adopted by the Council on the basis of Article 15 of the Treaty on European Union concerning a Stability Pact for South- Eastern Europe*, of 17 May 1999, 1999/345/CFSP, in OJ L 133, of 28 May 1999, pp. 1-2.

⁸ With the Western Balkans, the Union has combined foreign policy with intergovernmental mechanisms and instruments aimed at their stabilisation and association, regional cooperation and the promotion of good neighbourly relations. This has resulted in an *ad hoc* model of cooperation between the Western Balkan countries and the Union strategically aimed at managing intra- and extra-EU security issues. In this sense, see. T. RUSSO, *EU-Western Balkans Cooperation: Is There Any Model of Integration?*, in T. RUSSO, A. ORIOLO, G. DALIA (eds.), *Illyrius. Special Issue on EU-Western Balkans Cooperation on Justice and Home Affairs*, in *Illyrius Scientific Review*, Vol. I/2020, pp. 313-331. This connection is even more evident in the development of relationships with Ukraine, Georgia and Moldova.

Finally, the international dimension of enlargement has also been built through the reference to a multiplicity of regional international instruments and standards, such as the OSCE principles and Council of Europe norms, which have enriched the Copenhagen political criteria, far beyond the Union *acquis*.

1.2 ... at European Level

With regard to the multifaceted nature of the European dimension of enlargement, the process of integrating new member States has been fragmented into a successive series of phases and stages of progress linked to the attainment of (provisional and definitive) benchmarks, making enlargement a sort of “configuration” policy of States⁹ in which the Union has assumed an active role with obligations to prepare candidates for membership. The need to include the new members in the process of European integration, based on common principles and now common values, and compatible with the Union’s capacity to absorb/integrate the new members, has intended to deepen that function of transforming national systems through political (and other) conditionalities aimed at guaranteeing their “democratic” stability, that of the Union and its neighbourhood.

The normative basis of art. 49 of the Treaty on European Union (TEU), although more elaborate than its previous versions, does not contain any reference to the conditions that states must fulfil in the various stages of the accession process, nor any reference to the complex intergovernmental procedure required to achieve signature and ratification of the Accession Treaty. The accession of new members has in fact been enriched with additional criteria and instruments, according to the intergovernmental practice of the European Council that has helped shape the conditions of the Union’s membership. On the other hand, as has been pointed out, on the path to full membership, a non-member State has to go through various stages, starting with the lack of institutional ties and finally reaching full membership or participation in the form of differentiated integration¹⁰. This can take the form of transitional derogations or sub-systems of regulation and governance, also resulting from specific requests by the Member States, such as Denmark and before Great Britain, or refer to various organisational models that have already been advanced in the past and have recently been re-proposed in order to, on the one hand, reinvigorate the Union’s enlargement process and, on the other, emphasise the need for a broader and more all-encompassing European (geo)political community¹¹.

The expansion of tools and procedures in the implementation of art. 49 TEU, subject, *inter alia*, to strict conditionality, seems to be responsible for the multifaceted nature of

⁹ C. HILLION, *Evolution of EU Enlargement Policy*, 2011, discusses State-making policy, in part. p. 193.

¹⁰ In this sense, see T. MEHLHAUSEN, *op. cit.*, p. 14.

¹¹ The reference is to the European Political Community, which is not necessarily considered a forum for enlargement. See again, T. RUSSO, *Allargamento e Membership dell’Unione europea*, cit., p. 177 ff. In fact, according to A. ADAM, *European Political Community: The Future of An Intuition*, in *Groupe d’études géopolitiques*, 29 May 2023, available at <https://geopolitique.eu/en/2023/05/29/european-political-community-the-future-of-an-intuition/>, the European Political Community was not an alternative to enlargement, but an example of goodwill, which in the face of historical upheavals, represented a way to quickly create the political space necessary to identify and express common interests of all European States on an equal footing. According to T. NGUYEN, *European Political Community: Between Family Photo and “Strategic Intimacy”*, in *Hertie School Jacques Delors Centre Policy Brief*, 8 November 2020, available at https://www.delorscentre.eu/fileadmin/2_Research/1_About_our_research/2_Research_centres/6_Jacques_Delors_Centre/Publications/20221108_Nguyen_EuropeanPoliticalCommunity.pdf, as early as June 2022, it would have changed its conception: “[t]he idea moved towards a model less focused on enlargement (or its alternatives) and more geared towards strategic cooperation”.

the European dimension of enlargement in substance. These procedures and instruments were applied to better prepare the candidate countries in the application of the *acquis*, but they also sought to address the growing national concerns about the functioning of an enlarged Union. This made the accession process unpredictable (and also lacking in credibility), articulated in a rigid succession of stages, characterised by over one hundred decision-making steps, which have been reduced as a result of the revised methodology¹² and require the unanimous agreement of all States: from pre-accession with the recognition by the European Council of the sole prospect of accession to the start of negotiations¹³.

However, enlargement has been a driving force in transforming and modernising the candidate countries' systems during the accession process for integration into the Union. The Union has encouraged and supported a shift in its national policies through the so-called carrots-and-sticks approach, which offers financial support along with incentives that are commensurate with the progress made. Undoubtedly, membership is the most attractive one, but also the so-called progress rewards allow the future member States to start a process of inclusion in an entity that guides and supports the reforms of their national systems in a democratic way. This transformative function, defined as Europeanisation¹⁴, more easily accepted by post-communist countries due to the economic, political and social crisis that accompanied the end of communism, represented an opportunity for the Union to assume the role of mentor in the democratisation of Eastern Europe. The pre-accession strategy put in place on an *ad hoc* basis was, in fact, intended to ensure a sort of roadmap in the implementation of reforms and, above all, in the adoption of the *acquis communautaire*, making enlargement a European policy with a transformative objective¹⁵.

¹² See P. BARGIACCHI, *La nuova metodologia del processo di adesione all'Unione europea dei Balcani occidentali*, in T. RUSSO, A. ORIOLO, G. DALIA (eds.), *op. cit.*, p. 3 ff.

¹³ The reference is, in particular, to the pre-accession strategy, and the establishment of accession partnerships already with the CEECs, on the legal basis of art. 235 of the Treaty Establishing the European Community (TEC). See, among others, H. GRABBE, *A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants?*, in *EUI Working Papers*, Vol. 99, 2012. Furthermore, see M. MARESCEAU, *Pre-Accession*, in M. CREMONA (ed.), *The Enlargement of the European Union*, Oxford, 2003, pp. 9-42; P. NICOLAIDES, *Preparing for Accession to the European Union: How to Establish Capacity for Effective and Credible Application of EU Rules*, in M. CREMONA (ed.), *op. cit.*, pp. 43-78, as well as, T. RUSSO, *Partnership as an Instrument of Democratization in the EU External Action: A Look at the Balkans*, in AA.VV., *Law Between Modernization and Tradition. Implications for the Legal, Political, Administrative and Public Order Organization*, University "Titu Maiorescu" of Bucharest, 2015, pp. 677-688.

¹⁴ The concept of Europeanisation has been used to cover a variety of phenomena and mechanisms of change, although its most important use is in understanding the dynamics of the evolution of European polity. In this sense, see J.P. OLSEN, *The Many Faces of Europeanization*, in *Journal of Common Market Studies*, Vol. 5, 2002, pp. 921-952. With specific reference to pervasive 'Europeanisation' as a process of change in political and economic systems that countries underwent in the course of enlargement, see, among others, F. SCHIMMELFENNIG, U. SEDELMEIER (eds.), *The Europeanisation of Central and Eastern Europe*, Ithaca NY, 2005; as well as J. HUGHES, G. SASSE, C. GORDON (eds.), *Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe: The Myth of Conditionality*, Basingstoke, 2004; M. MATLAK, F. SCHIMMELFENNIG, T.P. WOŹNIAKOWSKI (eds.), *Europeanization Revisited: Central and Eastern Europe in the European Union*, Florence, 2018.

¹⁵ So, C. HILLION, *EU Enlargement*, in P. CRAIG, G. DE BÚRCA (eds.), *The Evolution of EU Law*, Oxford, 2011, pp. 188-215.

1.3 ... at National Level

Nevertheless, enlargement is measured at the national level by the ability and political will of States to implement reforms, to “espouse” the values of art. 2 TEU to which future member States must conform their national systems in order to contribute to the identity of the Union. The national dimension, already evident in the previous accession processes, became unavoidable after the enlargement to include the countries of Central and Eastern Europe that had not aligned perfectly, especially in the areas of the independence of the judiciary, the fight against corruption and respect for the rule of law¹⁶. As a result, enlargement is now more firmly and rigorously rooted in democratic governance, respect for human rights, and the establishment of the necessary legal and administrative frameworks, including those to combat fraud and corruption. These frameworks must be introduced by acceding States early in the pre-accession process, and the start of negotiations is contingent upon measurable progress in the rule of law's ongoing improvement¹⁷. The implementation of the negotiating Chapters on judiciary reform and fundamental rights (Chapter 23) and on justice, freedom and security (Chapter 24), falling under cluster 1 on the fundamentals of the revised methodology, must be opened first and closed last, with the acceding States having to prioritise reforms in these key areas.

However, it is instantly clear that a long-term approach is required due to the structural flaws and the intricacy of the required reforms in the Western Balkan countries. Furthermore, the shortcomings of the implemented reforms are highlighted by the reluctance to uphold the rule of law, especially in some of the more recently admitted States. The key point is that enlargement policy does not verify that the changes in institutional and political structures are substantial and comprehensive in relation to the values and ideals of the nations involved, nor does it guarantee that the reforms are long-lasting. It became clear that some of the more recently admitted States would require a more firmly established consolidation of their “social transformation”¹⁸ due to fundamental issues in their societies. The scholarly community and public opinion in general are concerned about this aspect, which the European Commission would not have given enough thought to¹⁹, given the push from the new admission procedures of Ukraine, Moldova, and Georgia. Although the path to accession requires a greater degree of conformity to the Union's policies and laws, it is true that States regain some degree of autonomy after achieving the goal of accession, which can have a destabilising effect on internal cohesion²⁰.

¹⁶ As is well known, the Accession Treaty of Bulgaria and Romania had also set up a Cooperation and Verification Mechanism (CVM) to support the efforts of these States in the full implementation of Union policies, which are no longer in force.

¹⁷ See, among others, T. TAKÁCS, D. JANČIĆ, *Fundamental Rights and Rule of Law Promotion in EU Enlargement Policy in the Western Balkans*, in C. PAULUSSEN, T. TAKÁCS, V. LAZIĆ, B. VAN ROMPUY (eds.), *Fundamental Rights in International and European Law: Public and Private Law Perspectives*, The Hague, 2016, pp. 123-141.

¹⁸ On this point, see J. WOUTERS, *Revisiting Art. 2 TEU: A True Union of Values?*, in *European Papers*, Vol. 1, 2020, pp. 255-277, in part. p. 267.

¹⁹ So, L. LOUWERSE, E. KASSOTI, *Revisiting the European Commission's Approach Towards the Rule of Law in Enlargement*, in *Hague Journal on the Rule of Law*, Vol. 1, 2019, pp. 223-250. See, also, N. HOGIĆ, *The European Union's Rule of Law Promotion in the Western Balkans: Building a Rule of Law Constituency*, in *Croatian Yearbook of European Law and Policy*, Vol. 16, 2020, pp. 197-223; L. PECH, J. GROGAN, *Meaning and Scope of the EU Rule of Law*, 2020, available at <https://reconnect-europe.eu/wp-content/uploads/2020/05/D7.2-1.pdf>.

²⁰ So, C. HILLION, *Adaptation for Autonomy? Candidates for EU Membership and the CFSP*, in *Global Affairs*, Vol. 3, 2017, pp. 265-275, in part. p. 271.

Formal compliance with the membership criteria does not mean substantial changes at the national level. On the contrary, it is precisely at the national level that a series of critical points have emerged in the fulfilment of the conditions of membership and the related internal control mechanisms that can be traced back to the respect of the values of art. 2 TEU, not only, as was imaginable, in the states engaged in the accession processes, but also and above all in the states that are already members²¹, to the extent that the very identity of the Union is threatened. Reforms in the area of cooperation on justice and home affairs, which still retains a strong political significance in the enlargement of the Union, were the subject of the conference on 30 May in Belgrade because they represent the “battleground” on which the greatest challenges lie not only for the future members but also for the existing member States and the Union itself.

Therefore, I would like to express my gratitude to all of the academics, young researchers, decision-makers, students, and professionals who attended the conference and contributed their scientific expertise to the debate. This special Issue of the Journal “EUWEB Legal Essays. Global & International Perspectives” compiles a selection of articles, comments, and current topics that have been discussed during the conference and will be further expanded in the Jean Monnet EUVALWEB Chair’s activities.

Thank you!

31st January 2025

**The Editor-in-Chief
Teresa Russo**

²¹ See P. BARD, D. KOCHENOV, L. PECH, J. WOUTERS, *Treaty Changes for a Better Protection of EU Values in the Member States*, in *European Law Journal*, Special Issue, 2024, pp. 1-16.