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EU Democracy and Rule of Law Promotion: The Enlargement Strategy and Its Progeny

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Center on Democracy, Development, and the Rule of Law
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Number 27
2 November 2004

This working paper was produced as part of CDDRL's ongoing programming on economic and political development in transitional states. Additional working papers appear on CDDRL's website: <http://cddrl.stanford.edu>.

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EU DEMOCRACY AND RULE OF LAW PROMOTION: THE ENLARGEMENT STRATEGY AND ITS PROGENY

Amichai Magen

I. INTRODUCTION

The fifth enlargement round (Enlargement) of the European Union (EU), which took place on May 1st 2004, is rightly recognized to be a momentous landmark in the history of modern European integration; the culmination of a fifteen-year process that has variably transformed and will continue to deeply impact the regime characteristics of the post-communist New Member States (NMS) and the remaining candidates (Bulgaria, Croatia, Romania and Turkey) – as well as the EU governance system and its perception of itself as an international actor. The post-Cold War democratization and marketization experiences of Central and Eastern European Countries (CEECs), in close proximity to the world’s densest regional bloc, have provided social scientists with an almost ideal environment to explore the domestic effects of external drivers of democratic reforms, contributing, *inter alia*, to the rethinking of earlier assumptions about the international components of democratization, and indeed about the nature of democratization itself. Still, as Laurence Whitehead observed, EU enlargement is: “*a major, but under-theorized, component of the post cold-war drive for ‘democracy promotion’ in those parts of the world that were until recently not organized into liberal democratic regimes.*”¹

Western dominated International Organizations have, in the post-Cold War period, deployed extensive democratic criteria and support mechanisms in their policies towards countries undergoing democratic transitions, and devised increasingly institutionalized economic and political incentives (both sticks and carrots) meant to “lock-in” democratization processes and prevent “backsliding”. Since the 1999 Kosovo crisis and *a fortiori* the September 11th attacks, the conceptual prism has shifted away from liberal internationalism and development, with a greater emphasis placed by Western actors on economic liberalization, good governance and political freedom as security-enhancing conditions.

These trends have by no means been confined to the EU. In the pan-European and Atlantic communities, democracy and rule of law promotion have become prominent matters for the Council of Europe, OSCE and NATO – the latter making inclusion in its security community explicitly conditional on the candidate country fulfilling the EU criteria for membership. Further afield the Organization of American States (OAS) and Caribbean Basin Initiative have performed important constraining and supporting roles, and the International Financial Institutions (IFI’s) have increasingly conditioned the provision of their support programs on the acceptance of good governance and rule of law standards.

¹ L. Whitehead, *The Enlargement of the European Union: A ‘Risky’ Form of Democracy Promotion*, in L. Whitehead (Ed.) *The International Dimensions of Democratization* (expanded edition) (2001) Oxford, OUP, pg. 415-442, at 415.

Still, no International Organization has established such elaborate and intrusive democracy and rule of law promotion policies, or has monitored their implementation so strictly, as the EU has come to do in the context of its Enlargement policy towards Central and Eastern Europe and Turkey. Moreover, EU foreign policy drivers, and particularly the Commission, now perceive Enlargement to be “*unarguably...the Union’s most successful foreign policy instrument*”.² Increasingly, the concepts and tools pursued as part and parcel of Enlargement are seen as constituting a “*Community method*” which can be adapted and deployed to shape the domestic polities of states beyond relations with candidate countries, in broader foreign policy contexts.³

The basic claim made here is that Enlargement – not merely accession itself, but the entire pre-accession process and its emerging progeny – can be meaningfully understood and evaluated from the perspective of a *democracy promotion strategy*, with possibly important conceptual and policy lessons going beyond EU expansion *per se* and indeed beyond Europe. The term “strategy” refers to deliberate “policy export” activity, not the essentially passive influence attributed to the EU by “contagion”, “convergence” and “gravity” models.

The paper proceeds as follows: section II identifies several factors which help explain why Enlargement has so far not been thought of by scholars and practitioners as a promotion strategy with potential lessons going beyond the EU and candidate countries *per se*. The assertion is that this state of affairs constitutes an omission that ought to be rectified, since various aspects of the Enlargement experience may be of value to those seeking to develop better democracy and rule of law promotion strategies and instruments. Section III traces the emergence and development of an EU, *qua* EU, democracy and rule of law promotion strategy and explores its main patterns of evolution. The argument advanced in this section is that an active promotion-through-Enlargement policy crystallized in 1997 with the formulation of the *Agenda 2000* program, and has since evolved not according to a premeditated “grand plan” but rather haphazardly, in response to challenges confronting the EU – notably Turkish candidacy, the emergence of a membership perspective for the Balkan countries and the new European Neighbourhood Policy (ENP). In keeping with the policy-orientation of the workshop for which this paper was prepared, Section IV elucidates some of the key features of Enlargement as a promotion strategy, particularly the more innovative and, in some respects *sui generis* ones.⁴

This paper is very much a work in progress, and does not pretend to either descriptive or analytical exhaustiveness. An evaluation of the implementation of the strategy and its effectiveness is also beyond the present scope. These latter issues are the subject of an evolving but still nascent literature.⁵

² Commission Communication, *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, 11 March 2003, COM(2003) 104, at 5.

³ President of the Commission, Romano Prodi, *The Wider Europe – A Proximity Policy as the key to stability*, speech to the Sixth ECSA-World Conference, Brussels, 6 December 2002. See also statements by Chris Patten and Wim Kok; Commissioner Chris Patten statement to the European Parliament, March 11th 2003; Wim Kok, *Enlarging the European Union: Achievements and Challenges*, Report to the European Commission, EU, March 19th 2003.

⁴ The workshop “*Promoting Democracy and the Rule of Law: EU and US Strategies and Instruments*” was held at the Center on Democracy, Development and the Rule of Law (CDDRL), Stanford Institute for International Studies (SIIS), October 4-5, 2004.

⁵ The author, together with Professor Leonardo Morlino of the University of Florence, is preparing a research project focusing on these issues in Turkey, the Balkans and the ENP.

II. THINKING ABOUT ENLARGEMENT AS A PROMOTION STRATEGY

That scholars and practitioners alike have largely neglected to think about EU Enlargement from the perspective of a promotion strategy is evident from the patchy condition of the Enlargement literature and its isolation from democratization and, even more so, from democracy and rule of law promotion literatures. This aspect merits some attention since it concerns broader questions about the relationship between democratization and democracy promotion literatures, on the one hand, and the study of international norm diffusion and regional integration, on the other.

As Schmitter and Wallace have respectively noted, the study of Enlargement has emerged and developed in a “*theoretical vacuum*”,⁶ and it too remains “*under-theorized*”.⁷ Integration theory has tended to ignore the implications of Enlargement and by extension its democratizing effects on countries undergoing the process of inclusion within a pre-established democratic community.⁸ Prominent works dealing with EU expansion in the 1990s were primarily descriptive, ignoring the implications of the phenomenon for broader international concerns, including democracy and rule of law promotion.⁹ In addition, successive rounds of enlargement have been examined through different disciplinary lenses, from different perspectives (EU-national, EU-supranational and candidate) and for different purposes, with no overarching theoretical framework to guide a coherent discourse.

One persistent question has been whether Enlargement can be explained in rationalist terms or whether sociological or constructivist theories are needed to provide an adequate account of the EU’s decision to enlarge to Central and Eastern Europe, has been argued back and forth by political scientists for the lion-share of a decade, as part of the “great debate” between the two camps in the study of international institutions and international relations.¹⁰ Under the aegis of this debate ancillary

⁶ Schmitter P., *Examining the present Euro-Polity with the Help of Part Theories*, in Marks G., Scharpf F. W., Schmitter P., and Streek W., *Governance in the European Union* (1996), at 14.

⁷ Wallace H., *EU Enlargement: A Neglected Subject* in Green-Cowles M. and Smith M. (Eds.), *The State of the Union: Risks, Reforms, Resistance and Revival* (2000), 149-163, at 149.

⁸ Chrysochoou D., Tsinisizelis M., Stavridis S. and Infanis K., *Theory and Reform in the European Union* (1999)

⁹ Grabbe H. and Hughes K., *Enlarging the EU Eastwards* (1998); Henderson K. (Ed.), *Back to Europe: Central and Eastern Europe and the EU* (1999); Mayhew A., *Recreating Europe: The EU’s Policy Towards Central and Eastern Europe* (1998); Rupnik J., *Eastern Europe: The International Context*, 11(2) *Journal of Democracy* (2000), 115-129.

¹⁰ Friis L. and Murphy A., *The European Union and Central and Eastern Europe: Governance and Boundaries*, 37(2) *Journal of Common Market Studies* (1999), 211-232; Moravcsik A., *Is Something Rotten in the State of Denmark? – Constructivism and European Integration*, 6(4) *Journal of European Public Policy* (1999) 669-681; Moravcsik A., *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (1998); O’Brennan J., *Re-Conceptualising Europe: Social Constructivism and EU Enlargement*, in Will P. and Levrat N., *Actors and Models: Assessing the European Union’s External Capability and Influence* (2001); Schimmelfennig F., *The Community Trap: Liberal Norms, Rhetorical Action and the Eastern Enlargement of the European Union*, 55(1) *IO* (2001), 47-80; Sedelmeier U., *EU Enlargement, identity and the Analysis of European Foreign Policy: Identity Formation Through Policy Practice* (2003) 2003/13 EUI Working Papers, Robert Schuman Centre, EUI; Sedelmeier U., *Accommodation Beyond Self-Interest: Identity, Policy Paradigms, and the Limits of a Rationalist Approach to EU Policy Towards Central and Eastern Europe*, Paper presented at 6th ECSA-USA International Conference (1999); Sedelmeier U. and Wallace H., *Eastern Enlargement: Strategy or Second Thoughts?* in Wallace H. and Wallace W. (Eds.), *Policy-Making in the European Union* (2000), 357-387; Sjursen H. and Smith K., *Justifying EU Foreign Policy: The Logics Underpinning EU Enlargement*, (2001) ARENA Working Paper 01/2001; Sjursen H., *Why Expand?*

discussions emerged on whether the offer of material benefits or, on the other hand, the EU's western identity, its symbolic (or even moral) allure, have likely influenced the CEECs most; and whether the EU can maximize its policy export through external-incentives and conditionality (with its emphasis on state interests) or through "social learning" generated by "EU-centered epistemic communities".¹¹ Indeed, the Enlargement process has been seized on by other commentators to advance theories of transnationality, spillover-governance and fuzzy-borders, prompting a discussion about why it is that EU policies appear to spill over into certain countries and regions, but not into others.¹²

Another set of discourses has grown from country studies and comparative politics, notably in the CEECs themselves. Elite views and public opinions on the EU have been measured and analyzed extensively.¹³ Commentators have speculated upon and began to empirically test the impact of the pre-accession process on the domestic economic, political and administrative systems of the candidate countries, though current interest in Europeanization effects has only recently begun to develop theoretical ideas that accommodate domestic politics.¹⁴ A related branch of the literature has identified differences in the response of candidate countries to the prospect of EU membership, with a number of studies attempting to explain the disparities with reference to pre-existing regime characteristics, costs of compliance, "cultural match" between domestic and EU norms, and the existence or lack of viable foreign policy alternatives.¹⁵

EU lawyers, for their part, have analyzed the legal and institutional features at different stages of the Enlargement process (from the EC's recognition of states and the Europe Agreements of the early 1990s to the Treaty of Accession signed in Athens on April 16th 2003) and have argued about the implications of Enlargement for the institutions and evolving constitutionalism of the EU itself.¹⁶ More recently,

The question of legitimacy and justification in the EU's enlargement policy, 40(3) *Journal of Common Market Studies* (2002) 491-513.

¹¹ Schimmelfennig F. and Sedelmeier U., *The Europeanization of Central and Eastern Europe* (2005) (forthcoming); Vachudova M. A., *The Leverage of International Institutions on Democratizing States: Eastern Europe and the EU* (2001); Green-Kelley J., *Ethnic Politics in Europe* (2004)

¹² Christiansen T., Petito F. and Torna B., *Fuzzy Politics Around Fuzzy Borders: The European Union's 'Near Abroad'*, 35(4) *Cooperation and Conflict* (2000) 389-415; Dimitrova A., *Enlargement, Institution-Building and the EU's Administrative Capacity Requirement*, 25(4) *West European Politics* (2002) 171-190; Kubicek P. J. (Ed.), *The European Union and Democratization* (2003)

¹³ Grabbe H. and Hughes K., *Central and East European Views on EU enlargement: political debates and public opinions*, in Henerson K. (Ed.), *Back to Europe* (1999); Caplanova A., Orviska M. and Hudson J., *Eastern European Attitudes to Integration with Western Europe*, (2004) 42(2) *Journal of Common Market Studies*, 271-288.

¹⁴ Grabbe H., *How does Europeanization affect CEE governance? Conditionality, diffusion and diversity* (2001) 8(6) *Journal of European Public Policy*, 1013-1031; Green Cowles M., Caporaso J. and Risse T. (Eds.), *Transforming Europe: Europeanization and Domestic Change* (2001).

¹⁵ Checkel J., *Why Comply? Social Learning and European Identity Change*, 55(3) *IO* (2001), 553-588; Schimmelfennig F., Engert S. and Knobel H., *Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey* (2003) 41(3) *Journal of Common Market Studies*, 495-518; Vachudova M. A. (2001), *supra*.

¹⁶ Arnulf A. and Wincott D. (Eds.), *Accountability and Legitimacy in the European Union* (2002); Bulterman M., *European Union Membership and Political Conditionality*, in Bulterman M., Hendriks A., and Smith J. (Eds.), *To Baehr in Our Minds: Essays on Human Rights from the Heart of the Netherlands* (1998); Cremona M. (Ed.), *The Enlargement of the European Union* (2003); Hillion C. (Ed.), *EU Enlargement: A Legal Approach* (2004); Maresceau M. (Ed.), *Enlarging the European*

another branch of the literature began exploring the economic and political effects of Enlargement on non-candidate third countries and other International Organizations, such as the UN and WTO.

Democratization literature has also neglected the democracy and rule of law promotion components of the EU's Enlargement strategy.¹⁷ As Dimitrova put it, even in the case of post-Communist institutional design, Enlargement and democratization literatures "*not only pass each other as ships in the night, but they rarely even sail in the same sea*".¹⁸ Factors contributing to the omission include the wider screening out of international dimensions from earlier democratization scholarship, and the gradual manner in which the promotion components of the Enlargement strategy have developed. A number of recent studies have begun to bridge this gap, but these still relate almost exclusively to the CEECs and remaining candidates, and the question of when democracy promotion by an external actor is more or less likely to succeed.¹⁹

Ample scope remains for empirical and conceptual work in this area, including important questions about the longer-term effects of integration on the legal-political structures and cultures of the New Member States post-accession, and whether the externally-facilitated democratizations "succeed" seamlessly or display unexpected side-effects once the prize of membership has been attained and the dynamics of EU leverage radically altered.

Thinking about Enlargement as a democracy promotion strategy requires bridging the gap not only between Enlargement and democratization literatures, but between the latter and the study of democracy promotion (or democracy aid). As Carothers has pointed out though, there has been a lamentable separation between these worlds, with practitioners borrowing little insight from academics, and the two groups generally "*engaged in dissimilar enterprises*."²⁰ The academic tendency to seek explanations for what are considered essentially past democratizations, has hampered the combing of contemporary processes for forward looking, policy-relevant lessons about democracy promotion, with the Enlargement experience being a notable example.

How can we account for the omission? The study of Enlargement from the perspective of a promotion strategy has been stunted by the assumption that (a) it is a spatially and temporally unique (or at least highly constrained) phenomenon, and therefore (b) is of little value to other state, international or NGO actors engaged in the promotion of democracy, the rule of law and good governance in countries beyond the immediate vicinity of the EU.

Richard Young's 2001 study of EU democracy promotion in the Mediterranean and Asia is demonstrative of this view: "*Most analysis of European policies has centred on consideration of the extent to which the EU assisted democracy, first in Southern and then Eastern Europe, through the enlargement process. Of course the EU's influence in these cases derived from external policy being converted into 'domestic'*"

Union: Relations between the EU and Central and Eastern Europe (1997); Maresceau M. and Lannon E. (Eds.), *The EU's Enlargement and Mediterranean Strategies: A Comparative Analysis* (2001)

¹⁷ Dimitrova A. (2002), *Supra*; Kubicek P. (2003), *Supra*; Whitehead L. (2001), *Supra*.

¹⁸ Dimitrova A., *Supra*, at 174.

¹⁹ A notable exception, at least with regards to the range of countries examined is Paul Kubicek (Ed.), *The European Union and Democratization* (2003), which includes chapters on Ukraine and Morocco.

²⁰ Carothers T., *Aiding Democracy Abroad: The Learning Curve* (1999), at 94.

policy and was thus of a unique kind not pertinent to other regions."²¹ The notion that Enlargement policy (or "Enlargement Governance") is simply the extension of governance inside the EU to neighbouring third countries has been challenged by more recent studies on the impact of regional integration on domestic polities.²² Furthermore, both these assumptions require some revision in light of the EU's "Big Bang" expansion to the east and the proliferation of Enlargement-derived concepts and instruments in EU foreign policy.

It is easy to understand why the rounds of EC enlargement in the 1980s, which incorporated the Iberian Peninsula and Greece, were viewed as a temporally and spatially unique experience with limited generalizable lessons for democracy promotion; although even here important analytical models such as "*democracy by convergence*" were derived.²³ But with the fifth enlargement round the picture becomes far more nuanced and interesting. The pre-existing regime conditions and patterns of democratization among the CEECs and Balkans vary considerably, and then there are important remaining candidates, notably Turkey whose candidacy for EU membership will extend the Europeanization deep into the heart of the Middle East, to the borders of Iran, Iraq, Syria and the Caucasus.

An enlarged EU of twenty-five member states also brings the EU into more intimate contact with increasingly varied, volatile and largely undemocratic peripheries to the north, east and south. The regime characteristics of these "new neighbors" then become a matter of higher priority for EU member states, precipitating new policies designed to influence domestic governance in what are non-candidate states. A good example is Poland's recent calls to extend the prospect of membership to Ukraine, as the most effective means of promoting marketization and democratization in that country, and its insistence that if Turkey can be included in the process then so can Ukraine.²⁴

Fears of instability on its door-step, more comprehensive approaches to security, as well as the perceived success of the Enlargement process has, over the past several years, prompted the EU to develop a repertoire of non-candidacy promotion strategies that still draw features from the Enlargement process. Thus, whereas in the past there existed a sharp dichotomy between democracy assistance through the enlargement process, on the one hand, and "the rest" of the EU's programs, on the other, the distinction is being eroded by the proliferation of Enlargement-derived approaches, directed towards a larger number of states in increasingly varied regions – Balkans, Mahgreb, Markesh, Caucasus, Russia and the so-called "Western NIS", Belarus, Moldova and Ukraine.

Moreover, as Ulrich Sedelmeier has postulated: "*EU enlargement should be not only considered the dependent variable in an analysis of EFP [European Foreign Policy] or of EU identity politics, but also as an independent variable that affects both EU identity and EFP*".²⁵ In other words, the Enlargement experience has shaped and

²¹ Youngs R., *The European Union and the Promotion of Democracy* (2001), at 2-3.

²² See literature cited by Dimitrova (2002), *Supra*, at 173.

²³ Whitehead L., *Democracy by Convergence: Southern Europe* in L. Whitehead (Ed.) *The international dimensions of democratisation* (1996).

²⁴ I am grateful to Professor Laurence Whitehead for this point.

²⁵ Sedelmeier U., *EU Enlargement, Identity and the Analysis of European Foreign Policy: Identity Formation Through Policy Practice*, 13/2003 EUI Working Papers (2003) at 1.

continues to shape both the internal institutions and identity of the EU, and its behavior as an international actor. As Enlargement-derived concepts and instruments become institutionalized in EU relations with non-candidate third countries in the wider European peripheries, at least some of these seep into EU promotion policies in broader foreign policy contexts, notably through the European Security and Defence (ESDP) and Common Foreign and Security Policy (CFSP), the latter with its explicit global mandate for democracy and rule of law promotion. In the collective decision-making processes that dominate EU foreign policy, rhetorical action and institutional conduct towards certain countries and regions create both expectations of consistency in treatment (with regards to democratic conditionality or required regulatory reforms for instance) and pressures for intra-institutional borrowing from one area of foreign policy to another.

The fact that the EU and the Enlargement process are *sui generis* does not mean that the democracy promotion strategy embodied in Enlargement is devoid of valuable knowledge for other promoters. European integration has gained global interest and we are witnessing the emergence and strengthening of regional integration schemes elsewhere.²⁶ While at the macro-level the Enlargement process itself is not replicable, the content concepts and instruments of the Enlargement process (such as the variable efficacy of rigorously applied conditionality, the importance of transnational networks, the role of legal reform, novel modes of monitoring, twinning and so forth) are at least comparable with tools utilized by other promoters, and some may be adapted and pursued in other contexts.

When viewed through a promotion prism, the Enlargement experience stretches more traditional analytical models of both democratization and democracy promotion. Inherent to the democratization scholarship that emerged from the mid-1980s is the notion described by Carothers as “*a sequence of democratization from political opening to electoral transition to democratic consolidation*”²⁷; where democratization is understood as an essentially unidirectional and short transition from a non-democratic regime type to a consolidated democracy, rather than the messier but more realistic long-term, multi-dimensional and open-ended process, where democratic quality varies considerably and reversal is a viable danger.²⁸ Such conceptions of the democratization process are increasingly understood to be shallow and mechanistic, ignoring the complex, incremental and sometimes erratic and patchy nature of democratizations, and neglecting vital questions of regime quality. A more nuanced, longer-term understanding of democratization processes widens and deepens the canvas beyond procedure and formal institutions, to include questions of genuine democratic accountability, the quality of justice and administration, effective rule of law and regulatory structures, protection of human and minority rights, intolerance towards corruption, economic performance and even modes of foreign policy behavior.

The strategy of democracy promotion through enlargement has extended to these issues. Thus, the culmination of the pre-accession process, as Whitehead observed already in 1996: “*generates powerful, broad-based, and long-term support for the establishment of democratic institutions because it is irreversible, and sets in train a cumulative process of economic and political integration that offers incentives and*

²⁶ Kuhnhardt L., *The Global Proliferation of Regional Integration*, ZEI Discussion Paper C136 (2004).

²⁷ Carothers T., *Aiding Democracy Abroad* (1999), at 93.

²⁸ Morlino L., *Democracy and Democratization* (2003) Bologna, il Mulino.

reassurances to a very wide array of social forces. In other words it sets in motion a very complex and profound set of mutual adjustment processes, both within the incipient democracy and in its interactions with the rest of the Community, nearly all of which tends to favour democratic consolidation."²⁹ While this view of the effects of enlargement on democratization in the CEECs may be overly optimistic³⁰, it correctly draws attention to the multi-layered and complex impact of Enlargement on institutional, societal and economic reforms in those states, contributing to the revision of earlier analytical models of democratization.

How we conceptualize democratization shapes our expectations about democratic substance and consequently the design of democracy promotion content and the policy instruments to pursue such content. As we shall see, with the notable exception of direct aid to Civil Society, the promotion of democracy through Enlargement contains all the categories of what Carothers calls the U.S's "core strategy".³¹ In addition it addresses some broader and deeper aspects of socio-political life including: socio-economic modernization, civil-military relations, legal, regulatory and administrative structures commensurate with Western European standards, the anchoring of the subject country in a web of human rights, social and anti-corruption treaties and monitoring mechanisms, good neighborly relations and peaceful resolution of disputes. Similarly, democracy promotion through Enlargement displays many of the tools familiar to other state and international promoters – diplomatic and normative pressures or praise, the award or holding-back of trade benefits, financial and technical aid – but also contains novel ones such as the massive, detailed internalization of modern laws through National Programmes for the Adoption of the Acquis (NPAA), and the decentralization of government and administration under the aegis of EU regional policy.³²

Since by its nature the Enlargement strategy strives to achieve in the third-country not merely an electoral democracy but a substantive liberal-democracy of sufficient institutional and normative quality to merit its full participation in a mutually-dependent order, its entire focus has been on aiding the longer-term, deeper transformation of countries from post-transition to high quality consolidation. This process does not end with accession. Indeed, according to some commentators the most important long-term impact of Enlargement on democratic consolidation in the CEECs will occur post-accession, with the "locking-in" of reforms and the embedding of what could otherwise be fragile democracies in an international environment with overwhelming democratic incentives.³³ The thrust of the Enlargement strategy, therefore, has been to address countries described variously as "pseudo" or "illiberal" democracies.³⁴ "Hybrid regimes" such as Turkey and Ukraine, Larry Diamond

²⁹ Whitehead L. (2001), *Supra*, at 19.

³⁰ See: Pridham G., *EU Enlargement and Consolidating Democracy in Post-Communist States – Formality and Reality* 40(3) *Journal of Common Market Studies* (2002), 953-73; Raik K., *EU Accession of Central and Eastern European Countries: Democracy and Integration as Conflicting Logics*, UPI Working Papers, number 37 (2002)

³¹ Carothers T. (1999), *Supra*, at 86.

³² See: Ott A. and Inglis K. (Eds.), *Handbook on European Enlargement* (2002)

³³ Sadurski W., *Accession's Democracy Dividend: The Impact of the EU Enlargement upon Democracy in the New Member States of Central and Eastern Europe* 10(4) *European Law Review* (2004) 371-401

³⁴ Zakaria F., *The Rise of Illiberal Democracy*, 76(6) *Foreign Affairs* (1997), 22-43.

observed, have been one of the most striking features of the “late period” of the third wave,³⁵ and continue to be the cause of concern for international promoters.

Because of its strong integrative aspect, furthermore, the Enlargement strategy may also contain important lessons for another category of cases, what James Fearon and David Laitin call “*neotrust territory*” – places where complete exist by international interveners and the establishment of full sovereignty are not viable because of weak state capacity and intense ethnic or border disputes. In territories such as Bosnia-Herzegovina and Kosovo (and possibly Kaliningrad and the Gaza Strip), the embedding of the entity in a regional matrix may provide the security and institutional environments necessary for the gradual emergence of democratic government.³⁶

Thinking about Enlargement as a purposeful promotion strategy has been hampered by the reluctance of the main actors engaged in the process to adopt an explicit democracy promotion discourse. As Jeffrey Kopstein and David Reilly observed, the effects of the EU’s Enlargement policy on democratizations in the post-communist world: “*is a topic that remains mostly unexplored, due principally to the crypto-political nature of most discussions of the matter among policymakers.*”³⁷ Indeed, policy-makers in the EU and candidate countries have been complicit in shrouding the process in both cultural-historical language (such as the “return to Europe” narrative) and highly technical, legalistic, terms (“adoption of the *acquis communautaire*”); language which obscured the actual dynamics of political and economic demands and compliance. A thorough discussion of the reasons for this dynamic is beyond the present scope, but it is clear that both sides have had good, though varying, motives to pretend.

By framing the process as one driven by mutual dependence and historical destiny and, at the same time, adopting highly technical language in its day-to-day implementation, EU decision-makers hoped to “depoliticize” the accession process, shield domestic reformists, take the edge off accusations that they were behaving in an “imperialist” fashion and avoid unfavorable comparisons with the EU’s own democratic deficit. For their part, policy-makers in the candidate countries were understandably loathe to be perceived by domestic constituencies as weaklings being tutored in the arts of democracy by their Western betters. “[I]n terms of the self-perception of the motives for reform by the elites in CEE” explains Sadurski, “*there has been a strong noblesse oblige type of view under which it was improper to accord too high importance to EU conditionality.*”³⁸ After all, if a country appeared to be reforming because of EU demands and not on its own initiative could it be said to have achieved stable institutional and normative conditions guaranteeing democracy and the rule of law? Could it be trusted to become a full member in a community of democracies?

³⁵ See Diamond L., *Elections Without Democracy: Thinking about Hybrid Regimes*, 13(2) Journal of Democracy (2002), 21-35

³⁶ Fearon J. and Laitin D., *Neotrusteeship and the Problem of Weak States*, 28(4) International Security (Spring 2004), 5-43, at 40

³⁷ Kopstein J. and Reilly D., *Geographic Diffusion and the Transformation of the Post-communist World*, 53 World Politics (October 2000) 1-37, note 39 at 25.

³⁸ Sadurski W., *Supra*, at 376.

III. THE CRYSTALIZATION AND EVOLUTION OF THE ENLARGEMENT STRATEGY

At a fundamental level, the process of European integration has, from its very inception, been intimately linked to securing democracy in Western Europe and promoting rule of law patterns of behavior among its historically belligerent states. Establishing a functional community of democracies as a means of preventing the resurrection of authoritarian regimes in Western Europe, and collectively resisting external Communist threats, was a *raison de'être* of the European Economic Community (EEC) from its inception in 1957.³⁹ However, while the Treaty of Rome may have originally been concerned with democracy preservation *within* the Community, democracy promotion *outside* the Community was hardly contemplated by its drafters.⁴⁰ Indeed, a deliberate EU, *qua* EU, promotion through enlargement strategy cannot be said to have emerged until the mid to late 1990s, though its various idea foundations go back to the 1970s.⁴¹

The convergence of the formerly authoritarian Southern European countries with Community democracies in the context of enlargement rounds in the 1980s, though undoubtedly important to the formers' democratic consolidation, cannot be said to have been aided by a deliberate and distinct EU democracy promotion strategy, since such a strategy did not exist at that time. Although a pre-accession process was contemplated by the Commission for Greece, it was not adopted and Greece was left to undertake preparations for accession by itself.

A more proactive, detailed and co-ordinated approach was taken only in the context of the fifth enlargement, when it became unavoidable given the sheer number of candidates and the complex post-authoritarian legacies of the CEECs. Even in the case of the fifth enlargement round, however, it is necessary to distinguish between two phases of EU influence, a "*passive*" and an "*active*" phase, to borrow from Vachudova's terminology.⁴² These phases correspond roughly to the periods 1989-1996 and 1997-present, and it is only in the latter period that a EU, *qua* EU, Enlargement promotion strategy can be said to have "crystallized".

The dramatic collapse of Communist in Central and Eastern Europe left a substantial policy void, towards which the EC/EU responded slowly and hesitantly. Diplomatic relations with the former members of the Soviet-dominated Council for Mutual Economic Assistance (CMEA) were only established between 1988 and 1992, and this initial step was followed by the gradual signing of standard trade agreements in the period 1990-1993. Although these Trade and Co-Operation Agreements (TCAs) were symbolically important to encouraging market and democratic reforms in the former Soviet bloc, they did not go far beyond the granting of Most Favoured Nation

³⁹ See: Henderson J., *Introduction*, in Henderson J. (Ed.), *Regional Integration and Democracy* (1999). Also, as Frank Schimmelfennig observed: "*Since its beginnings, European integration has been legitimated by the ideology of a pan-European community of liberal-democratic states*", Schimmelfennig F., *The Community Trap: Liberal Norms, Rhetorical Action and the Eastern Enlargement of the EU*, 55(1) *International Organization* (2001), pg. 48.

⁴⁰ Whitehead L., *The Enlargement of the European Union: A 'Risky' Form of Democracy Promotion*, in Whitehead L. (Ed.) *The International Dimensions of Democratization* (expanded edition) (2001) Oxford, OUP, pg. 415-442, at 417.

⁴¹ See Hillion, *Supra* (2004)

⁴² See Vachudova, *Supra* (2001)

(MFN) status and were not made conditional on the fulfilment of democratic criteria.⁴³ The Europe Agreements (EA) which the EC/EU signed with individual CEECs between December 1991 and June 1996 went further by complementing economic cooperation with the extension of a “European political area” to CEE, and making the further development of economic and political relations explicitly linked to respect for human rights and general democratic principles. Protracted negotiations and slow ratification by EU Member States, however, have meant that the earliest Europe Agreements (with Hungary and Poland) only came into force in 1994 and several were still pending when they were superseded by the launching of the pre-accession process itself in December 1997.

A more immediate aspect of the EC policy was the PHARE program established in 1989 and quickly extended to other transition countries in Central and Eastern Europe. PHARE was originally designed to aid economic reconstruction in the CEECs, not democratisation *per se*; focusing on technical assistance at the governmental level in the areas of agriculture, the environment, privatisation and fostering small-size enterprises. On the initiative of the European Parliament, a PHARE Democracy Programme was established in July 1992, with the particular emphasis on supporting civil society organizations engaged in fostering a more inclusive, participatory political culture. Until its overhaul in 1997, however, PHARE was “demand-driven”, responding to specific requests for help from governments, and lacking a broad proactive agenda.⁴⁴

The 1993 Copenhagen Criteria

An important shift in the EU’s policy towards Central and Central Europe was made at the June 1993 Copenhagen summit, which committed the EU for the first time to eastern enlargement and established conditions for membership. In order to be able to accede, each associated country had to show it was able to assume the obligations of membership by satisfying the economic and political conditions required: “*stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.*”

Viewed from the perspective of a promotion strategy, the Copenhagen Criteria, though unprecedented in making the attainment of stable democracy an explicit condition for inclusion in the regional bloc, were lacking in three key respects.

First, the criteria have rightly been criticized for their generality and vagueness, in that they provided no concrete guidance on what institutional and normative conditions would be considered by the EU to guarantee stable democracy and the rule of law. In fact, in the period 1993-97, the Commission took substantial steps to elaborate the *economic* requirements of membership, spelling out in its 1995 White Paper detailed sectors in its internal market *acquis* that needed to be internalised by

⁴³ Gower J., *EU Policy to Central and Eastern Europe*, in Henderson K. (1999), *Supra*, at 4.

⁴⁴ Bailey D. and De Propris L., *A Bridge Too Phare? EU Pre-Accession and Capacity-Building in the Candidate Countries* 42(1) *Journal of Common Market Studies* (2004) 77-98

the CEECs in order to begin fulfilling the conditions for membership.⁴⁵ Such “pouring of content” into the political criteria did not commence in earnest until the publication of “Agenda 2000” in 1997.

Second, the Copenhagen council did not evaluate the aspirants in terms of the political requirements, did not provide a time frame for assessing whether each country fulfils the necessary conditions and lacked monitoring mechanisms going beyond the political dialogue institutions established by the Europe Agreements. As such, the CEECs had no clear measure of the political reforms necessary and could not reliably evaluate whether their various institutions, administrations and laws were likely to be judged as fulfilling or falling short of EU standards.

Third, although the Copenhagen decision placed the entire onus of reforms on the CEECs – including their complete adjustment to a rapidly evolving *acquis* and adherence to the political aims of the Union – it made no provisions for assisting, in terms of technical and financial aid, the mammoth transformation involved in the fulfilment of the criteria.

The 1997 “Agenda 2000” program

The turning point marking the emergence of a EU, *qua* EU promotion strategy is represented by the structure and content of the Commission’s “Agenda 2000” proposals of July 1997, which were approved by the Luxembourg European Council in December that year. Subsequent to these, a distinct policy has evolved rapidly, spawning a bewildering array of policy initiatives and “Euro-jargon”. How has the EU approach differed post-1997?

Whereas in the past the emphasis of EU reform pressure was mainly *economic*, as evidenced by the 1995 White Paper exercise, the Luxembourg decision put democratic credentials in command of the accession process, with the political criteria for membership prescribed at Copenhagen achieving clear prominence over the economic ones. Thus, the conclusions of the Luxembourg summit established that: “*compliance with the Copenhagen political criteria is a prerequisite for opening accession negotiations*”⁴⁶ – a position subsequently reaffirmed in official pronouncements and practice.

Agenda 2000 and the Luxembourg decisions represent, for the first time, a substantive policy for determining which of the eligible aspirants fulfil the democratic criteria necessary for opening accession negotiations, and setting up differentiated tracks of preparations for eventual accession for those who do and those who don’t. They contained a “*pre-accession strategy*”, elaborating in detail the Copenhagen political criteria, evaluating each candidate in a Commission Opinion and separating the “ins” from the “outs” – hence vesting EU conditionality with “*real bite*”.⁴⁷

The Commission Opinions evaluated in detail the application for membership of Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania,

⁴⁵ See Commission White Paper, COM(95) 163 final and Annex COM(95) 163 final/2; Hillion (2002), *Supra*, at 415-416.

⁴⁶ At paragraph 29.

⁴⁷ Sadurski (2004), *Supra*, at 375.

Slovakia and Slovenia. Cyprus and Malta already received a favourable opinion in 1993. The Opinions followed the basic structure of the Copenhagen criteria, with chapters on “Democracy and the Rule of Law” as well as “Human Rights and Protection of Minorities”, and this basic structure has been maintained in subsequent Progress Reports. What is striking about these reports is not only their blunt pointing out of domestic shortcomings, but intrusive analysis and detailed reform “recommendations” on matters ranging from the functioning of the legislature, executive and judiciary, to adoption of Human Rights and anti-corruption measures, to training of police and customs officials.

The conclusion of the 1997 Opinions were that five CEECs (Czech Republic, Estonia, Hungary, Poland and Slovenia) and Cyprus had fulfilled the democratic criteria necessary to open accession negotiations (the “Luxembourg six”); Bulgaria, Latvia, Lithuania, Malta and Romania had not yet fulfilled the criteria but had made “sufficient progress”; and that one applicant, Slovakia, could not be included in accession negotiations on account of its unstable institutions and deficiencies in the functioning of democracy.⁴⁸

While the Luxembourg Council endorsed the Commission recommendations, it managed to avoid a divisive row with those CEECs excluded from opening accession negotiations by distinguishing between an “*accession process*” – in which all applicants from CEE will take part – and “*accession negotiations*” which will be opened only with those candidates judged to have fulfilled the Copenhagen democratic criteria, as evaluated by the Commission. Negotiations with the Luxembourg six were therefore opened in March 1998, while the “category two” countries remained in the non-negotiating accession process until February 2000. The case of Turkey, added a further dimension to the evolving strategy. While Agenda 2000 affirmed Turkey’s basic “eligibility” for membership and insisted that it would be judged by the same objective criteria as other aspirants, Turkey was otherwise totally excluded from the Commission’s recommendations, much to its consternation. Once again, in an effort to mitigate the Turkish response the Luxembourg Council devised a: “*strategy to prepare Turkey for accession...bringing it closer to the European Union in every field*” and proposing measures to intensify economic cooperation between the two. However, it was not until the 1999 Helsinki European Council that Turkey was recognized as an official candidate.

Thus, a differentiated strategy, with a “stretched-out” pre-accession process with defined stages and different conditionality dynamics is observed: (a) the recognition of a country as eligible, on the basis of Article 49 (formerly Article O TEU); (b) a “pre-negotiation” phase when eligible states seek an invitation to open accession negotiations and needs to satisfy the Copenhagen political criteria; (c) the negotiation period, when political conditionality continues and the candidate undergoes detailed

⁴⁸ On the effects of this decision on Slovak democracy see in particular see: Pridham G., *The European Union’s Democratic Conditionality and Domestic Politics in Slovakia: the Meciar and Dzurinda Governments Compared*, 54(2) *Europe-Asia Studies* (2002), 203-227; Krause K. D., *Slovakia’s Second Transition*, 14(2) *Journal of Democracy* (2003) 65-79.

convergence with EU institutions and standards; and finally (d) post-accession, once membership commences.⁴⁹

A central aspect of the proactive strategy initiated by Agenda 2000 and the Luxembourg Council was the establishment of “*Accession Partnerships*” for each candidate, covering specific reform priorities accompanied by a system of conditionality. Priorities for reform were divided into “short” (one year) and “medium” (two year) terms, and followed up by regular scrutiny by the Commission delegations in each country, specialized working groups of the European Parliament and a host of NGOs. Updated versions of the Accession Partnerships have been occasionally adopted, as Council Decisions directed to individual candidates, adjusting demands for reforms, as identified by the Commission.

In response to the Opinions and Accession Partnership, each candidate country presented a National Program for the Adoption of the Acquis (NPAA), indicating how it intends to address the reform areas identified by the Commission, the human and financial resources needed to meet the priorities, and committing itself to a reform time table. Again, these national programs have been periodically revised to take account of changes made and new stages in legal and institutional reforms. Beginning in April 1998, this process was supplemented by analytical “*screening*” of each candidate’s legislative, regulatory, institutional and administrative compliance with the *acquis communautaire*.

The new monitoring mechanisms embodied in the Commission reporting, moreover, have meant that EU conditionality could go beyond legislative adjustments in the candidates, to insist on broad “approximation” of governmental systems with EU standards and the effective implementation of reforms. An early declaration to this effect came in the 1995 Madrid European Council, which stated that in order to guarantee effective implementation of the *acquis* prior to accession, the candidates must ensure the “*adjustment of their administrative and judicial structures*”. Administrative and institutional conditionality has been progressively built upon as the serious shortcomings of some of the candidates in these sectors became more apparent through continuous monitoring. So for instance, the December 2001 Laeken European Council endorsed the Commission proposal to establish a framework to monitor the judicial and administrative reforms in the candidate countries.

The Accession Partnerships also linked, for the first time, all forms of EU financial and technical assistance, including PHARE, to the attainment of the priorities, as defined and monitored by the Commission Opinions and subsequent annual Regular Reports. Indeed, the Accession Partnerships made the Copenhagen political criteria legally enforceable vis-à-vis the candidates since the reception of aid was made conditional on performance in making progress towards attaining the criteria.⁵⁰ Although only a fraction of the 1.5 billion Euro per annum PHARE budget is

⁴⁹ Geoffrey Pridham refers to stages corresponding to (b), (c) and (d) above. Pridham G., *EU Enlargement and Consolidating Democracy in Post-Communist States – Formality and Reality*, 40(3) JCMS (2002), 953-73, at 958.

⁵⁰ Hillion (2002) *Supra*; Kochenov D., *Behind the Copenhagen Façade: The meaning and structure of the Copenhagen political criterion of democracy and the rule of law*, 8 European Integration Online Papers (ELOP), number 10 (2004)

specifically earmarked for democracy and rule of law promotion, a third of this budget was spent on “institution-building” – developing administrative capacity, effective state and local government institutions, as well as specialized regulatory structures and modernization of laws.

The 1999 Helsinki decisions

The evolution of the Enlargement strategy experienced another important leap with the Helsinki European Council decisions in December 1999, and the launching of the Stabilization and Association Process (SAP) with the explicit offer to the Balkan countries of future EU membership made by the 2000 Feira European Council. Concerned to offset the potentially destabilizing effects of the Kosovo crisis, the Helsinki Council revised the classification of the candidates and extended the opening of accession negotiations to Romania, Slovakia, Latvia, Lithuania, Bulgaria and Malta. The group of candidates, therefore, became at once larger and more differentiated in its levels of economic development and strength of democratic institutions and administrative capacities. Judging that this step would revitalize reforms in the economic and (in the case of Slovakia, Romania and to some extent Bulgaria) political laggards, the Helsinki decision indicated a shift to an all-inclusive process, where candidates would be evaluated on a case by case basis, with a degree of competition for completing accession negotiations developing among them.

The second major decision taken by the Helsinki Council was to grant Turkey candidacy status, declaring that: *“Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States. Building on the existing European strategy, Turkey, like other candidate States, will benefit from a pre-accession strategy to stimulate and support its reforms. This will include enhanced political dialogue, with emphasis on progressing towards fulfilling the political criteria for accession with particular reference to the issue of human rights...”*⁵¹ Hereafter, the varied and complex challenges of Turkish democracy – from its problematic civil-military relations and “strong state” tradition, to treatment of ethnic and religious minorities, human rights deficiencies and of course the issue of Islam – have become matters of growing preoccupation for the promotion-through-enlargement strategy.

The enormous challenges presented to the EU by Turkish candidacy, coupled with the willingness of the Turkish government (especially the AKP government elected in November 2002) to comply with EU democratic conditionality, has both spurred and facilitated the development of the Enlargement strategy, in four main respects: First, the Turkish case has further stretched-out the pre-accession process, by creating a *de facto* new waiting room category – one that may be termed a “*non-negotiating candidate*”. Whereas in the case of the CEEC candidates progress from the stage of application and finding of eligibility for membership to the opening of accession negotiations has been a relatively swift (almost immediate in the case of the Luxembourg six, and two years in the case of the Helsinki six) Turkey, which has been recognized as “European” already in the 1963 Ankara Agreement and granted official candidate status in 1999, has existed in a “*non-negotiating candidate*” state

⁵¹ Presidency Conclusions, Helsinki European Council, December 1999, paragraph 12.

for almost five years. This has allowed the EU to both turn the event of opening accession negotiations into a carrot in itself, and to maximize its leverage in the phase (b) of conditionality – the “*pre-negotiation*” phase. It is noteworthy that this phase carries less risk for the EU than phase (c) when negotiations have already commenced, since to suspend negotiations in the latter phase would require a unanimous and positive Council decision reversing a process which by then is already highly involved and politically charged. In practice, there has never been a country that has opened accession negotiations and was denied full membership.

Second, the control of compliance with the elaborated democratic criteria has grown increasingly institutionalised, with new intra-EU practices among the key institutions (the Council, Commission and the European Parliament) developed to monitor the pre-accession process.⁵² Of particular importance has become the role of the Commission. In practice it has defined, in ever-greater detail and audacity, the scope of the *acquis* for the candidates to internalise; has guided the decisions of the Council through its annual evaluation reports and occasional Strategy Papers on Enlargements; has formulated the pre-accession strategies towards the candidates and has managed the accession negotiations.⁵³

Third, as the process of Enlargement became more systematised, democratic criteria have been applied more strictly than in earlier enlargement rounds. Whereas in the past there was a degree of flexibility and the use of transition periods to allow new member states to continue with compliance after accession, in the late 1990s full adaptation by the candidates has become a pre-condition for entry. Furthermore, the approximation requirement now extends to the case law of the European Court of Justice, soft-law and even generic “*statements and resolutions adopted within the Union framework*.”⁵⁴ An important example of this trend has been the inclusion of the EU Charter of Fundamental Rights – an extensive bill of rights adopted as a non-binding “soft-law” document among Member States – in the Commission reports on the candidate countries. In its 2001 and 2002 Strategy papers as well as Regular Reports of the same period, the Commission linked compliance with the provisions of the Charter to fulfilment of the democratic requirements for membership, and indicating that it considers the Charter a benchmark for evaluating candidates’ democratic consolidation.⁵⁵

Fourth, the Copenhagen criteria have not only been elaborated, but have effectively become moving targets, with the bar of accession raised for later candidates (Bulgaria, Romania, Turkey) than for earlier ones. This is explained only partially with reference to the ever-evolving nature of the EU order. Another factor has been the adaptation of the criteria by the Commission and the Council. An example already noted in this context is the growing emphasis on administrative and judicial structures and capacities. Other examples include the increasing emphasis on the adoption of measures to fight corruption and money laundering and, in the case of Turkey, the need to establish stringent parliamentary budgetary control over security forces. Having in mind the Cyprus conflict and Turkish-Greek disputes over the Aegean

⁵² Hillion (2004), *Supra*, at 13

⁵³ See: Ruano L., *Origin and Implications of the European Union’s Enlargement Negotiations Procedure*, Robert Schuman Centre Working Papers 62/02 (2002); Hughes J., Sasse G. and Gordon C., *EU Enlargement and Power Asymmetries: Conditionality and the Commission’s Role in Regionalisation in Central and Eastern Europe*, ESRC Working Papers 49/03 (2003)

⁵⁴ Hillion (2004), *Supra*, at 15-16

⁵⁵ Menendez A. J., *Exporting Rights: The Charter of Fundamental Rights, membership and foreign policy of the European Union*, ARENA Working Papers 18/02 (2002); Hillion (2004), *Supra*, at 16.

Islands, the 1999 Helsinki European Council introduced an additional “good neighbourly relations” criterion to the list of political conditions. Regional cooperation and peaceful resolution of disputes have thereby become important conditions of progress towards membership. This shift may mark a growing emphasis on security in EU promotion activity, reflecting the challenges faced by the EU in confronting Turkey and the Balkans as potential members.

The Proliferation of Enlargement Concepts and Instruments

The substantive deepening of the Enlargement strategy, as applied to countries accepted as candidates for membership has been complemented, over the last few years, by geographic widening beyond the CEECs and Turkey. Diluted versions of the strategy applied to “*classic candidates*” and to the “*non-negotiating candidate*” are now being developed and applied to a growing number of countries in the EU’s peripheries that are not recognized as candidates *per se*.

In May 1999 the Commission proposed a strategy for “Stabilization and Association” for the five Balkan countries, with Stabilization and Association Agreements used as a contractual basis for political and economic transformation and a “perspective of EU membership” offered, based on the Copenhagen criteria.⁵⁶ Five Balkan countries – Albania, Bosnia-Herzegovina, Croatia, The Federal Republic of Yugoslavia (FRY) and the Former Yugoslav Republic of Macedonia (FYROM) – were recognized by the 2000 Feira European Council as “*potential candidates*” for EU membership, and a Stabilization and Association Process (SAP), featuring promotion instruments similar to those used to prepare the CEECs for accession have been developed for this “Enlargement-bound” group of countries.

Moreover, with the launching of the European Neighbourhood Policy (ENP), “Enlargement-like” concepts and instruments are emerging in EU relations with a highly diverse group of countries – Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Syria, Tunisia and Ukraine.⁵⁷ The Palestinian Authority, a non-state entity, is also included in the ENP.

The group now addressed through the ENP may be further divided into two categories – a “European” and “Non-European” group, with the crucial distinction of the former not being totally excluded *a priori* from the prospect of eventual EU membership, even if this prospect is distant and uncertain. Thus, for example, the March 2003 Commission Communication outlining the contours of the ENP stated that: “*In some cases the issue of perspective membership has already been resolved. Accession has been ruled out, for example, for the non-European Mediterranean partners. But other cases remain open, such as those European countries who have clearly expressed their wish to join the EU.*”⁵⁸

By refraining from naming categorically the “ins” and the “outs”, the Commission built into the new policy a degree of ambiguity which, from the EU’s perspective at

⁵⁶ COM (1999) 235 final

⁵⁷ The original formulation of the policy included Russia, but it has recently been removed from the list of countries to which the ENP is directed.

⁵⁸ Commission Communication, *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, COM (2003) 104 final, at 5.

least, is strategically constructive. Morocco, whose application for membership was quietly rebuffed in 1989 on the ground that it is not a European country knows that eventual accession is not an option. Belarus, Moldova and Ukraine, while clearly nowhere near to fulfilling the democratic conditions necessary to be considered for candidacy, nonetheless view themselves as “European” and their proximity to existing NMS (as well as to Romania) has already won them advocates within the EU who are concerned to avoid new dividing lines across Europe and to further develop the “Eastern Dimension” of the EU into eventual membership, providing the Copenhagen criteria are met.⁵⁹ Further east, but still on the northern side of the Mediterranean, Armenia and Georgia’s foreign policy has become strongly oriented towards inclusion in the EU bloc.⁶⁰ West of them, but on the eastern side of the Mediterranean are Syria, Lebanon, Israel, Jordan and Palestinian-controlled areas. Like the Balkan countries all are former provinces of the “sick man of Europe” – the Ottoman Empire – and all are territorially westward of the eastern borders of Turkey. But would any of them be considered “European”?

The ambiguity is compounded by the fact that in the only authoritative interpretation given to the term, the 1992 report to the Lisbon European Council, the Commission adopted an open-ended definition, asserting that: “*The Community has never been a closed club*”,⁶¹ and insisting that the term “European” for the purpose of membership eligibility: “*combines geographical, historical and cultural elements which all contribute to the European identity. The shared proximity of ideas, values, and historical interaction cannot be condensed into a simple formula, and is subject to review by each succeeding generation. The Commission believes that it is neither possible nor opportune to establish the frontiers of the European Union, whose contours will be shaped over many years to come.*”⁶² The Commission’s statement that it was not “opportune” to prefix the frontiers of the Community, suggests that already in 1992 it recognized the value of maintaining a degree of ambiguity regarding who might be eligible for EU membership.

With the emergence of these “concentric circles”, at least some countries may be able to move from one category to another, depending on a EU judgment about their “Europeanness” and progress in democratic reforms. Croatia, for instance, with an advanced economy and few state-building problems has left the “potential candidates” and entered the coveted “candidate category”. In time, countries like Ukraine, Moldova and possibly Israel may move into the “potential candidate” phase and beyond. Hence, we can now identify five distinct categories, each characterized by Enlargement-proper, Enlargement-bound or Enlargement-derived features:

⁵⁹ See for example: White S., McAllister I. and Light M., *Enlargement and the New Outsiders*, 40(1) *Journal of Common Market Studies* (2002), 135-53; Guicherd C., *The Enlarged EU’s Eastern Border: Integrating Ukraine, Belarus and Moldova in the European Project*, *Stiftung Wissenschaft und Politik (SWP) Studies* (June 2002); Batt J., *The EU’s New Borderlands*, Centre for European Reform (CER) Working Paper (October 2003).

⁶⁰ See: Head of Political Planning, Armenian Ministry of Foreign Affairs, Ambassador Ashot Voskanian, *South Caucasus within the Perspective of Contemporary Integration Processes*, in Andreas Marchetti (Ed.) *The CSCE as a Model to Transform Western Relations with the Greater Middle East*, Center for European Integration Studies (ZEI) Discussion Paper C137 (August 2004)

⁶¹ European Commission, *Europe and the Challenge of Enlargement*, EC Bulletin Supplement 3/92, paragraph 5.

⁶² *Supra*, paragraph 7.

“Classic candidates”	Bulgaria, Romania (CEECs, now NMS) Croatia (moved from Potential-Candidate group, Commission has recommended opening accession negotiations)
Non-Negotiating Candidate	Turkey (Decision on opening accession negotiations expected December 2004, five years after granting of official candidacy status)
Potential Candidates	Albania, Bosnia-Herzegovina, The Federal Republic of Yugoslavia (FRY) and the Former Yugoslav Republic of Macedonia (FYROM)
European neighbouring countries (“Wider Europe”)	Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.
Non-European neighbouring countries (“Neighbourhood”)	Egypt, Israel (?), Jordan, Lebanon, Libya, Morocco, Syria, Tunisia

Noteworthy also are nascent signs that Enlargement-derived concepts and instruments may be seeping into other areas of EU foreign policy, notably the European Security and Defence Policy (EDSP). At the ideational level the very legitimacy of the EDSP is explicitly linked by some European experts to the export of the same “European values” promoted by the Enlargement process – democracy, the rule of law, human rights and peaceful conflict resolution.⁶³ And this is also evident at the operational level, with the promotion of the rule of law designated by the Feira European Council (June 2000) as one of the focal areas for civilian crisis management and the establishment of the EU Police Mission in Bosnia-Herzegovina (EUPM) and EU Police Mission in FYROM (EUPOL PROXIMA). On July 16th 2004, furthermore, the EU launched a first “EU Rule of Law Mission” in Georgia, describing it as a development of the civilian strand of ESDP. The declared purpose of the mission is to build upon the EU-Georgia Partnership and Cooperation Agreement (PCA) which came into force in 1999, making the further development of economic and political relations between the two conditional upon respect for democratic principles, and linking provision of aid to Georgian reforms in areas of legislation (including adoption of EU standards) judicial and anti-corruption measures.⁶⁴

The proliferation of “Enlargement-bound” and “Enlargement-like” policies raises a number of theoretical and empirical questions that require further research. Regarding the former, will the prospect of eventual membership act as an effective catalyst for reform, or will the lack of immediacy and related uncertainties about the reality of membership seriously diminish the potency of EU conditionality and socializing influence? With the exception of Croatia, the Balkan “potential candidates” carry a daunting legacy characterised by chronic political instability, socio-economic underdevelopment and terrible ethnic violence. These challenges pose difficult tests for democracy promotion through enlargement, and the experiences of these countries

⁶³ See for example Howarth (2000) cited by Richard Youngs, *Normative Dynamics and Strategic Interests in the EU’s External Identity*, 42(2) *Journal of Common Market Studies*, 415-35, at 418.

⁶⁴ See: Council Joint Action 2004/523/CFSP, EU Rule of Law Mission to Georgia (EUJUST THEMIS).

and international protectorates over the coming decades will provide valuable material for developing theory about democratisation and democracy promotion.⁶⁵

Still bigger question marks hang over the ENP, partially because it has so far consisted of mostly policy rhetoric and Action Plans are still to be published. Be that as it may, several issues can be raised at this stage. Does the prospect of partial inclusion in the European regional system hold any allure for the regimes in Egypt, Jordan, Syria or Libya for instance? The fact that the vast majority of Turkish citizens are Moslem indicates that Islam *per se* does not constitute a barrier to Europeanization, but the history and secular nature of the Turkish Republic distinguish it sharply from the regimes of North Africa and the Eastern Mediterranean. Are there geo-political borders in the European periphery beyond which Enlargement-derived promotion efforts will not travel? Then there are questions about the credibility and strength of the ENP itself. Will anything less than the prospect of full membership – for instance, complete access to the Single Market alone – offer sufficient incentives for democratic reforms, and if so will the type and extent of changes that the EU will be able to effectively and legitimately demand differ greatly from the broad and detailed reforms involved in the Enlargement process? These issues await both theoretical and policy developments. By thinking about the component features of the Enlargement strategy, in its present state, however, we may be able to derive useful lessons about both.

IV. FEATURES OF THE ENLARGEMENT STRATEGY

Commentators have emphasized two meta-features of the Enlargement process: i.e. that it involves both incentive (conditionality) and social-learning based instruments meant to influence domestic compliance with EU-promoted structures and norms. Judith Green Kelley, for example, in attempting to account for varying degrees of compliance with minority rights advocated by the OSCE, Council and Europe and EU in several CEECs, has found that only the latter has been substantially successful in influencing domestic policies in Slovakia, Romania, Estonia and Latvia on account of its strong incentives and credible conditionality; and that even in the case of the EU “normative pressure” alone was insufficient to affect such changes. A research team led by Frank Schimmelfennig has similarly found that EU “enforcement by reward” has been effective in attaining democratic compliance, but only where “material bargaining”, rather than “social incentives” were used.

Positive conditionality includes the granting of membership, but also involves intermediate steps towards this ultimate goal for membership-eligible states – such as recognition of candidacy, enhanced financial “pre-accession” aid and inclusion in various community programs. For non-membership neighbouring countries the range of positive incentives is diminished but could conceivably extend to “everything but membership” – of which full access to the Single Market, participation in EU programs and agencies and a privileged political relationship are the most likely attractions. Although coercive measures (such as the suspension of accession negotiations or the inclusion of an “appropriate measures” clause into bilateral

⁶⁵ See: Pridham G. and Gallagher T. (Eds.), *Experimenting with Democracy: Regime Change in the Balkans* (2000)

agreements) have been a technical possibility, the EU has avoided the use of direct negative conditionality in these contexts. Then again, the fact that relations between each subject country and the EU occur “in the shadow of” these measures and that even relative exclusion of a country from the Single Market is in itself highly costly (economically and politically) means an element of coercion certainly exists in the process. In this sense the denial or delay of progress towards closer economic and political integration with the regional hegemon – on account of lack of progress in democratic and rule of law reforms – are in themselves mechanisms of influence.

Social-learning by third countries and their internalization of EU-promoted laws, institutions and, more controversially, norms, has been identified as a second meta-feature of the Enlargement process. Scholars of Europeanization and constructivist theorists of EU expansion, such as Geoffrey Checkel, emphasize institutional, social and cultural linkages to the activities of the EU as determinative to the convergence of elite norms, popular identities, as well as institutional adaptation and changing patterns of behavior in the exercise of state powers. “Political dialogue” through Association Agreement councils, continuous monitoring and feedback loops between various EU and subject country ministries and agencies, Parliament-to-Parliament communication and transnational party links, twinning projects and professional interactions in EU agencies and programs – these provide extensive opportunities for structural and normative convergence with the EU community of established democracies.

While these two “meta-features” of the Enlargement process are conceptually useful in examining the role that international institutions and norms have on domestic systems, they do not address the mechanics of the promotion-through-Enlargement strategy. Viewed from this latter perspective, the Enlargement process and its derivatives contains the following main features:

Turning the EU into an “active democratic hub”

Perhaps the most important long-term contribution of the Enlargement strategy to the development of democracy promotion policies more broadly, stems from it turning the EU from a “passive” economic and democratic hub into an “active democratic hub”. What do we mean by that? A “hub”, to borrow from Alfred Tovas’s description of large economic actors (either national, like the US or regional like the EU) variably attracts to it “spokes” seeking access to the larger market and investment opportunities it offers.⁶⁶ As such a hub is capable of exerting variable types of influence on spokes – from conditional market access to pressures for legal harmonization to related labour and environmental rules. There are numerous economic hubs, but fewer democratic ones – i.e. powerful democracies (or regional communities of democracies) constituting an external environment which provide a tangible model of democratic values and a source for “contagion”, “convergence” or the diffusion of norms and democratic experience for undemocratic or hybrid-regime spokes.

⁶⁶ Tovas A., *The Optimum Strategy for a Spoke: Linking with Other Spokes or Other Hubs?* in Maresceau M. and Lennon E. (Eds.), *The EU’s Enlargement and Mediterranean Strategies: A Comparative Analysis* (2001), 153-168.

Analytically, “Democratic hubs” can be divided into “passive” or “active” hubs. A passive hub may influence its neighbours (or in the case of regional communities also its members) through its demonstrative effect - and often as a model of stability and prosperity – but it does not engage in substantial, state-organized and deliberate democracy promotion policies. Examples of state actors who conform to this category include South Africa, Australia, India and possibly Japan. Several regional organizations may also be understood as constituting passive hubs. NAFTA and ASEAN are clear examples. The OAS, OSCE and, to a lesser extent, the Council of Europe, represent a different species of a passive hub, in the sense that they apply varying democratic control mechanisms to their existing members but have not articulated stringent democratic conditionality *before* admitting new members, and have not formulated policies designed to project outwards to none member states. Even the Council of Europe, which is distinguished from the OSCE and OAS by virtue of its European Court of Human Rights (ECtHR), has lacked stringent democratic conditions for membership, mechanisms for extensive monitoring applicants and assistance programs for guiding reforms.

For the OAS and OSCE it may be too late in the sense that it is difficult to see possible members in these organizations who are not yet members, but states such as Australia, South Africa and India and organizations such as NATO, the Council of Europe, and to a lesser degree the OECD and ASEAN, could in principle both strengthen the democratic conditionality and control applied to existing members (in the case of regional organizations) and develop membership criteria, monitoring devices and transition assistance programs and thus evolve from “passive” to “active” democratic hub. The UN too, despite its near universality, could become a more active actor by gradually developing democratic conditions of membership for any future members (for instance a Palestinian state) or territories emerging from international trusteeships.

The US and the EU are undoubtedly the world’s leading “active democratic hubs” in that each seeks to actively export democratic institutions, processes and norms towards its regional peripheries and beyond. The integrative nature of the EU of course marks a fundamental distinction between the two since the EU as a regional organization can offer incentives (foremost among which is membership) that a nation-state – federal and powerful as it may be – cannot. However, as we have seen, membership is but one model of incentives and there are other, looser ones that may help facilitate democratic and rule of law reforms without involving complete “fusion”, and while the US cannot offer membership in its *corpus politic* directly, it could use its enormous power to steer global and regional organizations in the direction of turning from mere economic hubs to democratic ones, and to gradually turn existing but passive democratic hubs into active ones.

What distinguishes membership in the EU from that of the Council of Europe and OSCE also, is that membership in the former carries with it sufficiently attractive prosperity, security, prestige and identity values to make EU membership highly coveted and consequently the costs involved in reforms are more palatable. The flip side of this equation is that exclusion from the Single Market, specially, is highly costly for a spoke. As Vachudova has argued: “*For East European states that fail to entering an enlarging EU along with their neighbours, the economic consequences*

will be grave. A steady flow of money, expertise and foreign direct investment will be diverted from states that do not join towards those who do."⁶⁷

Two lessons stem from this aspect of the Enlargement strategy. First, by turning from an economic into an active democratic hub and making strong economic benefits dependent on democratic reforms, a large economy can become a strong democracy promotion entity. Second, to affect change in spokes (none democratic hubs pose different challenges to a great extent) it is not enough to offer extensive benefits; it is equally necessary to make extensive requirements as a condition to obtaining the benefits. In other words, access to trade, financial, security, prestige and symbolic benefits need to become overwhelmingly conditional upon the attainment of democratic and rule of law standards, and if these are not credibly demanded they are far more likely to be complied with.

A distinctive EU promotion template

Like any democracy and rule of law promotion strategy, the Enlargement strategy embodies certain assumptions about both what democracy and the rule of law actually mean, and what institutions, processes and values need to be established for them to exist in a given country. What, therefore is the democracy template advanced by the Enlargement strategy?

As we have seen there has been no single detailed EU pronouncement on what democracy and the rule of law standards are required for accession and the criteria have evolved over time, with a degree of ambiguity maintained by the drivers of the process. Still, an analysis of Enlargement documents and practice reveals much about the working definition of these concepts. Also, despite the fact that the Enlargement strategy has at times placed different emphases on specific issues in the various candidate and potential candidate countries, a substantive template of the strategy is discernible.

At the primary level Article 49 TEU provides that only a European country that respects the principles set out in Article 6(1) TEU – namely, the principles of “*liberty, democracy, respect for human rights and fundamental freedoms and the rule of law*” – is eligible to be considered for membership. These principles, while reflecting previous Community practice, were “constitutionalized” for the first time in the EU legal order by the Treaty of Amsterdam, which came into force in May 1999. Although lacking in detail, it is clear from these principles that the standard of democracy sought to be advanced by the Enlargement strategy is ostensibly a high one, requiring not merely free, fair and competitive multi-party elections, but liberal substantive content borne from a commitment to “liberty”, human and fundamental rights.

Moreover, given that the penultimate aim of the Enlargement strategy, as least as far as candidates are concerned, is the full acceptance of the country into a mutually-dependent political order, the template advanced is that of a properly functioning democracy, willing to play by the rule-oriented, “democratic” rules of the game, and able to do so normatively, institutionally and in terms of administrative capacity. This

⁶⁷ Vachudova M. A. (2001) *Supra*, at 9.

is clearly implicit from the Copenhagen criteria that require the candidates to be able to “*assume the obligations of membership*” by demonstrating, *inter alia*, “*stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities*”. Hence, formal institutions and constitutional guarantees alone are insufficient, and the template of democracy advanced through the Enlargement strategy extends to “*look[ing] at the way democracy functions in practice, instead of relying on the formal descriptions of the political institutions*”.⁶⁸

A secondary level of analysis, looking at the Commission Opinions, Regular Reports, Accession Partnerships and related documents, reveals greater definition. The political criteria are divided into four distinct components: Democracy, the Rule of Law, Human Rights and Protection of Minorities. The scope and detail of reforms involved in the Enlargement strategy can be gleaned from the Turkish case for example. After reviewing the state of relations between the candidate and the EU, the reports divide into sub-sections, as follows:

Democracy and the Rule of Law: discusses the functioning of “The Parliament”, “The Executive”, “The Judiciary”, “Anti-Corruption Measures” and the “National Security Council” – the latter in lieu of specific civil-military relations issues peculiar to the Turkish context. Where elections have been held, as in Turkey in November 2002, the report comments on their legitimacy and fairness, as well as compliance with international standards (in this case the OSCE’s Office of Democratic Institutions and Human Rights (ODIHR) Election Assessment Mission. In evaluating the functioning of the legislature also, the reports comments on the progress or lack thereof in pursuing legislative reforms in accordance with Accession Partnership priorities as well as activity of various Parliamentary committees in areas of political reforms and human rights. With regards to the executive, the reports comment on the stability of the government, significant steps taken by the government to implement reforms, including new institutions or other implementation mechanisms, and criticises the government for lack of or slow implementation of reforms identified by the NPAA. Regarding the judiciary, the reports comment on the numbers, independence and effectiveness of the judiciary, going on to make specific comments on the actual application of legislation by the courts. The following statement from the 2003 Regular Report illustrates the detail and intrusiveness of the scrutiny involved:

*“The judiciary plays an important role in the implementation of political reforms. Courts have started to apply the reforms. Criminal proceedings launched against individuals on the basis of Articles 312 (incitement to class, ethnical, religious or racial hatred) and 159 (insulting the state institutions) have generally concluded in acquittals. The courts have started to review convictions of persons convicted under Article 8 of the Anti-Terror law and to order their release from prison. The courts have also started to review the convictions of persons convicted under Article 169 of the Turkish Penal Code which has been amended and in appropriate cases, to order their release. However, there are still signs of inconsistent use of articles of the Penal Code when applied to cases related to freedom of expression as shown by the broad use made by Article 312 and 169 of the Penal Code as well as Article 7 of the anti-terror law.”*⁶⁹

⁶⁸ Commission Composite Paper (1998), at 3.

⁶⁹ 2003 Regular Report on Turkey’s progress towards accession, at 21.

Similarly, the monitoring extends to specific recommendations for institutional modelling, emphasising that legislation is insufficient to fulfil the democratic criteria:

“As last year, there has been no progress with regard to the establishment of intermediate courts of appeal, although legislative preparations are underway. The Supreme Court still performs the functions of court of second instance. The Supreme Court deals with an average of 500,000 cases a year which would otherwise be dealt with by courts of appeal. The establishment of courts of appeal would not only increase the speed and efficiency of the judiciary, but it would also be an important step forward in ensuring the right to a fair trial.”⁷⁰

Human Rights and protection of minorities: evaluates the candidate’s respect for and protection of a plethora of human rights and measures to protect ethnic and religious minorities, civil and political rights, as well as economic and cultural rights. In the Turkish case, the monitoring covers such issues as: torture and ill-treatment, reforms of prisons and detention centers, freedom of expression (including broadcasting in minority languages), freedom of association and peaceful assembly, restrictions on political organization, political parties and foundations, freedom of religion, measures taken to improve gender equality (including prevention of trafficking in women), rights of the child, labour rights and freedom to organize labour unions.

The promotion template includes, therefore, rights and features of democracy that may be considered typical of European “social” democracy – such as a broad conception of rights to include economic and cultural rights, labour, social cohesion and the abolition of the death penalty.⁷¹ In this respect, the Enlargement strategy is characterised perhaps by its attempt to export a Western European, even continental, template of democracy. As Jan Zielonka observed, the hallmarks of Western European democracy can be seen in the NMS and remaining candidates: *In domestic politics the new member states have clearly adhered more closely to West European than to US models. The state in Eastern Europe is still quite interventionist; electoral systems are based on proportional representation resulting in coalition governments; positive rather than case law is the norm; social redistribution is relatively high; and the death penalty has been abolished. One can multiply similar examples.”⁷²* The emergence of such a “European model” of democracy may be reflected in internal definition. For instance, Article I-2 of the draft Constitutional Treaty now lists human dignity and equality among the EU’s common values, which in turn are said to be common to the Member States whose societies are founded on pluralism, tolerance and solidarity.

Conspicuous in its absence is the dimension of aid to civil society. This is reflective perhaps of a broader feature of the Enlargement strategy, namely its overwhelming emphasis on “top-down” approaches to democracy promotion, with “bottom-up” assistance generally confined to economic aspects and to the fringes of the strategy – such as youth and cultural exchanges.

⁷⁰ 2003 Regular Report on Turkey’s progress towards accession, at 21.

⁷¹ On promotion of “social cohesion” as part of the Enlargement process see: Allen D., *Cohesion and Structural Funds* in Wallace H. and Wallace W., *Policy-Making in the EU* (2000)

⁷² Zielonka J., *Challenges of EU Enlargement*, 15(1) *Journal of Democracy* (2004), 22-35, at 26.

Provide reforming countries with a detailed “road-map”

The highly detailed nature of the Opinions, Progress Reports and Accession Partnerships represent an important feature of the Enlargement strategy. By not only criticising practices, but also “recommending” specific legal and institutional reforms, the reports amount to a concrete “road-map” which a country seeking admission can follow, guided by periodic progress monitoring and financial/technical aid to implement the reforms. In countries willing to undertake changes but suffering from weak state institutions and poor capacities for policy formulation, such a detailed external template can help remove barriers to reform; though lack of local ownership and suspect domestic commitment to the specific contents of the reforms may undermine legitimacy and commitment to implementation. The specificity and action-oriented nature of the reports also empower domestic reformists (such as opposition parties, NGOs and the press) since these can point to concrete steps that need to be taken by the government to fulfil democratic condition and to better hold recalcitrant governments to account on backsliding and lack of progress. Detailed evaluations highly critical of the Meciar government in Slovakia (1992-98) are credited with empowering liberal opposition in this respect.

Democratization through law

A central feature of the Enlargement strategy has been the couching of political reforms in legal-technical terms and a strong emphasis on the internalisation and the implementation of the *Acquis Communautaire*. The consistent affirmation by successive rounds of enlargement of the candidate’s absolute duty to approximate its legislation to that of the EU, has established this as a core feature of the enlargement process – leaving little scope for real negotiations and exemptions.⁷³ Although the EU has conducted accession negotiations with several candidates simultaneously, negotiations and monitoring take place on a bilateral level (i.e. between each individual candidate and the EU) increasing the power asymmetry between the Union and the candidates, in favour of the former.⁷⁴ In practice, also, the duty to approximate (or “harmonize”) the domestic legal system to that of the EU is broader in scope than the term might suggest, covering existing legislation, future legislation, the legislative process and the implementation of new legislation.

The “screening” of candidates’ legislation and policies for their ability to “take on the obligations of membership” has extended the breadth and detail of democracy and rule of law promotion activity beyond those issues designated by the EU as falling within the overtly political criteria for membership. For the purpose of detailed monitoring, the *acquis* has been divided into twenty-nine separate chapters. Among these the “Co-operation in the field of justice and home affairs” chapter, for example,

⁷³ Hillion (2002), *Supra*, at 406.

⁷⁴ There is some debate in the literature on whether the power asymmetry in favour of the Union has been as strong as may appear from the formal arrangements, and whether in the event of the existence of such an asymmetry a “backlash” against the Union institutions, especially the Commission, is expected post-accession. See: Ruano L, *Supra*; Hughes J., Sasse G. and Gordon C., *Supra*.

covers important issues of national policy in the area of rule of law and justice administration, including extensive legislation and law enforcement standards relating to police cooperation and the fight against organized crime, smuggling and trafficking in human beings, anti-fraud and corruption, customs, judicial cooperation in criminal and civil matters, enforcement of judgements, judicial and prosecution training and enforcement of human rights standards.

A detailed look at the chapters of the *acquis* reveal in fact that the majority contain harmonization requirements which if implemented would strengthen democratic consolidation. Clearly, the strategy is directed towards a simultaneous dual transition – economic and political, with an emphasis on internalisation of Western European type legislation, establishment of regulatory frameworks and enforcement institutions, as well as strengthening administrative and justice capacities. This is evident under each chapter of the *acquis*: Free movement of goods (including public procurement rules); Free movement of persons (which covers, among other issues, citizens rights and modernization of social security provisions); Freedom to provide services (including banking and capital markets regulation, insurance rules and personal data protection); Free movement of capital (which includes provisions that need to be adopted in the area of fighting money-laundering); Company law (including corporate governance, accounting auditing and IP rules); Competition policy (including a requirement for the establishment and functioning of a Competition Authority, State Aid legislation and an enforcing of a State Aid Authority, and implementation of anti-trust rules); Agriculture (including rural development and farm administration policies); Fisheries; Transport; Taxation (including administrative capacity and technology measures aimed at improving effectiveness and efficiency of the tax administration); Economic and Monetary Union (including rules prohibiting privileged access of the public sector to financial institutions and independence of the Central Bank); Statistics (including strengthening of administrative capacity in collection and analysis of demographic, economic and social statistics); Social Policy and Employment (covering, among others, child labour, equal pay and non-discrimination at work); Energy; Industrialization policy (including restructuring, privatisation and public sector reforms); Small and Medium Size Enterprises (including “simplification of the business environment” through use of high technology); Science and Research; Education and training (including education of children of migrant workers, increase length of compulsory and secondary education and strengthening administrative capacity); Telecommunications and information technology (including competition and regulatory framework); Culture and audiovisual policy (covering, *inter alia*, broadcast in minority languages, including Kurdish); Regional Policy and co-ordination of structural instruments; Environment (including provisions on public consultation mechanisms related to environmental impact assessment, creation of enforcement institutions and increase in governmental staff); Consumer and health protection (including rules on settlement of consumer related disputes and efforts to support consumer organizations).

Empirical research into the effectiveness of this aspect EU pressure for adaptation is still underdeveloped, but existing evidence point to somewhere between mixed success and general enthusiasm. In a study of the institution-building and administrative capacity aspects of the Enlargement strategy, Dimitrova argues that reforms have been successful where the EU has articulated clear specific rules and where the main political actors in the candidate countries are united or close to

consensus on the direction of reforms promoted by the EU.⁷⁵ Pehe, on the other hand, offers a more enthusiastic endorsement, asserting that: “*The EU’s attention to the process of economic transformation was equally important for the stabilization of democratic institutions in candidate countries. While stock-market and privatisation transparency, banking reform, anticorruption measures, and simplified bankruptcy laws might not at first glance seem to have much to do with democratic consolidation, the truth is they all helped greatly to give democracy solid underpinnings in Eastern Europe.*”⁷⁶

Anchoring and Embedding

Two additional features of the Enlargement strategy may be described as “anchoring” and “embedding”. Anchoring is the binding of domestic laws, institutions, bureaucracies, political parties and interest groups to supranational liberal-democratic norms, rules, epistemic communities and the mechanisms for their regulation or enforcement. Embedding refers to the insertion of supranational institutions and socializing agents into domestic governance systems or, conversely the immersion of domestic elites in supranational institutions as a means of capacity and norm transfer. Both these aspects are strongly facilitated by the integrative nature of the Enlargement process, although they remain analytically distinct and may, in theory at least, be pursued in conditions where full regional integration is absent.

Enlargement involves extensive and diverse anchoring. In the area of laws and norms, the political criteria of membership, as articulated by the Commission, have included an obligation to sign and ratify a plethora of international and regional treaties including: The International Covenant on Civil and Political Rights (ICCPR) with its First (right of individual communication) and Second (death penalty) optional protocols; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination (CERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); the European Social Charter and the Revised European Social Charter; the European Convention on Human Rights (ECHR) and related protocols; the European Convention for the Prevention of Torture and the Framework Convention for National Minorities. In addition, candidates have been required to accede to a host of specialized agreements such as the Council of Europe Civil Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, and to participate in circles such as the Group of States Against Corruption (GRECO) which monitors compliance with European anti-corruption measures. The anchoring effect of countries involved in the process is magnified by the existence of extra-EU reporting, monitoring and enforcement mechanisms in many of these international instruments – foremost amongst which is the European Court of Human Rights, whose jurisdiction candidates must accept and whose decisions they must implement above national law.

⁷⁵ Dimitrova A. (2002), *Supra*.

⁷⁶ Pehe J., *Consolidating Free Government in the New EU*, 15(1) *Journal of Democracy* (2004), 36-47, at 38.

The progressive inclusion of candidate countries in Community programs represents another form of anchoring which may be termed “epistemological” or “social”. All candidates are gradually brought into pre-existing EU programs covering technical and professional agencies and affording access to EU funds (Research and Development, energy, transportation, the environment, public health) business networks (small and medium size enterprises), as well as programs for mass student exchange such as ERASMUS. Transnational political party networks and Parliament-to-Parliament committees also constitute to anchoring candidates to pre-existing epistemic and normative-pressure communities at the elite level. As a country progresses towards accession, the duration, intensity and density of domestic interaction (both organizational and personal) increases to a degree not otherwise found in international interaction.

A more unusual feature of the Enlargement strategy has been the embedding of institutions and agents of reform in domestic systems. A mild example is TAIEX (Technical Assistance Information Exchange Office) that makes bureaucratic, technical and professional experts available for short-term secondments to candidate countries. “Twinning” involves long-term positioning of officials (sometimes whole teams) from Ministries, regional bodies, public agencies and professional organizations in the Member States to corresponding bodies in candidate countries, to assist transfer of administrative and technical know-how.

A more structural and intrusive form of embedding has occurred in the context of EU aid provision to aspirants. The overhaul of the PHARE program conducted by the Commission in 1997-98 set out the objective of integrating PHARE into the candidate countries’ own governmental structures. To receive PHARE assistance – which in 1997 became “accession-driven” focusing on the Accession Partnership priorities of institution and capacity-building – National Funds were set up in the recipient countries, usually within national finance ministries. In addition, responsibilities for procurement of aid were assumed by a Central Finance and Contracting Unit (CFCU) within each country or a several implementing agencies such as justice and interior ministries.⁷⁷ As part and parcel of this decentralization and local taking over of responsibilities, recipients accepted financial controls, which according to some commentators have acted as a catalyst for improved administration more generally. These include application of public procurement rules, audit and anti-corruption, anti-fraud measures. This type of embedding was legitimated by the logic that the National Funds, CFCU’s and related rules were a prelude to the Structural Funds that, as new member states, candidates would have to administer in accordance with *acquis* standards. The same logic underlined the introduction of additional support instruments for the period 2000-2006. Established in 2000 but operational as of early 2002, two new initiatives were embedded into national systems as a means of familiarizing candidates with the workings of EU structural policies: the Instrument for Structural Policies for Pre-Accession (ISPA) – targeted at improving candidates’ transport and environment infrastructures – and Special Accession Programme for Agriculture and Rural Development (SAPARD) – established to co-finance rural development, again with accompanying financial control rules.

⁷⁷ An increased supervisory role was given to local Commission delegations.

V. CONCLUSION

The fifth Enlargement round of the EU has entailed the gradual development of a *sui generis* democracy and rule of law promotion strategy – an active promotion strategy that can only be said to have cristalized in the latter part of the 1990s. The evolution of an EU, *qua* EU promotion strategy came in response to EU concerns that the future new member states come into the regional community as consolidated, modern democracies, equipped with administrative capacities and democratic norms that will make them willing and able to participate in a mutually-dependent governance system. The evolution of the strategy has, over the past few years, been both spurred forward and shaped by the enormous challenges to the EU presented by the prospect of Turkish membership, the opening of a membership horizon to the five Western Balkan countries, and the beginnings of a European Neighbourgood Policy which seeks to emulate some of the key successes of Enlargement, notably in encouraging democratisation and marketization in the expanded EU's volatile peripheries.

The central features of Enlargement, Enlargement-bound and Enlargement-like promotion strategies are both remarkably similar to each other and innovative. In the context of its Enlargement policies the EU has developed the most elaborate and intrusive instruments for pressuring, facilitating and monitoring compliance with democratic and rule of law institutions and norms yet devised by an International Organization, and probably by any democracy promotion actor generally. The Enlargement strategy is defined not only by the use of material incentives and social-learning instruments, but also by more specific characteristics such as a distinct EU democracy and rule of law template, anchoring, embedding and a reliance on detailed, technical transformation as a means of deep socio-political transformation. Perceiving its Enlargement strategy to have been an unprecedented success, EU policy-makers are now adapting Enlargement-derived concepts and instruments and applying them to a broad context of foreign policy initiatives. Greater scholarly and policy-oriented attention should be directed to these developments, as they are likely not only to affect European foreign policy but also to shape the long-term identity of the EU, as a community and an exporter of liberal values.

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