Review Essay

Beyond Enlargement: Legal and (Geo-)political Landmarks of the EU’s Eastern Challenge

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1 Introduction

It is but a commonplace to claim that the European Union’s eastern enlargement has truly been a historic success story. Based on the logic of an interplay between the prospects of future accession, on the one hand, and the obligation of gradual norm approximation on the part of the candidate countries, on the other, the eastern enlargement has inspired policymakers to adopt some of these features for other instances of international political rapprochement and cooperation. There is no doubt whatsoever that this underlying philosophy of Europeanization – both guided and safeguarded by strict conditionality – has not only facilitated the process of legal transplants from West to East, it has, moreover, contributed to the political stability of Europe as a whole. It may
have thus – in the eyes of the overwhelming majority of the populations of the candidate countries – sought to correct historic injustices and inject new patterns of a European self-understanding that goes beyond the mere concept of an EU legal order based on the European Union treaties.

This unprecedented experience of legal approximation and compliance with EU law in exchange for institutional membership involving no fewer than ten countries has reinforced considerations that designate the EU as a value-driven community in which the Copenhagen Criteria are seen to be applicable even to those countries that are not currently official candidates. And indeed, the finalization of the various rounds of EU enlargement, most recently in 2007 when Bulgaria and Romania joined the club, began to pose and expose new challenges facing the continent.

In particular, it became clear that new policies and approaches to dealing with the gray zone between the EU and Russia were necessary. The question arose as to whether the concept of norm externalization as applied during the EU’s enlargement would be the appropriate method for these policies. Hence,

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1 By problematizing the significance of the enlargement process, Anneli Albi has also elaborated, among other issues, a rather overlooked element: “The enlargement project aims to rectify historical injustice for countries that had suffered under the Soviet yoke.” See Anneli Albi, EU Enlargement and the Constitutions of Central and Eastern Europe (Cambridge University Press, Cambridge, 2005), 5.


3 The so-called Copenhagen criteria established the eligibility rules and obligations for membership in the EU. Before the new Treaty of Amsterdam was agreed upon, the European Council adopted these criteria, in Copenhagen in June 1993, which are most importantly reflected in Article 6 of the Treaty on the European Union (TEU), stating that “the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law”, and Article 49 TEU, which specifies the procedure of accession and explicitly revisits the principles listed in Article 6 TEU.

4 Since both EU and NATO enlargements were executed on a partial basis, leaving Belarus, Ukraine and other post-Soviet republics out of the process, the notion of states belonging to a gray zone, i.e. nominally sovereign but still not involved in institutional ownership of the EU or NATO and located next to an increasingly revisionist Russia, started to set in quite early. See, for instance, Taras Kuzio, Ukrainian Security Policy (Praeger Publishers, Westport, 1995), 57.