

**“The Enlargement *acquis* and external strategy:  
a prelude to deliberative foreign policy?”**

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## *In this issue:*

**“The enlargement *acquis* and external strategy: a prelude to deliberative foreign policy”**

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## *Abstract*

The paper seeks to explain how EU's enlargement *acquis* has emerged and evolved over time. It looks at the role this *acquis* has played in both standardising EU applicants along some key regulative and normative lines as well as in forcing EU member states to couch their geopolitical and economic interests within a logic of democratic legitimacy and moral justification. Enlargement outcomes, the paper argues, are not compromises reached through bargaining, as they cannot be explained by merely looking at the initial distribution of power of participant states. Rather, they can be conceived as ‘working agreements’ reached at by a deliberative process dominated by claims of legitimacy and appropriateness. To the extent to which it can be demonstrated that the EU bases its international identity on rational argumentation rather than on bargaining, the EU might come to be qualified not in terms of civilian or military power, but as a deliberative power. The ‘deliberative turn’ offers, I will show, promising tools for analysing the EU.

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*The EU is not an aggressive entity. It has no use for geopolitical zones of influence. It is, in effect, the result of a common vision and a common will, as expressed in a number of clear rules set out in international treaties. Behind those rules, however, lie the fundamental principles which the Member States hold in common. The treaties assume an open society, based on democratic checks and balances and on the market economy; thus the law encourages free consumer choice and promotes innovation. The rule of law, press freedom, respect for human liberties and institutions capable of reconciling passionately held opinions in a peaceful way these are the basis not just for the success of the Union itself, but of the way of life we have been trying to create. And they are the key to our relative prosperity. It should not be surprising that we seek to project the same principles and values externally (Chris Patten in Moscow, January 2001)<sup>2</sup>*

## **Introduction**

EU policy towards Central and Eastern Europe, culminating in accession, can be considered one of the key historical successes of the EU's foreign policy. In the light of the record of failures of EU foreign policy in its periphery (from Yugoslavia to the Middle East), Central and Eastern Europe appears to be an oasis in a desert. This success is not in any way due to the uncontroversial or easy-to-agree nature of the issue: all observers of the process have noted the tensions, difficulties, contradictions and even reluctance which have marked the formulation and development of the EU's policy in the region (Friis 1998b, Mayhew 1998, Sedelmeier 1994, 1996, Sedelmeier and Wallace 2000, Smith 1999, Torreblanca 1998, 2001, 2002). In fact, looking back to the period 1989-1992, we see a good number of elements which suggest that EU success in the region could and should not be taken for granted: for most of the period 1989-1991, the Twelve showed themselves to be deeply divided on the issue of German reunification and the Maastricht Treaty and were completely unable to put together a coherent policy towards Central Eastern Europe and back it with the necessary resources. In fact, the way EU leaders (especially Thatcher and Mitterrand) reacted to the prospect of German reunification clearly demonstrated that the age-old rivalries which the EC was supposed to substitute were still very much present: despite the Treaty of the Eliséé and Franco-

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<sup>2</sup> “The EU and Russia: the way ahead”. Speech by the Rt. Hon. Chris Patten at the Diplomatic Academy in Moscow on 18 January 2001. Speech 01/11.

[http://europa.eu.int/comm/external\\_relations/news/patten/speech\\_01\\_11.htm](http://europa.eu.int/comm/external_relations/news/patten/speech_01_11.htm)

German reconciliation, Kohl enacted his Ten Points on unification without consulting Paris; Mitterrand rushed to Kiev to sound out Gorbachev on the likelihood of reinstalling the traditional French-Russian *alliance d’rivers* against Germany; and Thatcher vehemently opposed German unification and Maastricht with the argument that “we don’t want a German Europe”.<sup>3</sup>

The speed at which mutual trust and the bonds of economic interdependence waned in Western Europe, giving way to classical geopolitical instincts, appeared to confirm neorealist predictions about the EC and its future after the Cold War. As proved by the exchanges between Mearsheimer (1990) and Van Evera (1990) in *International Security*, the bid to ensure a post-cold war balance of power in Europe included discussions on whether nuclear weapons should be given to Germany and even Central Eastern European countries. Fortunately for Europe, the US renewed its commitment to European stability and allowed the EC to continue playing its role of managing both political reconciliation and economic interdependencies. Ultimately, both factors were crucial: the US commitment to NATO went a long way towards ensuring that Germany would not be neutralized and, at the same time, the EC was there to ensure the continuity of European reconciliation (to the point that, and this is something which is often forgotten, day one of German unification marked day one of EC membership for the former Eastern Germany territories).<sup>4</sup>

Contrary to Mearsheimer’s predictions, the *acquis communautaire* and EU norms, as a legitimate principle of order, have brought peace, prosperity and stability to the continent (rather than nuclear weapons). Yet, the literature which adopts a ‘power and preferences’ approach (be it neorealist or neoliberal) has largely neglected this successful aspect of EU foreign policy in both case studies and analytical contributions. In opposition to this approach, a large number of investigations are helping to uncover

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<sup>3</sup> During the first months of 1990, rhetorical tension between France, the UK and Germany escalated dangerously: *Financial Times* 4 January 1990, “Worried France treads warily around issue of German Unity”; 27 February 1990, “Genscher takes issue with Thatcher”; 5 March 1990, “France likely to back Poles in frontier row”.

<sup>4</sup> Commission’s Communication, “The Community and German unification”. SEC 90 (751). Brussels, 19 April 1990.

the distinctive normative qualities of EU foreign policy. Smith (1996) has advanced the notion of the EU as a ‘negotiated order’; Friis and Murphy (1999) have emphasized the importance of thinking about legal, institutional and cultural ‘boundaries’ rather than of ‘borders’; Sjurgen (2002) has highlighted the logic of justification inherent to EU foreign policy actions; and Manners’ (2002) study of the suppression of the death penalty in Central and Eastern Europe has highlighted the EU’s ‘normative power’. In parallel to this, the capability-expectations gap debate over EU foreign policy (Ginsberg 1999) has resulted in a widespread consensus around the fact that EU might be “weak on leverage, but strong on values” (Hill 1996: 9). EU foreign policy, we have been told, is based on a number of key principles and values on (such as inter-state reconciliation, peace, democracy), which are deeply embedded in both the *acquis communautaire* and the *acquis politique*.

This paper attempts to take the issue a step further: by stressing the normative underpinnings of EU enlargement policy and the deliberative way in which the enlargement *acquis* has been constructed, it suggests that the EU has dramatically transformed the way foreign policy instruments are set up and deployed. In doing so, and in line with the framework offered by Eriksen and Fossum (2000), the paper is also intended to offer some insights into the prospect for, and potential and validity of, using deliberative theory to study the EU.

The paper has three sections. First, I look at the distinctive features that characterize enlargement from the perspective of EU foreign policy. Here the argument is that enlargement is a good example of the type of post-state, post- hobbesian type of foreign policy actions which endow the EU with both a distinctive character at the international level and legitimacy as an international actor. In the second section, I examine the origins and evolution of the enlargement *acquis* and the role this *acquis* has played in channelling EU member states’ geopolitical preferences towards a rational deliberation focused on the validity, adequacy, legitimacy and appropriateness of the arguments for

enlargement.<sup>5</sup> In the third section, I conclude that given the permanent tensions between the geopolitical, regulative, normative and cognitive dimensions of enlargement policy it is not possible to characterize its results as a fully rational-deliberative outcome in the Habermasian sense, but suggest that the various instances in the creation and modification of the enlargement *acquis* can best be considered deliberatively reached “working agreements” rather than as results of typical distributive negotiations.<sup>6</sup>

## **1. Enlargement as a foreign policy instrument**

Despite the intense and profound divergences that exist on the theoretical and empirical interpretations of the EU, in general, and its foreign policy, in particular, Moravcsik and Vachudova (2002: 1), working within a liberal international relations framework, describe enlargement as “the most important single policy instrument available to further a more stable and prosperous continent”. From a very different perspective, Sjursen (1998, 2002: 5), also agrees that enlargement should be accorded a prominent place in EU foreign policy: “enlargement is, in itself, a form of EU foreign policy: it puts the EU in a position to shape large parts of the applicant states’ domestic and foreign policies [...] it contributes to set new standards for the governing of Europe”. Equally, Roy Ginsberg (1999: 446), in his contribution to the capability-expectations gap debate raised by Hill (1996), also characterizes enlargement as the “EU’s most significant and far-reaching foreign policy action”. Even analysts who do not work on EU foreign policy, such as those operating in the field of transitions to democracy, agree with this diagnosis of enlargement as a key instrument of EU foreign policy: for Pridham (2002: 954), “the impact of EU membership on democracy is not only long-term (through convergence) but very precise and short-term given the adaptations required by the EU in order to start accession negotiations”. Still, despite its importance,

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<sup>5</sup> By deliberation, I mean the process by which consensus is established with the aid of reasons and mutually acceptable arguments (Erik O. Eriksen, “Integration and quest for consensus: on the micro-foundations of supranationalism”. Paper presented at the CIDEL conference held in Florence in January 2003, p. 1. Available at: [http://www.arena.uio.no/cidel/Workshop\\_Firenze/Contr\\_Eriksen.pdf](http://www.arena.uio.no/cidel/Workshop_Firenze/Contr_Eriksen.pdf)).

<sup>6</sup> Working agreements “are something less than a rational consensus but something more than a strategically induced compromise and a *modus vivendi* as they rest on reasonable reasons” (Erik O. Eriksen, *op. cit.* 2003, p. 1)“

enlargement is a strange event to work with. There are at least three reasons for this: the first is related to the finality of enlargement, the second has to do with its governance features, the third with its regulative and normative content.<sup>7</sup> Let us consider these three issues in a little more detail.

First, the extension of the EU (legal and normative) order to its neighbours, which is the ultimate goal of enlargement policy, means that, if successful, the countries ‘object’ of foreign policy will become members and thus ‘subjects’ or actors in EU foreign policy. As exemplified by the quote from Patten’s cited at the beginning of the paper, the EU does not only aim to achieve economic and geopolitical goals in its periphery, but also seeks to mould the very nature of those countries, as God did, “in his image and likeness”. In fact, as it has been highlighted by specialists in the region, many countries find it more difficult to comply with EU *acquis communautaire* than to meet modern standards of democratic rule (Rose and Haerpfer 1995). Apart from military occupation, enlargement may then be the most intrusive form of foreign policy which one can imagine: it seeks to change the collective (social and political preferences) of entire nations, those “social purposes”, in the words of Moravcsik (1997) that lie behind state preferences and which have to do with values, identities and collective agreements about the definition and character of desirable public goods. As depicted in the literature, should the EU have a ‘Manifest Destiny’ of extending its peace project beyond its frontiers, this would be different from others’ powers external projection in history at least in three dimensions: it would not be state-centric (Allen and Smith 1996); it would generate international relations rather than just foreign policy (Hill 1996: 120); it could be conceptualised as an “evolving negotiated order” (Smith 1996). In other words, it would replace diplomacy and power by democracy and legitimate rule (Laffan 1998, Sjursen 2003).

Second, because of the deep and obvious link between enlargement and the core values, main institutional arrangements and key policies of the European Union, enlargement is

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<sup>7</sup> For these division of the EU in three pillars (regulative, normative and cognitive), I draw heavily on Laffan (2001).

also a key domestic EU issue, even a constitutional or *constituting* one which is intimately related to integration (Preston 1997). Very rarely does the achievement of foreign policy goals require a country or a group of countries to engage *first* in important constitutional and policy reforms but this is what the EU is forced to do each time it attempts to satisfy its enlargement goals and, more particularly, what it has been forced to do in its attempt to stabilize Eastern Europe as exemplified by the Maastricht, Amsterdam, and Nice Treaties and the more recent draft Constitutional Treaty. For those reasons, the way the EU governs enlargement is substantially different from classical foreign policy-making process in which executive authority and governmental decision-making process are central (Torreblanca 1998, 2001). In the context of enlargement, ‘governance’ means that there is an intimate, overlapping and cross-cutting connection between the internal (institutional, policy and budgetary reforms) and the external domain (selection of candidates, accession of negotiations, etc.). The EU lacks an international government, but that does not mean that it lacks an international structure of governance (Caporaso 1996: 33). Enlargement deals not only with ‘borders’, but with fuzzy geopolitical, legal, economic and cultural ‘boundaries’ (Smith 1996, Friis and Murphy 1999). Its instruments are predominantly regulative (i.e. the *acquis communautaire* and the body of norms and regulative principles governing enlargement policies) and normative (i.e. the existence of values, such as democracy and peace, on the basis of which enlargement is morally justified and legitimised). Also, given that the EU is permanently unsettled along five major dimensions: constitutional order, geographical boundaries, institutional balance, decision rules and functional scope (Laffan 1998:5) it is not surprising that each enlargement process has triggered a process of readjustment along these five dimensions. Moreover, as values and principles are never completely settled in the EU, agreement on these reforms is far from being consensual. Therefore, the domestic burden of enlargement does not fit well with classic concepts of foreign policy actions and ‘government’. Rather, enlargement is an issue closer to ‘governance’, understood as a “process of collective problem-solving in the public-realm which directs attention to the problems to be solved and to the processes associated with solving them” (Caporaso 1996: 32).

The third, and obviously quite closely related, dominant feature of the enlargement game connected is its deliberative nature. Theories about deliberative rationality fit well both with supranationalism in general (Eriksen and Fossum 2000), with EU foreign policy (Sjursen 2003), and in particular, with enlargement (Sjursen 2002): Owing to the fact that the CFSP has always been held together by a set of collective norms, both ‘hard’ and ‘soft’ law (Smith 2000), enlargement has always had a clear normative orientation (Sjursen 2002). Regardless of whether or not the actual negotiations of enlargement may share many elements with traditional diplomacy (such as the use of sanctions and inducements, threats and rewards, carrots or sticks) and thus can be understood as standard bargaining processes (with all its implications in terms of fixed-preferences, economic rationality, and negotiated outcomes), enlargement is marked by a very important component of argumentation. Argumentation takes place in at least two ways.

In the inside of the EU, enlargement is not only a distributive game, but a rule-making and rule-interpreting game in which conditions for rational deliberation and deliberative outcomes are satisfied in both the senses presented by Habermas (Eriksen and Fossum 2000) and Elster (1991). Therefore, though successive enlargement rounds have always been accompanied by large enlargement packages reached at through strategic negotiations (Torreblanca 2002), the framework-setting negotiations (Smith 2000) which have preceded them present more argumentative than bargaining elements.

To the outside, the candidates are not only ‘induced’ to apply and comply with the EU *acquis* and norms: they are ‘persuaded’ to believe that these norms in themselves good for them. As a diplomat recently told a Turkish ambassador in my presence, accepting the EU *acquis* is not only about negotiation: “as long as you continue adopting the *acquis* only in order to satisfy us”, the diplomat warned, “it will not work to get you in the Union. You have to show us that you apply the *acquis* because you believe that it is in itself good for your country, that is, that you would adopt those norms even if you did

not want to become a member of the EU. Why? Because, ultimately, the *acquis* is what makes your country a democratic and prosperous country”.

## 2. The enlargement *acquis*

Until now, it has simply been argued that enlargement is a key element of EU foreign policy, that this policy has been successful, that norms and values are important in the EU and that EU enlargement policy includes deliberative or argumentative elements. But how have these norms and values which have determined the success of enlargement been arrived at? This is the issue considered in this section, in which I try to summarize the essential features of the enlargement *acquis* by looking at its defining moments, from the British membership application to the Southern European question; the 1993 Copenhagen membership conditions, and ending in the 1997 Luxembourg Summit decision to open negotiations with all candidates rather than just with those best prepared for accession. The four cases show that the policy responses given in certain critical junctures too particular problems were further institutionalised and embedded in the *acquis communautaire*. The result was that in each of these occasions, member states initially conceived the game as a geopolitical and economic bargaining, then found themselves engaged in a discussion on whether the existing enlargement *acquis* should be applied and how it should be applied to each particular case, and then saw the closing of the enlargement game presided by a new or revised set of norms achieved through deliberation.<sup>9</sup>

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<sup>9</sup> I define the enlargement *acquis* as “the set of rules, norms, principles and values which establish who can be member, when it can be member and how will it become member”. The status of this *acquis* in legal terms is not clear: some parts are ‘hard’ law, some parts are ‘soft’ law, and some parts may even have an inferior status. See, for example, Michael E. Smith’s (2000) problems with the term ‘legalization’.

*The search for a legitimate enlargement policy*

As is well known, it all started out because of the careless wording of Article 237 of the Treaty of Rome’s that stated that any European country may become member. Such a loose definition can be interpreted both as synonymous with an explicit open *ethos* and *pathos* in the founding project of the EEC or as confirming the implicit recognition that the founding fathers had not in fact dedicated much time to speculate about the future of the organization. The different reasons behind the negative answers given in the sixties to the UK and Spain and, at the same time, the offer of association agreements eventually leading to membership given to Malta, Greece, Cyprus and Turkey did not speak well of the coherence of the EEC and, most importantly, revealed the absence of any developed plan on this issue. In fact, the EEC’s dealings with the membership question in the sixties confirm the hypothesis that the handling of the enlargement *acquis* emerged from the need to provide particular responses to particular problems at different moments, and that even then, not a lot of effort was devoted to coordinating and integrating the responses given to different requests for membership.

An obvious case in mind is Macmillan’s decision in July 1961 to apply for EEC membership.<sup>11</sup> The arguments used to justify the rejection of the British request for membership concentrated on the regulative aspect (whether UK’s accession was compatible with the *acquis*) or on cognitive issues (whether the UK was truly ‘European’). Surprisingly as it may appear, De Gaulle’s 1963 arguments on the UK’s application sounded very similar to those employed today with respect to Turkey: either the UK could not meet the *acquis communautaire* (because of its agricultural tariffs) or it did not share the *finalité politique* because they were not true or ‘pure’ Europeans (due to both the Commonwealth and the Transatlantic link). De Gaulle was obviously worried about British tariffs, British agriculture and the transatlantic relationship, but he considered these to be manifestations of more profound differences in terms of

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<sup>11</sup> Speech by Harold Macmillan to the House of Commons on 31 July 1961. In EEC Bulletin 1961, 9-10, Sept-Oct, pp. 7-9, reproduced in Truyol (1999: 230-1).

collective identity: British accession, he concluded, would fundamentally alter the nature of the EEC.<sup>12</sup>

But much as is the case today with respect to Turkish membership (Lundgren 2002), the need to publicly justify the reasons behind political decisions in order to obtain support and legitimacy opened a deliberative round in which the consistency of arguments was examined. Observers have noted that the conditions set out in the Commission’s opinions on British, Norwegian, Irish and Danish accession established the idea that the achievements of European integration were beyond negotiation (Preston 1997: 452; Goebel 1995, both cited in Joergensen 1999:8). However, the true founding moment of the doctrine of the *acquis communautaire* as a core component of the enlargement *acquis* was the Birkelbach Report. The report established that accession was not a right of the applicant but, rather, that the Community had the right to demand that applicant states fully commit themselves to honour the economic, political and institutional obligations which membership entailed. Very revealingly, the Report’s reflection on democracy was part of wider reflection on the conditions under which an applicant would become a “strange body” (sic) once member. Asking themselves what it was about Britain that made it incompatible with EEC membership, EEC leaders and the Commission were forced to rationally spell out those conditions under which the perceived threat of British membership to the EEC would be removed. This is in fact the origin of the Birkelbach Report and not, as it is usually depicted, the Spanish demand for association (actually, the Report preceded rather than followed the Spanish application). The Report was however the product of a reflection by the EEC Parliamentary Assembly on the nature of political integration and the *finalité politique* of the Union in the wake of Macmillan’s decision to apply for membership.<sup>14</sup>

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<sup>12</sup> Press Conference of President De Gaulle, Paris 14 January 1963, reproduced in Truyol (1999: 239-243).

<sup>14</sup> The Birkelbach Report was made public on 15 January 1962, while the letter from the Spanish Ministry of Foreign Affairs demanding the opening of negotiations “with a view to examining the possible vinculation of my country with the EEC in the most beneficial form for both parties” was dated in Madrid on 9 February 1962. *Rapport de la Commission politique de l’Assemblée Parlementaire Européenne sur les aspects politiques et institutionnels* (15 January 1962), Document 122, Janvier 1962. (Archives of the European Communities, 07.515:32;X3.075.15), reproduced in Truyol 1999 (pp).

The year before, the EEC Bad Godesberg Summit Declaration had for the first time proclaimed the member states’ desire to coordinate their foreign policies and, eventually, arrive at “common positions” (sic) with a view of promoting “the political union of Europe”.<sup>15</sup> As a consequence, besides making democracy one obvious condition of membership, the Birkelbach Report made an explicit reference to applicants not pursuing foreign policies “which are in contradiction with the fundamental attitudes of member states or that substantially deviates from them”. Building on this principle, the report concluded that the Community was more than just a free trade area or a customs union, that the “political character of the Community cannot here on be called into question”, that acceptance of the institutional framework was also a precondition for membership; and, even more importantly, that accession to the Union was irrevocable and that it could not be partial. It concluded by affirming that “membership of the Community entailed not only the obligation to admit all the dispositions established in the Treaties, but also all the decisions and directives passed after the entry into force of the Treaties, including those adopted by the Council of Ministers and the Court of Justice”.<sup>18</sup>

As said, the Birkelbach Report was not addressed at the Spanish government: Franco did not seek membership but a mere association agreement. However, Franco’s application triggered a spillover of the democratic clause from article 237 (membership) to article 238 (association). This was a step of very important foreign policy consequences because it affected not only those countries wishing to become members but also those wishing to have a more structured relationship with the EEC. Since the

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<sup>15</sup> Summit meeting of EEC Member States, Bad Godesberg, 18 July 1961. European Parliament, Documents about Political Union, January 1964, pp. 9-10, reproduced in Truyol (1999:228-230).

<sup>18</sup> The *acquis communautaire* became established around six elements: the Treaties, the institutions, the body of legislation, the international agreements already signed by the EEC, the accession treaties; the political goals or *acquis politique*, and the ruling of the ECJ.

association agreements of the sixties contained an evolutionary clause, which envisaged full membership, the EEC immediately put itself in the position to influence the domestic politics of all its immediate periphery. As seen in 1967, when a group of colonels staged a coup in Greece, the EEC did not hesitate to apply its enlargement *acquis*, freeze the association agreement and impose sanctions on the military junta. Therefore, in a brief span of time, and in relation to Southern Europe, the EEC had developed four important and interrelated norms as the core of its enlargement *acquis*: first, only democracies could gain membership; second, association agreements may eventually lead to membership; third, the EEC would only establish association agreements with democracies; fourth, associates who did not comply with democratic criteria would be sanctioned. EC foreign policy activism was subtle but very effective: those who approached the EEC for a special status would be ‘captured’ into the democratic conditionality criteria but countries not wishing to take the association path were not coerced: despite its authoritarian and repressive nature, Spain obtained a preferential trade agreement in 1970

The emphasis on democracy in the enlargement *acquis* when dealing with Southern Europe was so pronounced that when Greece, Spain and Portugal democratized, despite widespread fears about their capacity to fulfil the *acquis communautaire*, they were speedily invited to open negotiations on accession. In the case of Greece, much as in the case of the UK, the Commission adopted a regulative position, seeking to preserve the integrity of the *acquis*, but the Council overrode the Commission’s concerns and, in a political act, decided to open accession negotiations (Verney 2002). Similarly, negotiations were opened with Spain in 1979 despite widespread fears about the country becoming an ‘enfant terrible’ (sic) due to its foreign policy orientation, the size of its population, and its backward economic structures, including massive unemployment, the third largest fishing fleet in the world and a labour-intensive agricultural sector (Barbé 1989, 1995)

The British application, the Greek coup and the democratization of Southern Europe forced the EC to devise a specific set of rules, norms and standards for dealing with

applicants. In none of these cases had the EEC really ‘wished’ to take these countries onboard: in both cases, neither geopolitical nor economic reasons impelled the EEC to enlarge, in fact quite the contrary. As De Gaulle had emphasized, any Community extending beyond the original Six would be a wholly different community in which France, and apparently, many others, would not recognize themselves. However, as a result of the deliberative debate which followed the British application, and which resulted in the Birkelbach Report, the enlargement *acquis* became structured along two main dimensions: one (regulative) emphasizing the existence of a set of rules of obligations (the *acquis communautaire*, in the extended version defined above) which candidates had to accept; a second (normative), specifying the values which the candidates’ political systems had to embody and preserve (democracy and human rights, as defined by the Council of Europe and the European Court of Human Rights, (ECHR).

At first sight, this translated into a clear enlargement *acquis* which defined democracy and the indivisibility of the *acquis communautaire* as conditions of membership. However, in both enlargement processes, the EEC had to balance each of these two requirements: the UK, Denmark and Ireland were democratic, but were not willing to share the *acquis communautaire* in full (especially in relation to foreign policy and the *finalité politique*). In contrast, Greece, Portugal and Spain were willing to share the *acquis*, but as there were strong indications that they might not be able to fully do so, member states preferred to emphasize the common values behind their application and contribute to consolidate their democratic regimes, even if some risks had to be taken with respect the *acquis*. In both cases, a balancing act was achieved, thus proving that enlarging could not be handled as legal process, but that it needed to be handled as a political one, i.e. as a foreign policy instrument.

*Eastern enlargement: adapting the acquis.*

As had happened in the sixties, the EU was caught unprepared between 1989 and 1993, when Eastern Europe broke free from the Soviet Union and immediately turned its eyes to the EC and applied for membership. Many member states’ reactions, such as

France's, were, once again, purely instinctive and balance of power-oriented: they were aimed more at preserving individual geopolitical or economic interests than at rationally examining the existing enlargement *acquis* with a view of applying or adapting it to the new situation. In fact, the EC backed away from the *acquis* when it refused to include in the 1991 Europe Agreements with Poland, Hungary and Czechoslovakia the evolutionary clause which had been included in the Maltese, Greece, Cypriot and Turkish association agreements concluded in the sixties. Very revealingly, the EC took almost three years, from 1990 to 1993, merely to apply its own enlargement *acquis*, which since the sixties had made clear that European democratic countries with an associate status would become members.

If and when the EU finally accepted in Copenhagen in June 1993 to restore its enlargement *acquis* and promise membership to all democratic European countries with association agreements, it was because member states had reached agreement on how to ensure that an eventual Eastern enlargement would satisfy both the regulative and the normative dimensions on which the enlargement *acquis* had been based ever since the Birkelbach Report and the first and second enlargements. The Copenhagen conditions, and the careful implementation of them from then on - through the Balladur Plan launched in 1993 to contain minority tensions in Central and Eastern Europe, the structured foreign policy dialogue established in Essen in 1994, the 1995 White Paper spelling the legal adaptations candidates had to embark on to accede to the Single Market, the inclusion in the 1997 Amsterdam Treaty of a wider definition of democracy and the sanctions associated to any likely breach of those conditions in article F.1 - were all foreign policy actions adopted as a result of the need to update and upgrade the enlargement *acquis* to meet the needs of a new situation.

However, the Copenhagen package cannot be understood by merely looking at the distribution of preferences of the partners. A few weeks before the Summit, there was still a majority of EC member states which, as a result of an assessment of their own geopolitical or economic interests, simply opposed enlargement (Torreblanca 2001: 314-328). Yet, EC member states could not voice their opposition in terms of ‘I oppose

enlargement because it is not beneficial for me’: the inherited enlargement *acquis* prescribed that membership was conditional on being European, democratic and wishing to respect in full the *acquis* and, therefore, it worked as the legitimate frame of reference against which new situations had to be assessed in terms factual or normative adequacy as described in Elster’s (1991) conceptualisation of the difference between arguing and bargaining. In consequence, rejection of enlargement could only be legitimately argued in terms of concerns which were either regulative (‘they will never be able to implement the *acquis*’) or normative in character (‘they are not stable democracies, the rule of law is weak and minorities are not respected’’).

Once these kinds of arguments were placed on the table, a deliberation process could begin over the conditions the candidate countries had to meet in order to be allowed into the EU and how the process should be managed. From this perspective, the set of membership conditions defined in Copenhagen that emphasized democracy, the rule of law, respect for minorities, the existence of full-functioning market-economy, the capacity to withstand the forces of competition, full adherence to the goals of political, economic and monetary union (and the always forgotten ‘that the Community be ready to admit new members while preserving the impulse to European integration’), can best be understood as the outcome of a process of deliberation in which EU members states were first forced to spell out and justify their opposition in terms of two types of arguments which did not include geopolitical or economic individual interests (which it was assumed could be accommodated later on through bargaining).

Observers have described in similar terms the outcome of the Luxembourg European Council of 1997, where the member states decided that the EU would adopt a ‘regatta’ approach to enlargement (Friis 1998b). The ‘regatta’ approach was the result of a deliberative game started in Madrid in December 1995 when, on German insistence on a limited enlargement, the Spanish Presidency persuaded the Council to adopt a policy of ‘relative merit’, ‘non-discrimination’ and full implementation of the *acquis communautaire* by the candidates. This policy culminated in Luxembourg with the decision to open accession negotiations with all the candidate countries which met the

Copenhagen political conditions, rather than just with those better prepared in economic terms, in order to allow the possibility that other countries could ‘catch up’ later on. In this way, the EU satisfied both those who were emphasizing the regulative dimensions (the candidates’ obligation to implement the *acquis communautaire*) and the normative dimension (the fact that the EU risked undermining the stability of some democracies by refusing to open accession negotiations with them on the economic grounds alone). By adopting a policy of yearly monitoring the implementation capacity of the candidates (the so-called ‘screening’), the EU retained its ability to influence domestic events in the candidate countries and, at the same time, preserved the sacrosanct *acquis*.

Therefore, once again, member states entered the game with strong geopolitical preferences: in line with what NATO was planning, Germany wanted to limit enlargement to Poland, Hungary and the Czech Republic; France and Spain were insisting on the Southern European and Mediterranean dimension of enlargement, and the Scandinavian countries were worried about a likely exclusion of the Baltic countries. This patronage behaviour reflected again a rather standard geopolitical instinct. However, regardless of whether in accordance with bargaining theories (Moravcsik the choice for Europe) we should have observed a negotiation game in which the outcomes would be mostly predetermined by the asymmetries of power of the participants (with some leeway for institutions helping member states to find equilibrium points beyond the lowest common denominator), the result of the Luxembourg Summit largely reflected the views of two small countries (Denmark and Sweden) and the Commission and were closer to regulative and normative concerns than to the individual interests of key member states, such as Germany. The Luxembourg decision was another balancing act, a ‘working agreement’ in deliberative terms, because member states reached it deliberatively, though they accepted it for different reasons.<sup>19</sup>

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<sup>19</sup> According to Eriksen, op. cit paper, there are four types of outcomes of an interaction process among actors: ‘factual agreements’, ‘compromises’, ‘working agreements’, and ‘rational consensus’. The first

### 3. Enlargement and deliberation

The enlargement *acquis*, I have shown, has not always consisted of a single and coherent entity: it has not been the result of a single decision, but rather, it has emerged incrementally, it has not always been completely coherent, but subject to contradictions; it has been disputed, and not merely consensual. As such, the enlargement *acquis* may be considered a typical product of the EU as a ‘negotiated order’ (Smith 2000): it has a conservative bias, in which adjustment is incremental and not very flexible; the Commission is an active actor enjoying widespread legitimacy; and there are numerous coalition-building and implementation problems. However, as highlighted by Laffan (1997) and Joergensen (1999), evidence for the gradual, contested, evolutionary and deliberative nature of the *acquis* is contradictory with its bed-rock and sacrosanct nature. This leads us directly to the legitimacy question, which is worth exploring further.

The success of EU’s enlargement policy ultimate goals (to standardize the applicants’ ‘social purposes’ and preferences along EU lines), has to do a lot with the legitimacy of the *acquis communautaire* and, more particularly, the enlargement *acquis*. Nonetheless, anyone who has followed, even at a distance, EU enlargement negotiations can immediately detect a problem purely of legitimacy in the way the *acquis communautaire* is formulated, or rather thrown at, the candidate countries. As is well-known, the word ‘negotiations’ is really a euphemism: enlargement negotiations simply boil down to the transposition by the candidates of between 80,000 and 200,000 pages of EU regulations, divided into thirty chapters covering all aspects of the political, economic and social life of the candidates, from the quality of drinking water to the rights of children, from judiciary corruption to phytosanitary measures. Negotiations revolve around one single and not very democratic principle: the indivisibility of the *acquis communautaire*, which implies that there are no opt-out options for new-comers

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two are products of strategic interactions in which bargaining dominates, the last two are products of communicative action in which arguing dominates. A working agreement is not a negotiated compromise, parties accept it for different reasons, but they have a normative quality if only because they reflect the best argument all parties could live with.

and that negotiations can only establish temporary, but not permanent, derogations. This accords the *acquis communautaire* a peculiar constitutional character: members can opt-out of future arrangements and can change the *acquis*, applicants cannot opt-out of past-agreements and cannot challenge the *acquis* (Preston 1995).

Though accession negotiations provoke numerous tensions, these tensions derive from national interests with respect to particular policy or institutional goals more than underlying rules, principles and norms. Enlargement is successful, it can be argued, because both the rules governing the process and the outcomes of it are consensually accepted by the applicants. Moreover, they are accepted because the applicants consider them legitimate along the three key dimensions (substantive, procedural and identitarian) on which legitimacy is said to be based (Beetham and Lord 1991).

First, on the substantive dimension, it is quite obvious that applicants apply and wish to become members because they benefit from membership: the fact that no country has been worse off after enlargement or has asked to withdraw from the EU demonstrates that enlargement is a good and effective policy output. On the third dimension (identity, feelings of belonging), it is also quite evident that while European identity cannot be compared with national identity, feelings of Europeanness and shared links are evident and widespread in accession countries, making it easier for them to accept the impositions of the EU.

Along the second (procedural) dimension, which is the most important in terms of the argument presented here, it is evident that no matter how unbalanced the terms of accession negotiations, accession takes place by consent, and usually with super-majoritarian results in both national Parliaments and popular referenda. Nonetheless, enlargement is legitimate not only because the candidates accept it out of material necessity, but because they concede legitimacy to the rules of the game and the way they have been defined. And, as explained above, the fact that these rules are considered fair and just is intrinsically related to the way they have been arrived at: that is, through deliberation. Only through deliberation could the member states have arrived at

principles such as ‘relative merit’ or ‘non-discrimination’: clearly, such results do not match typical bargaining compromises in which actors are either coerced into agreement or helped to split the difference by establishing side-payments.

Examining the enlargement question, Moravscik and Vachudova (2002) have concluded that the process of enlargement can be perfectly explained in terms of a rationally-oriented negotiation between self-interested actors who seek to maximize economic and geopolitical benefits. The authors do not see what they refer to as the “mysterious or idealistic elements” which the literature on enlargement usually emphasizes. However, this is contradictory not only with the available empirical evidence (Friis 1998b, Sedelmeier 1994, 1996, Sjursen 2002, 2003, Torreblanca 2001, 2002 etc.) and the arguments offered here, but also with Moravscik’s (1997: 525) own refinement of liberal international relations theory, in which he explicitly admits, following a ‘liberal ideational’ orientation, that state preferences derive from social purposes which, in turn, can have transnational influences. Surely the enlargement *acquis* can be characterized, both in its regulative and normative dimensions, as one of these transnational influences which shape member states’ foreign policy behaviour.

Otherwise, how can we explain the fact that France accepted UK’s accession or that Spain accepted Eastern enlargement? Since France’s first preference was not to have the UK in the Union, and given that accession was dealt with under unanimity rules, the only way to explain France’s acceptance of British membership in terms of economic rationality would be to identify the economic, geopolitical or institutional compensations which France obtained in return. However, it is difficult to see how, if at all, France has benefited from UK membership, whether in geopolitical, economic or institutional terms. Pending more detailed studies on the Spanish case, it seems evident that the situation faced by Spain in relation to Eastern enlargement is quite similar. In both cases, the final outcome of the game has been an enlargement *acquis* which has reflected more rational deliberation and the arrival at some shared understanding of what a legitimate and justifiable enlargement *acquis* would look like than a pure

bargaining outcome in which costs and benefits were distributed according to the relative power of each participant.

As has been shown here and in numerous other instances, key decisions related to enlargement (such as when to enlarge, whom to enlarge, how to enlarge) have been dominated by mixes of regulative and normative concerns rather than by power, utility-based or strategically dominated preferences (Torreblanca 2002). This is not to say that negotiations, bargaining, threats, package-dealing or side-payments have been unimportant (actually, when it comes to both the distribution of institutional, budgetary and all sort of other costs, both internally among the fifteen, and externally, among the fifteen and the twelve candidates, the situation has almost reflected a pure bargaining situation). However, while in the Hobbesian theory of agreements “lions always get the lion’s share” (Esteban and Markóvics 2003), i.e. outcomes typically reflect the asymmetries of power among the participants, when it comes to enlargement we have seen how lions (from De Gaulle to Mitterrand, Thatcher to Kohl) have been brought into a rational deliberation over the validity and legitimacy of each other’s arguments. This has resulted in, if not a pure rational consensus in the Habermasian sense, a set of working agreements which, despite being accepted as valid by different actors for different reasons, have a superior normative and legitimacy quality than distributive agreements reached through pure bargaining (Eriksen and Fossum 2000).

Back in the sixties, the EEC produced an enlargement *acquis* specifying what membership entailed in terms of rights and duties and how enlargement processes would be dealt with. This created deliberative conditions within the EEC and between the EEC and the applicants for them to argue over the truthfulness, validity, appropriateness of each other’s arguments for accepting, rejecting or justifying enlargement. This made it possible to translate identity-based arguments, geopolitical concerns or economic anxieties into a deliberative framework in which they could be properly dealt with and be subject to objective processes of both factual and normative verification. The *acquis communautaire* became something more than a focal point which expanded the Pareto frontier and made everybody better off: it turned definitions

of membership into a rational deliberation about objective criteria and democratic legitimacy, relegating distributive and pure bargaining concerns to later phases of the policy game.

## Conclusions

The empirical evidence provides quite convincing support for the idea that the EU can be conceptualised not only as a modifier of norms in the international system, implying both that it is constructed on a normative basis and that it is predisposed to act in a normative way in world politics (Manners 2002: 252), but also as a modifier of preferences, a standardiser of social purposes along some key dimensions such as democracy, interstate reconciliation, the rule of law, human rights and market-oriented economic orientations.

Enlargement may therefore be considered by EU enthusiasts as the first example of a post-modern form of foreign policy. Its, if not dominant, abundant regulative and normative content may well indicate a post-state, post-hobbesian type of foreign policy dominated by Kantian tunes about the rule of law, democratic values and the ethical quality of our actions. The perspective of EU membership, and its favourite instrument: the *acquis communautaire*, has been one of the key elements in explaining the success of the democratic, economic and foreign policy transitions in which Central and Eastern Europe has been engaged in since 1989. As felt in the Greece of the Colonels, Revolutionary Portugal, Franco’s Spain, Meciar’s Slovakia, Romania in the second half of the nineties and Turkey at present, the pessimistic distinction between normative and empirical attainments in EU foreign policy, so frequent in the literature (Rosecrance 1998: 22, cited in Manners 2002, also Hill 1996, above) may lead us to overlook some key indicators for optimism: as proven by enlargement policy, and in contradiction to conventional wisdom about foreign policy, values do seem to have leverage capabilities and normative attainments do seem to have empirical consequences.

The conditions of enlargement may be so unique in terms of making rational deliberative processes emerge that they would make it hard to identify similar processes to compare with. Yet, we should not be discouraged by this. A potentially promising research strategy may be to abandon the search for most similar cases and concentrate on most dissimilar ones. Those who, like Oscar Wilde, consider the rumours suggesting that classical foreign policy is dead in the EU sphere to be mere exaggerations might do well to compare the regulative (law) and normative (values) quality of EU foreign policy in Central and Eastern Europe with two examples at hand of great power behaviour: examining US policies towards Mexico and Central America and Russian policies on its ‘near abroad’, the concepts of ‘order’ and ‘disorder’ and the intrinsically distinct quality of these ‘orders’ and ‘disorders’, compared with the EU, become evident. The difference may not be found to lie in whether the EU is a civilian or military power, but rather in the ‘social purposes’ behind its preferences, the regulatory, and normative content of its foreign policy methods and the legitimacy imprint given to its policies by the deliberative way in which basic principles and orientations for political actions are reached at.

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