Thanking the Greeks: The Crisis of the Rule of Law in EU Enlargement Regulation

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Abstract

This paper showcases the weaknesses of EU enlargement law and demonstrates how one Member State – namely, Greece – is notable for abusing this weakness, for harming the candidate countries, the EU, and the institutions alike, for stripping the EU position of its predictability, and for undermining the EU Commission’s efforts. Accordingly, Greece has severely incapacitated the key procedural rule of law component of the EU’s enlargement regulation, turning it into a randomised political game and ignoring any long-term goals of stability, prosperity, and peace that the process is to stand for. Following a walk through Greece’s engagement throughout a number of enlargement rounds, the paper concludes that the duty of loyalty – which is presumably able to discipline Member States that undermine the common effort – should find a new meaning in the context of EU enlargement.

Keywords

Introduction

The EU’s enlargement policy has been regarded as a successful tool for spreading peace across the continent, supplying powerful incentives for the transformation of new Member States joining the Union with each enlargement round. Such transformation has been enabled through pre-accession conditionality, which has gradually developed in the EU’s enlargement practice (see Kochenov 2008: 8, and the literature cited therein). Although overestimating its effectiveness would probably be a mistake (see Kochenov 2008), pre-accession conditionality is unquestionably a fundamental and indispensable element of the law regulating enlargements: it is the key set of procedural essentials that enables the Union to promote and guarantee lasting change in the Member States-to-be, following a pre-defined, relatively open and transparent process. Conditionality thus provides a script and promises predictable success in cases where it is meticulously followed.

Inherent in the application of conditionality is the fact that it strengthens the position of the Union and its Member States vis-à-vis the candidate countries. However, a number of straightforward tensions arise from the construct wherein the Union and those who are ‘already in’ are omnipotent in the face of the new applicants, while the law regulating the process as such is quite weak: not only does Article 49 TEU regulating accessions never mention conditionality, it is also silent on the legal enforceability of its political components (see Kochenov 2005). The EU and the Member States can literally demand anything, and there are no checks built into the system besides the states’ good will and, possibly, their desire to comply with the Union’s values and the duty of loyalty,2 which would prevent a situation from arising where a candidate country – or, for that matter, the Union’s own goals and objectives – could end up harmed in the context of this (political) process. This danger is rarely emphasised (notably, see Hillion 2010), yet it has been as acute as ever since day one of EU enlargement regulation.

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1 E.g. Manuel Barroso’s speech at the ‘EU Enlargement – 5 Years After’ conference, Prague, 2 March 2009, SPEECH/09/83.

2 The first and probably most important duty is the principle of loyal cooperation enshrined in Article 4(3) TEU, which establishes the basis for all compliance procedures (e.g. Cremona 2012: xl). In addition, Article 24(3) TEU requires Member States to support the Union’s external and security policy actively and unreservedly, and to comply with EU actions in this area. Member States must also ‘refrain from any action which is contrary to the interests of the Union or likely to impair the effectiveness as a cohesive force in international relations’ – see, for instance: Hillion and Wessel 2008.
This situation is the key focus of this paper: the imperfections of EU enlargement law, as exemplified by the behaviour of Greece (among other actors of course),\(^3\) in the context of a number of enlargement rounds. The tricky question that arises here is whether Greece's actions can be considered 'illegal'. Given the goal-oriented nature of the Union and the clear mission behind the very idea of its enlargements, the answer would probably be 'yes'. It would be much more difficult, however, to give the same answer with regard to the enforceability of the rules violated, which points in the direction of the lacunae in the law. The law allows Member States to go unpunished while openly employing their membership to solve their bilateral issues with the candidate countries, or to cater to the needs of the internal political situation. Should a Member State be able to render 'what is essentially a bilateral problem into a "European issue" at the multilateral level of accession negotiations' (Šabič 2002: 93), its chances of achieving an advantageous outcome to the bilateral issue can improve substantially (see Basheska 2015).

Following an explanation of the key role that conditionality plays in the context of EU enlargement regulation, which also (given the asymmetry outlined above) naturally opens up possibilities for abuse, this paper looks at three specific pre-accession contexts: Greek-Turkish relations, Greek-Cypriot relations, and Greek-Macedonian relations. The focus, moreover, is on tracing Greece's successful attempts at hijacking the pre-accession process, rendering the EU's enlargement law unworkable, and making the effective application of the principle of conditionality impossible. The paper also aims to analyse Greece's influence on the progress of each of these three countries on their path to the EU, contrary to the enlargement agenda. The paper concludes that EU enlargement law is in need of serious reform in order to ensure that the Union is not among the accomplices of Member States in their attempts to achieve their Quixotean task, as it can now be legitimately viewed from candidate countries.

1 Applying Conditionality to Bilateral Disputes

Following the last two rounds of enlargement, the principle of conditionality is unquestionably en vogue, now used everywhere from the Western Balkans to the ENP countries (see Tulmets 2008; Kochenov 2011). Effective and delivering on many a promise, it is related to the Union’s perceived ability to push through change and progress by exporting its own values and acquis. It is argued that highly politicised processes bring better results should they be

\(^3\) On the disastrous performance of the European Commission, see: Kochenov 2008.
steered and acquire a crisp legal-procedural form, as opposed to being largely random in essence – thus, once infused with predictability and reliable expectations for all sides at least in the short- to medium-term, the results are markedly better. This is exactly what conditionality was designed to deliver.

Viewed in this light, conditionality has nothing negative about it, as it is taken as an attempt to solve a wide range of outstanding problems related to the viability of the incoming countries’ functioning in the juridical-economic context of the Union, thus helping them to transform. To that end, however, conditionality presupposes that the applicants agree with the Union’s scrutiny of all the spheres of their legal, political, and economic reform, and that they also agree to fulfil the demands addressed to them by the Union. Moreover, given that in exercising the pre-accession monitoring of the candidate countries the European Institutions are not restrained by the EU’s limited sphere of competences, the candidate countries basically offer the EU a carte blanche to interfere with their internal affairs (Blokker 2006: 17). As such, the principle of conditionality applies throughout the entire duration of the pre-accession process, with different groups of conditions being developed by the Union to determine whether the applicants are ready to move forward towards accession. Thus, having met the criteria once, the same candidate country can fall short of meeting the criteria the next year, since the scope of the criteria is constantly adjusted at will – either to correspond with the difficulties experienced in the pre-accession period by the country in question, or simply because some previously secondary sub-field receives a renewed importance in the eyes of the Union.

Conditionality could be particularly effective due to the asymmetry in the negotiation strength between the EU and the candidate countries. Since the demands of the EU are not counterbalanced by the right of the applicants to accede, the Union and the candidate countries are far from being equal parties during the pre-accession process (see Nicolaïdes et al. 1999: 52). Accordingly, this principle has undoubtedly weakened the position of the candidate countries vis-à-vis the Union and the Member States, leaving them no room for manœuvre⁴ and with a degree of pressure sufficient to guarantee that the Union’s demands are met. It is in this context of asymmetrical relations (see Moravcsik and Vachudova 2003) that the requirement for the settlement of bilateral issues in the Union’s enlargement policy has been framed (see Arıkan 2003).

Indeed, conditionality can hardly be an appropriate tool in the enlargement process, as testified by attempts at the settlement of a number of bilateral issues.

⁴ For the criteria of a ‘depoliticised enlargement process’ see: Nicolaïdes et al. 1999.
issues. In aiming to prevent the importation of external conflicts, the requirement for the settlement of bilateral disputes is a legitimate condition in the EU’s enlargement policy. Taking the argument further, the Union is even obliged by virtue of Article 3(5) TEU and Article 21(1) TEU to promote international law in general and UN principles in particular in its enlargement policy, thus making the membership of applicant countries conditional on the peaceful settlement of disputes. Nevertheless, the implementation of this requirement for the settlement of bilateral disputes should not be flexible and arbitrary, and instead should be consistent and in accordance with international law. In addition to applying equally to all candidate countries in terms of consistency, this inevitably means that the settlement of bilateral disputes requires the parallel advancement of the equality of all the states involved. Yet, as noted above, the position of Member States and candidate countries in the enlargement process is far from equal.

Rodin looks at the asymmetric relations between states to differentiate between two general groups of bilateral disputes involving states with different statuses (see Rodin 2012: 156). According to his classification, vertical disputes involve a Member State and a candidate country, while horizontal issues involve only candidate countries (Ibid.). In vertical disputes, Member States can either act on their own behalf with respect to their bilateral disputes with candidate countries, or they can act on the behalf of the Union regarding ‘EU-wide issues’ (Ibid.). Horizontal issues, for their part, can be decided outside or within the framework, depending on their nature, but they can also be reflected at the EU level if they concern an EU interest (Ibid.).

The settlement of vertical disputes in the enlargement process can be particularly problematic in cases where a Member State negotiating and assessing the fulfilment of the accession conditions by a candidate country is also a directly affected party. The opportunities for Member States to exert pressure in the enlargement process are thereby increased, and can vary ‘from withholding consent to the opening of negotiating chapters, to objecting to the graduation of a country to a new phase (candidate membership, opening of negotiations, membership)’ (Uilenreef 2010: 15–22). Indeed, Member States have a crucial role in the enlargement process. It is also notable that the EU institutions, although taking part in the process of enlargement preparation,

6 Article 2(1) of the UN Charter stipulates that the ‘organisation is based on the principle of the sovereign equality of its Members’. See also the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the UN Charter, UNGA Res 2625 (XXV) (24 October 1970).
do not themselves sign the Treaties of Accession. Clearly, then, the enlargement of the EU is not about the Union enlarging itself but about the Member States enlarging the Union, with the help of institutions.

Given the unanimity requirement in the Council, let alone that the Accession Treaty ratifications need to be in accordance with their constitutional requirements (as Article 49 TEU demands), Member States have been able to employ their powers to delay the enlargement process ever since the first enlargement round, when France blocked the UK’s accession attempts. Accordingly, Member States can insert their ‘crude domestic interests’ (Hillion 2011: 191) into the enlargement process. However, unlike in the past, when Member States employed their membership powers to block the accession of candidate countries for various reasons on a rather exceptional basis, this seems to have become a regular practice at the current stage of integration. The process has therefore been described by Hillion as a ‘creeping nationalisation’ of the EU’s enlargement policy (Hillion 2011). Its implications for the effectiveness of the regulation of EU enlargements are clear.

2 Bilateral Relations and the Accession of Greece

The EU enlargement agenda has come to be increasingly dependent on bilateral relations between Member States and candidate countries. One of the examples where the enlargement of the Union has been delayed – if not completely deadlocked – is partly due to the troubled relations between Greece and Turkey.

Even before the Greek accession to the Union, Turkey had raised its concerns related to the Greek application for membership at the EU level. The Council subsequently noted that Greek membership should not negatively impact the relations between the Community and Turkey, to which Greece agreed.

7 This was the case, for instance, with the two French vetoes of the UK’s attempt to accede to the Communities. For more details see Hillion 2011: 191. Cf. Wall 2013; Davis 1997.

8 See, for instance, Uilenreef 2010, with regard to the impact of the bilateral dispute between Slovenia and Croatia on the EU integration efforts of the latter.

9 Turkey stressed the question of the procedure to be followed for the implementation of Article 56 of the Additional Protocol to the Ankara Agreement [1977] OJ L 361/22: ‘[i]n the event of a third State acceding to the Community, appropriate consultations shall take place in the Council of Association so as to ensure that account can be taken of the mutual interests of the Community and Turkey stated in the Agreement of Association’.

10 The Council agreed to emphasise the interest of the Community in maintaining very close relations with Turkey in its declaration of 24 June 1975, EC Bull 6–1975, noting that
(Smith 2003: 110). In its opinion on the Greek application for membership, the Commission maintained that ‘[t]he prospect of Greek membership raises the problem of the disagreements between Greece and Turkey, an Associate country whose agreement with the Community also has full membership as its stated final objective’. However, the Commission refrained from interfering in the troubled relations between the two neighbouring countries and clearly separated the decision over the Greek membership application from the need to solve the existing issues between the two states. It maintained that:

[t]he European Community is not and should not become a party to the disputes between Greece and Turkey. The Commission is consequently of the opinion that the European Community should urge upon Greece and Turkey the need for them to reach just and lasting solutions to the differences which separate them. The Community should consider what part it could play, in parallel with the preparatory work for Greek accession, to facilitate this process. It [was] evident that the success of these initiatives does not depend on the Community alone, and it would therefore be inappropriate for the decision on Greek membership to be dependent on it.

By taking this view, the Commission has greatly distanced itself from the bilateral disputes between the two neighbouring countries, and more importantly, it has detached these issues from the enlargement process. However, it did recognise that ‘the balance in the Community relations with Greece and Turkey has found its expression in their identical status as Associates both of them with the possibility of full membership as the final objective, albeit with different timetables’, and that the ‘prospect of Greek membership of the Community introduce[d] a new element in this balance’. To that end, and in accordance with the Council’s declaration, the Commission indicated that specific steps should have been taken to ensure that the examination of Greece’s membership application would not affect relations between Turkey and the Community or the rights guaranteed by the Association Agreement between the two parties. This, however, is not exactly what happened.

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12 Ibid.
13 Ibid., para 7.
14 Ibid.
15 Ibid.
Turkey’s Membership Application and Prospective Accession

Turkey applied for membership on 14 April 1987, and its application brought its troubled relations with Greece into the focus again.16 Existing Aegean disputes17 and the Cyprus question remained unsettled, standing in the way of completely friendly relations between the two neighbouring countries. Past efforts by the Commission and the Council to prevent the relations between the Community and Turkey to stand as an impediment after Greek accession were unsuccessful. Quite to the contrary, the rhetoric of these two institutions significantly changed, and good neighbourliness started to acquire an explicit requirement for the settlement of bilateral disputes as a condition for further progress towards EU membership. One of the reasons the Commission offered for responding negatively to opening the accession negotiations with Turkey included:

[e]xamination of the political aspects of the accession of Turkey would be incomplete if it did not consider the negative effects of the dispute between Turkey and one Member State of the Community, and also the situation in Cyprus, on which the European Council has just expressed its concern once again. At issue are the unity, independence, sovereignty and territorial integrity of Cyprus, in accordance with the relevant resolutions of the United Nations.18

Six months later, the Dublin European Council expressed its concerns regarding the Cyprus question, reaffirming ‘its support for the unity, independence, sovereignty and territorial integrity of Cyprus in accordance with the relevant UN resolutions’.19 It reiterated that ‘the Cyprus problem affects EC–Turkey relations’,20 and stressed the need for the quick elimination of the obstacles preventing ‘the pursuit of effective intercommunal talks aimed at finding a just and viable solution to the question of Cyprus’.21

The standpoints of the Commission and of the European Council regarding the status of Cyprus did not introduce any novelty to the scene. Rather, they

16 On Turkey’s path to accession, see in general Hughes 2011. See also: Kanarek 2003; Canefe and Ugur 2004; Arvanitopoulos 2009.

17 For a detailed legal analysis of the Aegean disputes between the two neighbouring states see Athanasopoulos 2001; Bölükbaşı 2004.

18 European Commission, ‘Commission’s Opinion on Turkey’s Request for Accession to the Community’ sec (89) 22/90 final/2, 20 December 1989.


20 Ibid.

21 Ibid.
reflected the earlier approach of the Commission and its Member States, both of which strongly disapproved of the declaration of independence of the so-called ‘Turkish Republic of Northern Cyprus’, supporting instead the unity, independence, sovereignty, and territorial integrity of the Republic of Cyprus.\footnote{See, for instance E.C. Bull 11-1983, point 2.4.1.}

What was new at that point, was the linking of this question to Turkey’s progress towards EU membership.

Evidently, Greece’s accession brought the bilateral disputes, from which the Commission had previously distanced itself, to a multilateral level. Hoffmeister notes in this respect that the ‘carefully drafted statement [of the Commission] coincides with the political analysis that Greece under Prime Minister Papandreou would [have] any way block[ed] Turkey’s accession if there was no prior Cyprus settlement’ (Hoffmeister 2006: 86, footnote omitted). Grigoriadis, moreover, links the developments in the years that followed with the Greek decision ‘to exploit Turkey’s interest in improving its relations with the European Union by conditioning its consent to the improvement of Turkey–EU relations on the modification of Turkey’s policies on their bilateral disputes’ (Grigoriadis 2014: 2).\footnote{For a rather critical analysis see also Rumelili 2008.} He further argues that Turkey’s unwillingness to change its policies resulted in ‘Turkey–EU relations suffer[ing] a stalemate as any decisions that could improve [these] relations were blocked by Greece’s veto’ (Ibid.; see also: Tsakonas 2009: 110; Berridge 1996: 113; Bahcheli 2004: 114; Çakir 2010: 36; Preston 1997: 218.).

EU expectations for the settlement of the Cyprus issue persisted into the later stages, that is, after Turkey was granted candidate status. Thus, the EU Accession Partnership with Turkey enumerated among its short-term priorities and objectives the need for Turkey to ‘strongly support the UN Secretary General’s efforts to bring to a successful conclusion the process of finding a comprehensive settlement of the Cyprus problem’.\footnote{Council of Ministers, ‘Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey’ [2001] OJ L 85/13, para. 4.1.} Furthermore, after Turkey secured the opening of accession negotiations with the Union, the settlement of the Cyprus issue was specifically enumerated among the principles guiding its negotiating framework, in addition to the Copenhagen criteria. The negotiation framework for Turkey clearly stipulates that its progress toward integration will be measured against the good neighbourliness requirement and its relations with its neighbouring states, including a settlement of the Cyprus issue.\footnote{Council of European Union, ‘Enlargement: Accession negotiations with Turkey: General EU Position’ 12823/1/05 REV 1 (Annex II ), 12 October 2005.}
The explicit inclusion of the good neighbourliness condition to cover the settlement of the Cyprus issue corresponded, moreover, to the profound development of that condition in the enlargement practice of the Union – initially towards CEEs and later on towards Western Balkan countries. However, the EU did not strictly link the progress of CEE candidate countries to the settlement of their bilateral disputes, despite all its encouragement in that direction. The nearest it came to applying conditionality to the settlement of a bilateral dispute before the fifth enlargement took place was in the case of Cyprus. Unlike the case of Turkey, though, Greece used its membership powers to ensure Cyprus’ accession to the Union, notwithstanding the unresolved Cyprus question.

4 Cyprus’s Membership Application and Accession

The Republic of Cyprus applied for EU membership in 1990 in the name of the entirety of its territory, albeit with the disapproval of the Turkish Cypriots, who first desired that the Cyprus issue be resolved (Karatas 2011). Recognised only by Turkey, Northern Cyprus is considered by the EU and the wider international community as occupied territory of the Republic of Cyprus. Accordingly, the prospective accession of the island to the Union supplied a unique opportunity for the settlement of the issue, but also brought uncertainty regarding the overall handling of the de facto divided island before and after its eventual accession. Unfortunately, this opportunity has not been used.

Indeed, the requirement for a settlement of the problem not only affected Turkey’s membership aspirations, but also had an impact on Cyprus’ application. Due to the unresolved issue, the Commission first decided not to act upon Cyprus’ application (Hoffmeister 2006: 86). Thus, almost two years after the application, the Lisbon European Council merely concluded that ‘[r]elations with Cyprus […] will be developed and strengthened by building on the association agreements and their application for membership and by developing the political dialogue’.

Shaelou 2010: 60, for instance, notes that after Cyprus’ accession to the Union, the aim of recognition of the Republic of Cyprus by Turkey and the normalisation of the relations between Cyprus and Turkey was to be achieved by exerting political pressure, as well as through the ‘technical requirements deriving from binding instruments of [EU] law’.


Lisbon European Council (26, 27 June 1992) Presidency Conclusions, para. 1.4.
The Commission only started to prepare its opinion on the application after the unsuccessful talks on the proposal of the (then) UN Secretary General, Boutros Boutros-Ghali, for a secular, bi-zonal, and bi-communal federation composed of two politically equal states, which was to be submitted to both communities for referendum.\textsuperscript{29} In the Commission’s opinion on the matter, it clearly emphasized that the integration of the island ‘implies a peaceful, balanced and lasting settlement of the Cyprus question – a settlement which will make it possible for the two communities to be reconciled, for confidence to be re-established and for their respective leaders to work together.’\textsuperscript{30} The Commission added, however, that ‘as soon as the prospect of a settlement is surer, the Community is ready to start the process with Cyprus that should eventually lead to its accession’.\textsuperscript{31} This indicated that the EU intended to make the future accession of the island conditional upon a settlement of the issue.\textsuperscript{32} Nevertheless, if no settlement was to be reached, the situation in the opinion of the Commission would have to be reassessed and the question of Cyprus’ accession reconsidered in January 1995.\textsuperscript{33}

The Corfu European Council in 1994 was a turning point in the story, envisaging that Cyprus would be included in the fifth enlargement round,\textsuperscript{34} despite the lack of a solution to the problem. Although in its Communication to the Council of 6 February 1995 the Commission re-expressed its concerns with regard to the unsolved question,\textsuperscript{35} it nevertheless opined that the accession negotiations with Cyprus could start six months after the conclusion of the Amsterdam Intergovernmental Conference. Thus, on 6 March 1995 the General Affairs Council agreed to start the accession negotiations with Cyprus,\textsuperscript{36} and this decision was further confirmed at the Cannes European Council in June 1995, as suggested by the Commission.\textsuperscript{37} This marked the abandonment of the


\textsuperscript{30} European Commission, ‘Commission Opinion on the Application by the Republic of Cyprus for Membership’, Doc/93/5 of 30 June 1993 (Opinion on the application of Cyprus).

\textsuperscript{31} Ibid.

\textsuperscript{32} Tocci 2002:108, for instance, argues that a settlement of the dispute was effectively a condition in the Opinion on the application of Cyprus. See also Bourne 2001: 394.

\textsuperscript{33} Opinion on the application of Cyprus.

\textsuperscript{34} Corfu European Council (24, 25 June 1994) Presidency Conclusions, section B.

\textsuperscript{35} European Commission, Communication to the Council in view of the re-examination of the question of Cyprus’ accession to the European Union, SEC (95) 205 final.

\textsuperscript{36} Council of the European Union, General Affairs and External Relations, Decision on Cyprus Accession (6 March 1995).

\textsuperscript{37} Cannes European Council (26, 27 June 1995) Presidency Conclusions, para. 11.1.
settlement of the Cyprus issue as a condition for the further progress of that country (Tocci 2002: 108). The shift in the EU institutions’ position, however, did not reflect any positive momentum in resolving the Cyprus problem, but resulted instead from political bargaining.

In particular, Greece had agreed to lift its veto to the Customs Union agreement with Turkey (which it used previously, due to the unresolved Cyprus issue) in exchange for securing the opening of the accession negotiations for Cyprus (Ibid.; see also Hofmeister 2006: 89, 108; Grigoriadis 2014; Tsardanidas and Stavridis 2011: 120; Tsakonas 2009: 110; Berridge 1996: 113; Bahcheli 2003: 174; Çakir 2010: 35). Unsurprisingly, the two decisions – the lifting of the veto of the Customs Union and the opening of the accession negotiations with Cyprus six months after the conclusion of the Intergovernmental Conference – arrived simultaneously at the meeting of the General Affairs Council on 6 March 1995. The Customs Union was too significant politically and economically to be sacrificed (e.g. Karatas 2011: 28).

Nevertheless, the lifting of the condition did not imply that the issue of Cyprus’ accession would be completely ignored. In fact, Cyprus started its accession negotiations with the Union in 1998 with a clear expectation that the problem would be settled.38 The Union, furthermore, has stood firm on the position for a settlement of the issue, despite not making the accession of Cyprus conditional upon it, and Member States have insisted on the inclusion of Turkish Cypriots in the negotiation talks (see Tocci 2004: 129). Accordingly, one day before the first round of negotiations with Cyprus, four Member States (France, Germany, Italy, and the Netherlands) declared jointly that a settlement of the dispute was urgently required because the negotiations would have caused ‘a number of problems that originate[d] in the special situation of Cyprus’.39 Greece argued, however, that the Cypriot government’s attempts to bring the Turkish Cypriots to the negotiation table had been unsuccessful ‘due to the fact that Turkey, which occupies part of the island, is holding Cyprus’ accession hostage’ (Hofmeister 2006: 100). In addition, Greece recalled that all candidate countries should be assessed on the basis of the same criteria and should participate in the accession process on an equal footing, as noted at the Luxemburg European Council (Ibid.).

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38 See Cannes European Council, para. ii(1).
Differences aside, all Member States agreed on the need to include Turkish Cypriots in the negotiation process. The EU referred repeatedly in its working papers to the President of the Republic of Cyprus' invitation to the Turkish Cypriots to ‘nominate representatives to be included as full members of the Cypriot team, which [would] conduct the negotiations’, reserving for itself the right to reopen chapters ‘at an appropriate moment’. The possibility of making Cyprus' accession to the Union conditional upon the settlement of the dispute was, nevertheless, ruled out. The Helsinki European Council in 1999 stated that 'a political settlement will facilitate the accession of Cyprus to the European Union [but] [i]f no settlement has been reached by the completion of accession negotiations, the Council's decision on accession [would have been made] without the above being a precondition'. The safe accession route for Cyprus was again strengthened with the help of Greece, which expressed its preparedness to block the whole upcoming enlargement round if any Member State tried to exclude the prospective accession of the divided Cyprus at the Copenhagen European Council (see Spiteri 2002; see also Grabbe 2003: 82, and Engert 2010). In the words of the Greek ambassador to the EU, it was ‘unthinkable for any Greek [political] party to vote in favour of accession that does not include Cyprus’, and if Cyprus was 'not among the first lot, there [would have been] no enlargement'. The negotiations were finally concluded in the Copenhagen European Council in 2002, and Cyprus was welcomed to join the Union on 1 May 2004. The Union, however, decided to suspend the application of the *acquis* to the northern part of the island if the dispute was not settled by the time of Cyprus’ accession and until the Council decided unanimously to the contrary, at the Commission’s suggestion.

Nevertheless, the settlement of the Cyprus issue has remained an important precondition for Turkey’s progress towards the EU. Unlike Cyprus, which, backed by Greece, escaped having settlement become a strict precondition of

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41 The EU Common positions included the following text: 'the EU notes that the invitation of the Cyprus government to include representatives of the Turkish Cypriot community in the negotiations has so far not been taken up, and that the Conference may therefore return to this chapter at an appropriate moment'. See also Hoffmeister 2006: 100.

42 Helsinki European Council (10, 11 December 1999) Presidency Conclusions, para. 9(b).

43 Quoted in McCartan 2002.


45 Copenhagen European Council (12, 13 December 2002) Presidency Conclusions, para. 12.
its accession, no such circumstances can be imagined in the case of Turkey. The situation gets even more complicated knowing that, just like Greece, the ‘new’ Member State would not hesitate to exercise its right of veto to block the ongoing negotiations with Turkey due to the unresolved issue, notwithstanding its consent for the beginning of such negotiations. In these circumstances of inequality between the conflicting states, but also of a persisting infringement of the territorial integrity and sovereignty of one Member State, settlement of Cyprus’ issue, in the light of the good neighbourliness principle, can scarcely be imagined.

5 Macedonia’s Membership Application and Prospective Accession

Macedonia successfully escaped the armed conflicts that followed the break-up of Yugoslavia, and the EU viewed the country as a strong contributor to achieving stability due to its potential for regional cooperation and maintaining good relations with its neighbours. In the words of the Commission, Macedonia was ‘continuously [showing] its readiness to maintain good neighbourly and cooperative relations with all countries in the region’. Its generally cooperative attitude helped Macedonia move quickly towards EU membership, though only at first. The country submitted its membership application on 22 March 2004 and had already been granted candidate status on 16 December 2005.

46 The Republic of Cyprus has already employed its veto to block Turkey’s negotiations to join the Union, requiring a settlement of the issue. A clear view of the blockages to the opening and closing of the negotiation chapters is presented in the Twelfth Report of Session 2010–2012 of the House of Commons Foreign Affairs Committee, ‘UK–Turkey Relations and Turkey’s Regional Role’, 81–5.

47 As per UNSC Res 817 (7 April 1993) UN Doc S/RES/817 Republic of Macedonia has been recognised for all purposes within the UN under the reference FYROM (Former Yugoslav Republic of Macedonia). The term ‘Macedonia’ in this article is used to refer to the Republic of Macedonia and not to the region Macedonia, which extends beyond the borders of the Republic and is held by three countries: Greece (50%), Macedonia (40%), and Bulgaria (10%): Encyclopaedia Britannica, available at <http://www.britannica.com/EBchecked/topic/354250/Macedonia> [accessed on 21 October 2015].

48 European Commission, ‘Regional Approach to the countries of South-Eastern Europe: Compliance with the conditions in the Council Conclusions of 29 April 1997’ (Staff Working Papers) SEC (98) 586 and SEC (98) 1727.

49 Brussels European Council (15, 16 December 2005), Presidency Conclusions, para. X(24).
However, despite the overall positive picture, an unresolved dispute between Macedonia and Greece started to deteriorate the candidate country’s reputation as a good neighbour. The main obstacle is known as the ‘name dispute’, which has brought Macedonia and Greece into lengthy negotiations. Since the early 1990s, the name of the newly independent state became one of the dominant issues in the politics of the neighbouring countries, following strong opposition from Greece. The dispute over the name occurred at a variety of levels and in a variety of contexts, and it has largely been dominated by a historical dimension. Yet, searching for an answer to the question – namely, which of the two countries ‘has the best claim to be the “real inheritor” of “historical” Macedonia’ (Messineo 2012: 171) – goes far beyond the scope of this paper. What is more important for the current discussion is the framework for the settlement of the bilateral dispute.

Following the admission of Macedonia to the UN, the organisation undertook the task of bringing the two parties to an agreement through special mediators. However, the exhaustive negotiations did not even remotely result in a mutually acceptable solution. On the contrary, the pressure placed on both Greece and Macedonia resulted in an aggravation of the relations between the neighbouring countries, which only started to improve after the signing of the Interim Accord.

The Interim Accord, which is a legally binding document, regulated the conduct of Greece and Macedonia and became the main framework for the development of their relations. The two countries ‘agree[d] to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993)’ (Article 5(1), Interim Accord). The legal framework for the settlement

50 For a brief summary of the arguments of the two states and a chronological record of the developments regarding the dispute, see CoE: Parliamentary Assembly 2008: 37–41.
51 See UNSC Res 817 (7 April 1993) UN Doc S/RES/817 on the admission of Macedonia to the UN. See also UNSC Res 845 (18 June 1993) UN Doc S/RES/845.
52 Thus, on 16 February 1994, the Greek government placed a total embargo on Macedonia, with the sole exception of food and pharmaceuticals. On 22 April 1994 the Commission brought an action against Greece in front of the ECJ, claiming that the Member State misused its powers by failing to justify the unilateral measures prohibiting trade; see Case C–120/94 Commission of the European Communities v Hellenic Republic [1996] ECR I–1533. With the conclusion of the ‘UN Interim Accord Between the Hellenic Republic and the FYROM’, UN Doc 95–27866 of 13 September 1995 (Interim Accord), Greece lifted the trade restrictions and the Commission decided to withdraw its application.
of the issue was thus established, along with the related UN Resolutions, and agreed between the two countries in the Interim Accord. The Interim Accord also secured the future Euro-Atlantic integration of the newly independent state. Greece, for its part, committed not to block the accession of Macedonia under its provisional name in any regional or international organisation. In particular:

> [u]pon entry into force of [the] Interim Accord, the Party of the First Part [Greece] agrees not to object to the application by or the membership of the Party of the Second Part [Macedonia] in international, multilateral and regional organisations and institutions of which the Party of the First Part [Greece] is a member; however, the Party of the First Part reserves the right to object to any membership referred to above if and to extent of the Party of the Second Part is to be referred to in such organisation or institution differently than in paragraph 2 of the United Nation Security Council Resolution 817(1993) (Former Yugoslav Republic of Macedonia) (Article 11(1), Interim Accord).

Article 11(2) of the Interim Agreement went even further, stipulating an obligation on Greece to actively support the on-going economic development of Macedonia ‘through international cooperation, as far as possible by a close relationship of [that country] with the European Economic Area and the European Union’ (Article 11(2), Interim Accord). Clearly, then, the Interim Accord provided an opportunity for the re-establishment and deepening of the cooperation between the neighbouring countries.

Since the signing of the Interim Accord, the economic relations and cooperation between the two countries has resumed to such an extent that Greece is currently one of the most important foreign economic partners and investors in Macedonia. Nevertheless, this significant (although mostly economic) cooperation between Greece and Macedonia has served as a distraction from the unsuccessful negotiations between the two countries. While the negotiations under the auspices of the UN continued, neither country seemed particularly interested in resolving the problem. However, any more vigorous attempt to resolve the issue could have undermined their strong economic cooperation, since these two neighbours have been able to agree on almost anything but their history.

The progress in the relations between Greece and Macedonia was therefore positively assessed in the Commission’s reports, and the name issue, though still pending resolution, was not considered to be of primary importance. While encouraging the two neighbours to settle this issue, the Commission did not dedicate much space to the problem in its reports, as the circumstances surrounding the settlement of the dispute kept the EU out of the picture. The compulsory legal framework for the settlement of the issue was established in accordance with the relevant Security Council Resolutions and agreed by the two parties to the Interim Accord, and was thus fully conforming with the rules of international law. Moreover, the guarantees for unblocking Macedonia’s progress towards NATO and EU membership and for the further support on that route by Greece under the Interim Accord have formed essential conditions for successful negotiations between the two countries, intended to lead eventually to the settlement of the issue. In such circumstances, any pressure by the Union would have been unnecessary and even contrary to the terms agreed upon for the settlement of the issue under the rules of international law. Therefore, it should not be surprising that the EU kept out of the problem as much as possible. This situation changed, however, with the aggravation of the relations between the two neighbouring countries, which culminated with the Greek veto of Macedonia’s accession to NATO in 2008.

Although the Greek veto on the accession of Macedonia to NATO is not in itself connected to the country’s prospective EU membership, its negative impact should not be underestimated (see Vachudova 2005: 149). That act, as confirmed by the ICJ, constituted a direct breach of Article 11(1) of the Interim Accord, which prohibited Greece from vetoing the accession of Macedonia to international organisations or to institutions of which it itself is a member.55 The membership of Macedonia to NATO, however, was made explicitly conditional upon the settlement of the name issue, contrary to the earlier binding agreement between the two neighbouring states.56 Although carefully phrased, the response of the NATO partners reflected the fact that their opposition to

54 European Commission, Services Report of 3 October 1997; European Commission, ‘Regional Approach to the countries of South-Eastern Europe: Compliance with the conditions in the Council Conclusions of 29 April 1997’ (Staff Working Papers) SEC(98) 586; SEC(98) 1727; SEC(99) 714; and SEC(00) 168/2.
55 This violation by Greece was later confirmed in a judgement of the ICJ on 9 December 2011; see Application of the Interim Accord of 13 September 1995 (The former Yugoslav Republic of Macedonia v Greece) [2011] ICJ Rep 2011 (Macedonia v Greece).
the accession of Macedonia represented the action of an individual Member State rather than a collective decision.\textsuperscript{57}

The NATO veto, furthermore, had almost an immediate impact in the EU enlargement context. In fact, the Accession Partnership with Macedonia, which preceded the Bucharest Summit, had already shifted away from the previous EU approach and listed the solution over the name issue as one of the short-term priorities for the country, with a view of ensuring good neighbourly relations.\textsuperscript{58} The Council explicitly stated that Macedonia should ‘[e]nsure good neighbourly relations, in particular by intensifying efforts with a constructive approach to find a negotiated and mutually acceptable solution to the name issue with Greece, in the framework [...] and avoid actions which could negatively affect them’.\textsuperscript{59} Only two months after the NATO Summit, the Brussels European Council underlined that ‘maintaining good neighbourly relations, including a negotiated and mutually acceptable solution on the name issue remains essential’\textsuperscript{60} for Macedonia’s future progress towards the EU. Such a reaction was not only inconsistent with the previous EU approach but also ignored the legal significance of the Interim Accord, if not actively encouraging its further violation.

Namely, the breach of the Interim Accord evidently jeopardised the legal framework of good neighbourly relations between the two countries by shifting the conditions under which the dispute was to be solved. The abstention of Greece from objections to Macedonia’s prospective EU membership, as envisaged in the Interim Accord, was the only guarantee for preserving the equality between the two countries in the process of settling the dispute.

Furthermore, the ICJ’s judgement confirming Greece’s violation did not change the situation on the ground (see Macedonia v Greece). The Court also rejected ordering the infringing party to comply with its international obligations, although concluded that its judgement ‘would affect existing rights and obligations of the Parties under the Interim Accord and would be capable of being applied effectively by them’.\textsuperscript{61} Referring to its previous case law,\textsuperscript{62} the ICJ considered that ‘[a]s a general rule, there is no reason to suppose that a State

\textsuperscript{57} See paras 81 and 82 in Macedonia v Greece.
\textsuperscript{59} Ibid.
\textsuperscript{60} Brussels European Council (19, 20 June 2008) Presidency Conclusions, para. 56.
\textsuperscript{61} Ibid., para. 53.
whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed'.63 However, the condemnation of Greece was insufficient reason for the country’s compliance with the rules of international law.64 Contrary to the ICJ’s presumptions, Greece did not comply with its obligations under the Interim Accord. The ICJ’s judgment has also had little notable impact at an EU level. Despite six recommendations from the European Commission for the opening of accession negotiations with Macedonia, the Council’s approval has been continuously postponed.65 Thus, the whole idea of a link existing between a candidate country’s performance, as assessed by the Commission, and its progress towards accession, of which the opening of accession negotiations comprises a crucial part, has been entirely undermined. The Commission’s recommendation – and compliance with the Commission’s and Council’s recommendations, as well as the Copenhagen criteria as such – also loses credibility and a sense of purpose in such a situation where the operation of conditionality can be frozen for an unlimited period of time. It is particularly sobering when such blockages occur in violation of international law, as in the case of Greek activism. All the Commission’s actions, as well as the objective of stability and prosperity in Europe, are thus brought out on the altar of Greek internal politics, and however weak its enlargement law, the Union emerges as an accomplice in this strange hijacking: that is, not much is being done to counter Greece’s anti-communitarian and disloyal behaviour, thereby harming the very core of the European idea.

Conclusion

The use of conditionality has proven to be an ineffective and inappropriate method for the settlement of bilateral disputes in the enlargement process. If the political considerations of Member States contribute more to peace and stability than the strict observance of the law, the EU should consider redefining its priorities in order to be more consistent with the implementation of the accession condition for the settlement of bilateral disputes. Nevertheless, if

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63 *Macedonia v Greece*, para. 168.
64 See in this respect the Declaration of Judge Ad Hoc Vukas to the judgment, warning about the possible consequences of the ICJ’s decision not to order the infringing party to comply with the judgement.
65 The Commission has been recommending the opening of the negotiations six times in a row, i.e. since 2009.
securing stability remains the Union's key priority, and its inherent concomitant commitment is to promote the rules of international law in its relations with the wider world, then it seems that the EU should start treating it as such by playing a more responsible and mature role via its enlargement policy. The compliance of Member States with their obligations under the rules of international law and in accordance with EU law is highly desirable for the settlement of their bilateral disputes with candidate countries. If applied outside the law, however, the condition for the settlement of bilateral disputes cannot legitimately serve the EU's interests in promoting international law in its relations with the wider world, nor does it lead to 'peaceful relations based on cooperation' (Article 8(1) TEU).

As Wallace puts it, '[t]he European Union has a long record of rhetorical commitments to foreign policy initiatives, not followed through by national governments' (Wallace 2003: 7). Furthermore, the settlement of bilateral disputes in accordance with international law does not exist in current EU foreign relations or in its enlargement context. Instead, enlargement is used as a convenient platform for promoting Member States' domestic agendas, contrary to rules of international law, as testified by Greece. The EU has therefore been unable to deliver on its own promises and commitments, acting rather 'as a clearing-house for national interests' (Pace 2006: 22). Accordingly, a genuine reconsideration of Member States' obligation of solidarity to ensure 'that the Union is able to assert its interests and values on the international scene' (Article 32(1) TEU) is urgently needed for bringing the law back on track.

References


