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Geopolitics of the European Rule of Law – Lessons from Ukraine and the Western Balkans

Against a backdrop of growing Sino-American rivalry, the pandemic crisis and the Russian war on Ukraine no longer leave Europeans any alternative: the European Union will be geopolitical (Arnoult and Gaudot, 2022). Otherwise, it would condemn itself to impotence, returning to the insignificance of the Cold War years: Post-Soviet studies are still ongoing and lead us to promote new ways of thinking about the future. However, the Union can only claim to be such a global player if it resumes both its enlargement process and its constituent process – regardless of the current reluctance of member states to do either. The rule of law, democratic accountability and control are part of the EU's influence, attraction and legitimacy (Bernard, 2022). For their part, the candidate countries have mostly understood this requirement, and Ukraine (and the fact that President Zelensky recognises that it will be difficult) is one of the best examples of this.

At the same time, Russian aggression has rekindled a movement of solidarity in Europe that we thought we had lost. It also confirms for Ukraine its European destiny (Houeix, 2022), and its domino effect on Georgia and Moldova. Any real political community is based, first and foremost, on a shared sense of belonging. In this respect, the return of a large-scale war on the continent will have at least strengthened this feeling, with the influx of Ukrainian families and their fraternal and spontaneous welcome by the peoples of the EU. The increasing Europeanisation of our national political scenes is progressing, slowly but surely, and we can acknowledge the fact that the French Presidency of the Council of the European Union (FPEU) has taken this issue in stride.

The FPEU closed on 30 June 2022 with a strong symbol: the recognition of the candidate status of Ukraine and Moldova to the European Union (EU) and, to a lesser extent, with the vote to lift the Bulgarian veto on North Macedonia. Unfortunately, we are far from concluding that

the next enlargement will be an enthusiastic one: The issues concerning the Western Balkans seem to be leading to the *status quo ante* (Kolozova and Bernard, 2022). However, current events have triggered a refreshed interest in the EU's enlargement goals and processes. Several opportunities arise for rule of law promoters: to reclaim the security discourse; to explain EU enlargement through the commitment to the rule of law; and consequently, to develop a strategy to influence opponents of enlargement.

The opportunity for rule of law promoters to reclaim the security discourse

Ukraine, Moldova and Georgia need guarantees and protection. These countries are struggling for their independence, for their existence and if they fail, they will disappear, as they already disappeared during their history. As they will never join NATO, the EU needs to become a defence and security organisation for its neighbours in order to protect itself. President Macron's proposal about a European Political Community (see e.g. Wheelodon, 2022) is therefore aimed at those who want to link enlargement to basic guarantees of the rule of law, sovereignty and security.

The security rhetoric had been for too long the flagship of populist speeches, and they use it as a justification for their attacks on the rule of law. Their security objectives are limited to regime stability (Löfflmann, 2022).

With regard to EU candidates, it appears that the EU is supporting legislative reforms in the Western Balkans but is partnering with the governments that will not necessarily deliver reforms. In practice, the government of a candidate state, composed of members of populist parties, is the interlocutor of the EU during negotiations. The so-called stabilitocracy (Bieber, 2017), preferred to democracy, justifies disputable breaches like limiting the variety of information sources. Populist movements are primarily responsible for a stalled enlargement process, because enlarging the EU implies enlarging a very strict definition of the rule of law.

We must keep in mind that Ukraine, Moldova and Georgia have a significant number of people in their population, citizens and officials, who prefer a security guaranteed by Moscow. This is not exclusive to candidate and potential

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candidate countries, some EU member states such as Bulgaria are still suffering from it.

As a matter of course, the enlargement was only one item of the European development, and it is becoming a co-item of the EU. If the very essence of European construction is pragmatism, we have two new candidates, Ukraine and Moldova, and a new potential candidate, Georgia, who certainly have ambitions in economic matters and the rule of law but above all peace and security. It has become essential to decide and adopt a stance on the compatibility of the rule of law and security together and, of course, to act accordingly.

These Ukraine, Moldova and Georgia applications, unimaginable at the beginning of the French presidency of the EU Council, were submitted at a particularly critical time ahead of the EU-Western Balkans summit. Unfortunately, there is no EU doctrine on warring and occupied states that are applying for membership.

As regards warring states, the Balkan precedents of the 1990s highlighted the need for European political will but there is no doctrine ("Fragmentations et recompositions", 2004). Nor is there any doctrine about an occupied state. The specific situation of Cyprus has not prevented part of the island from becoming a member of the EU (Ker-Lindsay, 2005, 223). This may or may not be welcome, as Northern Cyprus is still manifest in a frozen conflict that is likely to be mirrored in eastern Ukraine. We cannot avoid this issue with Moldova and Transnistria, with Ukraine and Donbas and with Georgia and South Ossetia. We will face the same problems as the Serbia and Kosovo precedent if decisions are not made and clear direction is not given.

Distinguish different types of opposition to EU enlargement in the discourse

The rule of law and security have been at the heart of the enlargement issue since the fall of the Iron Curtain. Thus, opponents of enlargement can be characterised as follows:

- those who refuse to see a demanding definition of the rule of law accompanied by security objectives in line with it (the fight against trafficking in particular)
- those who believe that the aspiring state does not offer the guarantees of a legal order indicative of an attachment to a strict definition of the rule of law, and as a result, their security objectives are not compatible with the guarantee of European fundamental rights (in other words, they are not able to combat trafficking).

Therefore, the reasons for the opposition are not necessarily the same. To illustrate this point: In 1995, Austria, Finland and Sweden did not pose any difficulties in terms of the rule of law. Their legal systems are similar to those of the member states in terms of the rigour of its definition. When they joined the EU, the foreign policies of Sweden and Finland were naturally focused on Finland's foreign policies, which were naturally neighbourhood-oriented, due to their neutral status. The Common European Security Policy as such did not pose any difficulties (European Parliament, 2015). Therefore, it cannot be said to be an extension of the EU's rule of law and security doctrine.

On the other side of the Iron Curtain a few years later, it is difficult to speak of a definition of the rule of law in the former European communist dictatorships. As far as security is concerned, it is even more complicated because there are non-aligned and former members of the Warsaw Pact. It is therefore difficult to have an overview of who can be considered a European partner.

This situation does not seem to have changed 20 years later. Indeed, if tomorrow Norway starts the process of joining the EU, it will be difficult to find anything to complain about. On the other hand, the current candidate countries meet two types of opponents: critics of EU expansion and sceptics of their ability to adhere to the rule of law.

It is with this in mind that one can distinguish the different vetoes (Koložova and Bernard, 2022) of member states to enlargement.

Develop a strategy to influence opponents of enlargement

Before asking how to convince those who reject the enlargement of the EU, we must answer the following question: Do we want to try to convince the opponents of European rule of law? But we must also answer other, even more delicate questions: Do France, Germany and EU diplomacy want to convince others to adopt the demanding precepts of the European rule of law? Is it necessary? What about Poland, Hungary or Malta?

Directing influence towards the right audiences is a very serious question because efforts to deal with propaganda must be effective and not just counter propaganda (European Parliament, 2016, 2022).

Citizens of states that have little commitment to the rule of law, but are seriously committed themselves to the European rule of law, have a strong tendency to flee and settle further west (Pinna, 2022). It is not a priori neces-

sary to convince them, but it may be wise to highlight them among those who believe that failures in the rule of law are endemic in nature. Communicating that EU enlargement is not a danger in itself seems absolutely unnecessary.

In our view, most of the influence must currently be with those who expect the maximum in terms of guarantees of the rule of law. And in order to do so, the EU – within or without the European Political Community – must guarantee a minimum of security because the rule of law requires a sovereign state that is indisputable in its territorial integrity, its population and the existence of a legitimate government. This means that the EU must adopt a demanding doctrine regarding the definition of a state under attack in its territorial integrity, the threat to its population and the illegitimacy of its government. This message is essential to those who are waiting for answers, whether they are on the EU side or on the candidate or potential candidate state side.

Communicating that respect for the rule of law does not compromise security requirements is more complicated. Schematically, if you put yourself in the shoes of a jaded citizen: If the EU cannot do anything about corruption, you might as well continue to play the game of corruption, opposing it is more dangerous than anything else. Corruption thrives because it is imposed (Pinhero Machado, 2015) and the tools for disbursing funds allow it. Insisting on people's refusal, guaranteeing their security when refusing these pressures and using new tools – such as a programmable currency like the digital euro – should reduce this scourge considerably. This also allows the Union to provide security: compliance and legal certainty. Only under these conditions can EMPACT¹-type co-ordinations with the candidate countries work effectively.

Communicating the efforts and successes of the candidate states to Western citizens and representatives who are sceptical about their chances of complying with the rule of law includes things like joint police-gendarmerie training as well as highlighting the coordination between member states and candidate countries, such as cooperations leading to the dismantling of trafficking. This success can already be promoted, but it is clear that the objective must be to combat the very existence of such trafficking, in particular when it is maintained or tolerated by state representatives. This is clearly evident from the demonstrations in Georgia (Agence France Press, 2022).

These demonstrators are exactly like the enlargement sceptics: They believe that the current representatives will not bring them the legal certainty and security that they aspire to.

More must be done to promote an understanding of the societal and state issues of the candidate countries among member states. This would help to put an end to preconceptions about corrupt behaviour being linked to nationality. It is systemically explainable and difficult to overcome for all the reasons associated with resistance to change.

Finally, and most importantly, this is where the work must come from: Candidate states must do their own self-promotion. What do they have to contribute to the European Union? To the member states? To security? To industry? It has become essential to get out of this habitual and deleterious logic of “waiting for directives to get our subsidies”. Unfortunately, it is unlikely that this type of action – the candidate state coming to promote itself to the other member states – will come from state representatives. (Koložova and Bernard, 2022).

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1 EMPACT stands for European Multidisciplinary Platform Against Criminal Threats. For more information, see <https://www.europol.europa.eu/crime-areas-and-statistics/empact>.