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Ukraine's Membership Bid Puts Pressure on the European Union

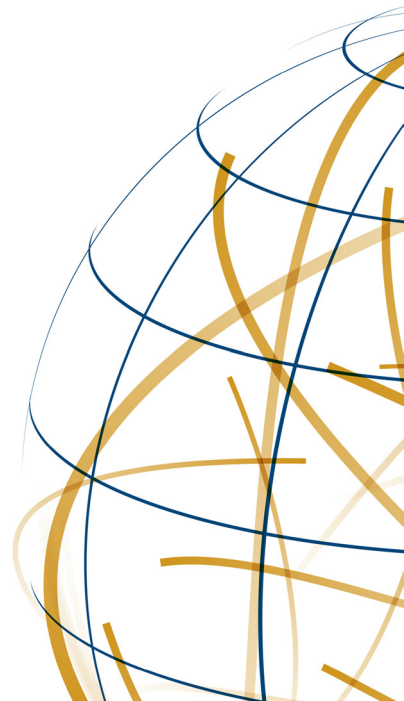
A Security Policy Flanking, Not a Revision of EU Enlargement Policy, Is Advisable

Barbara Lippert

As Russian tanks and artillery advanced on Kharkiv and Kyiv, President Volodymyr Zelensky signed an application to join the European Union. He called for a special admission procedure to secure swift accession for Ukraine, yet Ukraine did not first aspire to EU membership under missile fire. Much like Moldova and Georgia, it sees its current status of association with the EU as a precursor to accession. The 28 February application was a call for help from the dreadful war. Initial responses from the European Commission and the European Parliament indicated much political sympathy for Ukraine's urgent call, but the EU leaders do not hold forth the prospect of swift accession. This restraint results from the experience that membership negotiations are generally challenging and protracted and that there are no short cuts to the goal. There are, indeed, EU interests that run counter to an explicit membership perspective. The EU should in any case add a security component flanking its policy of integration and cooperation with Eastern Partnership countries.

In response to Ukraine's membership application Commission President Ursula von der Leyen replied promptly to President Zelensky that "We want them [Ukraine] in". That went beyond the EU's internal consensus formula according to which the EU acknowledges Ukraine's aspirations and its choice for Europe but is not itself politically committed to that goal. While the Commission in Brussels is the ever benevolent manager of the enlargement process, it is the EU's member states that determine the course and pace of progress. Since Ukraine's 2004 Orange Revolution, the 2008 Russo-Georgian war, Russia's recognition of the

breakaway territories of Abkhazia and South Ossetia, and the the EU's initiation of the Eastern Partnership (EaP) in 2009, the Baltic states, Poland and Sweden have more and more openly favoured an explicit accession offer to the so-called Associated Trio (Ukraine, Moldova and Georgia). But neither France nor Germany have followed suit. Even after the Euromaidan in 2013/14 and Russia's annexation of Crimea in 2014 they both insisted that in the medium term successful implementation of the association agreements, including the deep and comprehensive free trade area (DCFTA), and not EU membership, headed the agenda.



The EU sees Putin's war against Ukraine as a turning point, however. What does this mean for its policy towards Ukraine? What possibilities for action does the EU have and what are the implications for its enlargement policy?

The options outlined as follows only stand a chance of realization if, after the end of the war, the EU still finds in Kyiv a legitimate government that has preserved its sovereignty against Moscow. If Russia appoints a proxy regime in Kyiv, the accession candidate option will be obsolete anyway. The EU might then face the question whether and to what extent it can collaborate with a Ukrainian government in exile to uphold the Ukrainians' *European vocation*.

Revise the Enlargement Consensus?

The EU acts on the basis of the renewed 2006 enlargement policy consensus and its "three Cs": consolidation of the enlargement area, strict conditionality as laid down in the Copenhagen accession criteria, and communication of the objectives, costs and benefits of admitting new countries in order to improve public acceptance of the enlargement. The "Kyiv effect" (Manfred Weber, MEP) could trigger adjustments to all three principles:

Consolidation: The principle of consolidation relates to the political commitments the EU has undertaken to countries with an explicit accession perspective, these being Turkey and the Western Balkan states. By making this objective one of the three enlargement process premises, however, the EU indicated to other European states, which in principle can apply for membership under Article 49 TEU, that they cannot per se expect political support from the Union. This point was aimed at EaP countries like Ukraine. Towards them, Brussels drew a line between enlargement and neighbourhood policy based exactly on the question of accession perspective.

The EU might now cross this line and state, in keeping with the Thessaloniki

model, that the future of Ukraine, Moldova and Georgia is within the European Union. In 2003, the EU sent a political signal of that kind to the Western Balkan states, of which only one, Croatia, has since (in 2013) joined. There are many reasons on both sides why that message fizzled out and the credibility of the accession promise suffered. But Thessaloniki did at least harden the EU's self-commitment inasmuch as a departure from it can be well-nigh ruled out. For the most part, an accession perspective does not yet mean for a country that it will directly become an accession candidate. For that the Council requires it to be able to demonstrate a certain level of preparation for accession negotiations. The Council must decide unanimously, and even that status does not mean negotiations will follow directly. In respect of Ukraine, this means that in principle there is scope for a symbolic recognition policy at (seemingly) low cost. Furthermore, an accession perspective and a membership application are not necessarily closely linked. An application is the prerequisite for a meticulous examination procedure and a recommendation by the Commission to enter into negotiations. Three of the five current membership candidates — Turkey, Serbia and Montenegro — are involved in accession negotiations while Albania and North Macedonia are still waiting for the go-ahead and Bosnia-Herzegovina and Kosovo are only considered to be potential candidates. Every little increase in status has hitherto been disputed in the EU, partly because it is conditional on verifiable progress by the candidates in fulfilment of the accession criteria, but also because individual member states pursue in this context their bilateral quarrels with would-be members and brake processes with a veto. From a Brussels viewpoint, an accession perspective or indeed a candidate status would provide Ukraine with an exceptionally quick start. How swiftly matters then progress is hard to say as far as the EU is concerned. The basic rule of accession conferences from start to finish is unanimity. In the entire process there are many individual veto and intervention opportunities for the 27 governments.

Given a suitably strong political will on the part of all 27 member states the EU could in principle even enter into symbolic negotiations at short notice with the Zelensky government in order to send a signal of solidarity and support to the people of Ukraine. That would at the same time make it clear to the Russian aggressor that the EU wanted to relieve Ukraine from its dangerous in-between status and anchor it firmly in Euro-Atlantic structures. The envisaged Ukrainian membership would then be an expression of the incipient bloc-building.

For countries with a considerable backlog in relation to the EU's *acquis* and with serious governance deficits, the time that elapses between membership application and membership can easily be ten to twenty years. Only Germany's new federal states (*Länder*) were able to "accede" to the European Communities without delay and without membership negotiations by virtue of their incorporation into the territory governed by the Basic Law.

Conditionality: The requirement of strict fulfilment of the accession criteria was made even stricter by the changes to the methodology of the accession process that France initiated in 2019. In Ukraine's case and despite the diverse forms of differentiated integration that already exist, the EU has very little leeway to reduce the political and economic requirements or to handle selectively the rights and duties to adopt primary and secondary EU law in the new member state. The priorities are protection of the Union's values (political criteria, Article 2 TEU), the uniformity of the judicial area and the functionality and capacity of the EU (economic and *acquis* criteria). Temporary transitional arrangements — the traditional adjusting screws — would not, in view of Ukraine's fundamental shortcomings in respect of the *acquis*, be enough to cushion a hasty admission.

Pre-war Ukraine would definitely not have fulfilled the political criteria. On the other hand, the EU lowered its sights on the political criteria when entering into negotiations with Turkey. Its leap of faith in Ankara's will and ability to reform was

soon disappointed. The central arena of action will be Ukraine's specific pre-accession progress toward the EU *acquis*. In this process the EU can use instruments tried, trusted and new to provide support, for monitoring and to interlock with Ukraine's economic and political reconstruction and reform programmes. Security policy cooperation is likely in the future, and in contrast to traditional enlargement policy, to play a much larger role inasmuch as post-war Ukraine will be a country with a permanent political and physical line of conflict with Russia, unstable borders and a fragile peace in an unsettled neighbourhood. The accession talks may be the political arena on which the wider public is focussed, but they mainly reflect progress and problems in the pre-accession process.

Communication: The EU could argue that some kind of special procedure for the Ukraine was an extraordinary emergency measure, but it would need to communicate the measure as such.

Emergency admission of European states was discussed in the EU in the 1990s immediately after the fall of the Iron Curtain. Discussion was triggered by precarious internal developments in East-Central and South-Eastern European countries and by the hope that a move of this kind might prevent a dangerous departure from the path of democratization or at least open up a way out of the hostilities in a disintegrating Yugoslavia.

The Russian war of aggression against Ukraine is, like 1989/90, a caesura and a turning point. Back then the CSCE states most confidently laid the foundations for an all-European architecture of democracy, peace and unity (Charter of Paris for a New Europe). The partial order established by the European Communities in the west of the continent was the political centre of gravity. In 2022, in contrast, a time is dawning that will be characterized by geopolitics and the creation of countervailing power and by an interaction mode of containment and confrontation between Russia on the one hand and the EU and countries oriented toward it on the other. Bearing that

in mind, the hardship Ukrainians face today is greater than it was for the countries of East-Central Europe in the 1990s, so an emergency admission strategy appears *prima facie* plausible.

In a nutshell, the EU member states are at liberty to offer Ukraine a membership perspective, to recognize it as an accession candidate and even, albeit only symbolically, to enter into accession negotiations. They would thereby express their solidarity with the Ukrainian struggle for sovereignty and democracy and commit themselves politically to Ukraine joining the EU once it fulfils the terms and conditions. The main difference between this and the pre-war policy on Ukraine would therefore be that it is no longer a question of whether but of when Ukraine becomes a member of the EU.

These decisions would, however, put the other two “Cs”, consolidation and conditionality, on the back burner or undermine them. The EU’s efforts to restrengthen the credibility of its enlargement policy, which took a serious hit in the Western Balkans, will be subjected to an even tougher test if the number of potential new members was extended to include the EaP countries. Sympathy with Ukraine may be very great at the moment and the present circumstances may make special measures acceptable, but opening an accession perspective for Kyiv would mean a revision of cornerstones of the enlargement policy with lasting consequences for the EU27.

The EU might therefore feel it advisable to define in the framework of European treaties a new status of partial or junior membership or to create a new European political and economic area with a strong security policy component below the threshold of membership with and for associated third states. This could be a precursor or a permanent alternative to full membership. The construct to be developed would thus be more an intensified EaP with closer institutional links to the EU than a flawed EU membership.

Security and Integration Policy Aspects

If the EU were to open up an accession perspective for Ukraine, it would be a very far-reaching promise. Keeping it would require a prudent strategy that took foreign, security and integration policy dimensions into account. They will here be touched upon only in brief:

EU and NATO: The EU would need to clarify quickly where an enlargement strategy for EaP countries stands in relation to NATO and its open door policy. The Atlantic alliance does officially adhere to this policy, which is supported by EU states that are also NATO members.

The accession of the EFTA states to the EU in 1995 and the Mediterranean countries Cyprus and Malta in 2004 were the last enlargement rounds involving countries that were non-aligned. Since the Russian invasion of Ukraine, Sweden and Finland have been considering joining NATO more specifically than ever. Only Ireland, Austria, Malta and Cyprus would then be neutral or non-aligned EU members. This means that traditionally membership in NATO precedes membership of the EU, as is, for instance, the case among the candidates in the Western Balkans with the potential exception of Serbia. If, in Ukraine’s case, EU membership were to go ahead or even entry into NATO were *de facto* to be ruled out, that would mean the EU admitting a geopolitically extremely exposed country in a precarious security situation. Under Article 42.7 TEU EU member states would be obliged to provide “aid and assistance by all means in their power” to Ukraine as a member state in the event of an armed aggression on its territory. Even if the EU and its members possessed more robust capacities of its own they could not do so without NATO safeguards. In perspective, member states’ mutual aid and assistance would need to be understood more in military and security policy terms than the current wording of the article under the CFSP chapter suggests. Irrespective of membership issues, NATO and the

EU ought to coordinate closely their cooperation with EaP states in the area of security and defence. In the 1990s Yugoslav was the since disbanded Western European Union (WEU), as an organization subordinate to the EU, established a new associated partner status for non-aligned Central and Eastern European countries. That did not mean the WEU was committed to come to their assistance as it was for its members, all of which were members of NATO and the EC/EU. But the associated partner countries were thereby regularly involved in a security alliance that served inter alia the purpose of consultation and defence planning. In addition, there was the Eurocorps, a brigade under dual EU and NATO command that served with the Stabilisation Force (SFOR) in Bosnia.

The EU and NATO might, for example, set up a joint organization for security policy cooperation with the EaP countries. The core group of this spin-off would be the countries that make up NATO's European pillar. In the best case they would include the UK, which was, after all, one of the guarantee powers of the 1994 Budapest Memorandum on Security Assurances. The range of topics could include all aspects of defence, including cyberthreats and protection of critical infrastructure. Above all, however, the new organization would have to deal with security guarantees for Ukraine and the longstanding conflicts in the secessionist territories and de facto states of the Associated Trio. The EU would need to connect this Euro-Atlantic spin-off with other cooperation and integration formats, especially with the Energy Union, and to link the initiative with the political and economic measures to strengthen the resilience of the EaP countries. This new organization would be a security policy flanking to EU enlargement and could be a preliminary stage to NATO membership for EaP countries.

How large would the number of new candidates be? Would the political signal of the accession perspective apply only to Ukraine or to the Associated Trio as a whole or would it extend further? That issue and, above all, the problem of NATO member-

ship make it clear that the enlargement strategy must be embedded transatlantically and in security policy terms. It would have to be implemented in a hostile environment that the EU would directly encounter in its new borders as envisaged.

The EU's absorption capacity: Including Ukraine as an accession candidate would have considerable implications for the medium-term development of the EU. Even if enlargement is seen primarily as a foreign policy instrument, a view likely to predominate in Ukraine's case, the consequences for the EU's system of governance and individual areas of politics must most definitely be taken into consideration. In the years of polycrisis the EU was already struggling with centrifugal tendencies of various kinds. In policy formulation and decision-making processes it shows clear symptoms of overstretching, the cause of which is not only the number of members but also the heterogeneous nature of their preferences and starting positions. These signs of overloading can at best be attenuated by the forms of differentiated integration and the transition to majority voting. Each enlargement, especially those that involve unconsolidated democracies with weak economies, increases the pressure of problems and the pressure for reform of the EU. However, capacities for solving difficult tasks, crises and dealing with conflicts of objectives and priorities in the EU27 do not increase accordingly. That is why there is much to suggest that the EU should only admit new members once it has reformed its institutions and decision-making processes. With existing and new assurances to ten countries, the EU is conjuring up a scenario that exceeds by far its absorption capacity – even taking the next two decades into consideration. Accession of Ukraine (population approx. 44 million) and of Turkey (population approx. 84 million), which has not yet been entirely ruled out, would also shift the EU's geographical focus to its present periphery. The core Europe around France, Germany and the founding countries might be less and less able to hold together such an overextended

EU. Countries might join an EU that was arguably even more strongly integrated than today and bring with them an unbroken nineteenth-century sense of national sovereignty that, taken to its polemical extreme, made them feel as dominated by Brussels as they had been by Moscow.

Today and for the foreseeable future the EU is not ripe to admit EaP countries as new members. To effectively be able to secure the borders with Russia it would have to enlarge its military capabilities substantially within the framework of the Common Security and Defence Policy (CSDP) and to deepen its cooperation with NATO.

Dealing with the Membership Application

The European Commission and Council will not simply neglect the accession request from Kyiv. The EU will probably not, however, take time to prepare its reply carefully, weighing up different viewpoints in an internal clarification process. European Council President Charles Michel had immediately noted differences between member states on this issue. Commission President von der Leyen has called for a “moment of truth for Europe”.

The EU has at least two combinable ways to deal with the membership application. First, the European Council could, after a recommendation by the Commission, grant Ukraine candidate status directly, as it were, without lead times. This would remain until further notice a purely symbolic act and would temporarily earn the EU moral repute. It could encourage Ukraine and bolster it up in the event of genuine cease-fire and peace negotiations with Russia.

That move would surely shunt not only Ukraine but also the Associated Trio onto a track of very lengthy accession negotiations. Georgia and Moldova have already jumped on the bandwagon and submitted applications of their own at the beginning of March — an act the EU had often advised against because it would be too soon and the response would surely be negative. The

candidate countries in the Western Balkans will probably also step up pressure on the EU to bring the ongoing or faltering negotiations to a conclusion.

At the informal EU summit meeting held in Versailles at the beginning of March 2022 the 27 heads of state and government agreed on the second option. Acknowledging Kyiv’s application diplomatically (recognizing Ukraine’s “European aspirations” and its “European choice”) and noted that the Council had acted swiftly and invited the Commission to submit its opinion. That triggers the customary Article 49 TEU procedure. In addition, the 27 national parliaments and the European Parliament are informed about the application. But an answer to the request is de facto deferred until the end of war and hostilities in Ukraine. A detailed review or screening of the application by the Commission, dealing mainly with assessing a country’s readiness for accession in the light of the Copenhagen criteria, cannot be undertaken meaningfully in view of the war and its consequences. That is why at the Versailles summit the EU27 also announced their intention of further deepening their relations with Ukraine until the Commission’s opinion is published. The point of reference continues to be the association agreement (DCFTA). The Council also invited the Commission to submit its opinion on the applications of Moldova and Georgia. With regard to Ukraine, the 27 reassured that it “belongs to our European family”. Overall, formulas are used that put a damper on the high-flying expectations of the pro-accession forces, including not only Ukraine itself but also EU member states like Estonia that are now aggressively advocating candidate status for Ukraine. They certainly have solidarity with Ukraine in mind, but at least Poland and Hungary, which is more restrained in its support for Ukraine, could make use of the momentum of securitization that is sweeping the EU to have the conflict with Brussels over the rule of law and democracy dropped from the agenda as irrelevant.

The EU should also, in view of the course set in Versailles, wonder how sustainable

an accession perspective for Ukraine is if a level-headed cost-benefit calculation by individual member states is set against it and the still unforeseeable geopolitical effects are costed in. As in the case of the 2004 eastward enlargement the EU is running the risk of ensnaring itself in its own political rhetoric (Frank Schimmelfennig's "rhetorical entrapment") if it espouses President Zelensky's moral argumentation. He called on the EU heads of state and government and MEPs to back an accession perspective for his country. Such a commitment would allow decision-makers to show themselves to be Europeans and demonstrate that they were on the side of Ukraine, which was fighting for its rights, its freedom and its life, and to become an equal member of Europe. He was thereby appealing to the normative foundations of the EU as a peace community and exerting moral pressure on it. Because Ukraine is the victim of the Russian war of aggression and in resisting it is defending those values on which the EU, but also NATO, are founded, it "deserves" (according to the Polish and Lithuanian Presidents speaking in Kyiv on 23 February 2022) candidate status. The more the EU accepts this line of argument, the more difficult it will become to set other viewpoints and interests (*absorption capacity*, EU security) against it and refer to the technocratic logic of the accession negotiations.

The Perspectives: Ambivalences Remain

The EU has long underestimated or misjudged the geopolitical implications of enlargement and of the EaP. That was shown in 2013 when Russia's intervention against Kyiv's association agreement with the EU was intended to prevent Ukraine from turning towards the conceptions of international order of the West and its organizations. The EU had/has offered its eastern neighbours a far-reaching and ever closer association, if only in a cooperative environment, i.e. with a non-revisionist

Russia, including development opportunities up to and including membership, which the EU has never ruled out.

If the EU embraces the geopolitical logic, the war in Ukraine will mark the end of the era of incremental EU enlargement to the east. The end of the Cold War in 1989/90 opened up an unexpected window of opportunity to extend the peace zone in Europe by admitting neighbouring Central and Eastern European states into the European Union. The framework conditions for cooperation and integration in Europe were favourable and there was a justified hope of converging views on political order among the CSCE states.

There is much to suggest that the EU is continuing to pursue its enlargement policy under the conditions of the new bloc formation in Europe with the aim of consolidating its membership promises. Emergency admission is highly unlikely and regular accession is a very distant prospect for Ukraine. That is why the EU should (at least) in respect of the EaP countries develop integration and cooperation arrangements below the level of EU membership as outlined above and improve its own ability to act in all areas in order to be able to assert its values and interests itself. To that extent, ambivalences with regard to Ukraine and other EaP countries will continue to exist. As long as Russia pursues an aggressive and imperial policy toward its neighbours, the EU, together with the United States, must counteract it by all means and in the longer term.

Nothing forges a stronger bond than a common foe. The war on Ukraine initiated by Putin could have the effect of the external threat uniting the EU27 in unprecedented political cohesion and consistency in action. The EU has shown in its reaction to the Russian invasion of Ukraine that it is capable in this exceptional situation of projecting power collectively. The basis for that is its economic and financial power and a supranational executive that must be deepened and secured.

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