

A Year Later: War in Ukraine and Western Balkan (Geo)Politics

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Ukraine War: A Push towards Differentiated Integration for the Western Balkans?

Marko Milenković*

The process of European Union (EU) enlargement to the Western Balkans (WB) is entering its third decade. The six (potential) candidates were first offered a membership prospect back in 2003. The Russian aggression against Ukraine brought a completely new political context in which enlargement is taking place. With two new EU candidates – Ukraine and Moldova, and Georgia as a potential candidate – the process of enlargement is gaining new impetus. However, it is also becoming more complex as the EU will have to work simultaneously on integrating two rather different parts of the continent: the Balkans and a part of the Eastern Partnership. Both the EU and the candidate countries are reiterating their commitment to EU membership for the Western Balkans and are formally taking some steps in the accession process. However, there are many factors both on the EU side and among candidates that make such a perspective untenable in the short-term. These include enlargement fatigue, unwillingness of candidates' government to implement crucial reforms needed for EU membership, as well as multiple influences of non-Western powers. In the absence of membership prospects in the near future, might differentiated integration - widely used by the Union internally

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and externally - serve as the framework for the Europeanisation of the Western Balkans (Milenković 2022; Milenković 2023)? The following analysis calls just for that. It aims to contribute, from the legal perspective, to the debate on the future of WB enlargement in the context of the war in Ukraine in this volume.

For decades, the EU integration process has been built upon the conditionality approach (Džankić, Keil, & Kmezić 2019). For the Western Balkans, the process has been lengthy and hampered by a variety of factors on both the EU and the prospective members' sides (Belloni & Brunazzo 2014; Economides 2020). Many of the Member States' attitudes towards enlargement have changed in comparison to the CEE countries and their accession in 2004/2007, as has been recognised by scholarship for over a decade (Milenković & Milenković 2013; O'Brennan 2014). Enlargement fatigue within the Union is, albeit to the lesser extent, complemented by the accession fatigue within candidates (European Parliamentary Research Service 2016). The new negotiation methodology aimed at more political control of the process and a gradual integration of candidates in EU policies was introduced in 2020 (European Commission 2020). Even so, the mainly technical negotiation process is progressing slowly, mostly due to political constraints. An important aspect of the new methodology is the firm insistence on the so-called "Fundamentals" cluster aimed at the advancement of the rule of law, human rights and institution-building. Gradual progress in integration, but also rolling back in the whole process, is envisaged to be based on the progress of the reforms in the "Fundamentals" cluster (Milenković 2020). The EU's enlargement fatigue, the strict conditionality requirements, the EU's internal political crisis, and the current resistance to enlargement in various Member States all contribute to the need for a tangible new approach to EU membership, both in theory and in practice (Milenković 2023). The pivotal political moment is calling for swift action in terms of negotiating and for creating new solutions that would enable all or most candidates to integrate in the EU as soon as possible. There are even calls for immediate accession of Ukraine to the EU with a variety of legal arguments offered on how this could be done (Kochenov 2022). 'But the war must not distract EU from the Western Balkans. In fact, because of the war, the focus also needs to be on the Western Balkans' (Dimitrov et. al 2022). Taking everything into consideration, it is essential that concrete measures are offered to the Western Balkans and legal steps are taken in order to keep the region safe, stable and adherent to European values.

Current state of (differentiated) integration for the Balkans and possible options to move the region closer to membership

In this part, trajectories of cooperation between the Western Balkans and the EU are studied through the optics of differentiated integration (Milenković 2022). We do so by examining both current integration paths and by looking into legal options available in the short and midterm under the present EU founding treaties. Differentiated integration can be described as the approach/possibility on the legal/political front for EU Member States and non-Member States to engage in or not to be involved in specific areas of the integration. It has been a long-standing strategy for the EU's internal operations but also for its relationship with neighbouring countries (see Stubb 1996; Leruth, Gänzle & Trondal 2022a). It has made it possible for integration to advance over the past few decades, while allowing some states to take or not take part in certain policies (such as the Schengen Area or Eurozone) even without EU membership.

Existing modes of integration of the Western Balkans

There are numerous avenues of integration of the Western Balkans with the European Union that we observe as differentiation for the region (Milenković 2022). Foremost, the Stabilisation and Association Agreements (SAAs) concluded between the EU, its Member States, and prospective candidates, set a stage for a comprehensive transformation of the aspiring members, govern reforms in a number of areas (such as environmental protection or competition), and create the grounds for the gradual inclusion in the internal market. Concluded for an unlimited period of time they do present a basis for relations until a country progresses to membership status. However, association agreements as stipulated by founding treaties could be used for revamping relations and bring the region closer to the EU even without membership. The Energy Community Treaty (ECT) founded in 2006 presents another important building block in the transformation of the region. It integrates, on a sectoral

level, ECT members into the European energy market and facilitates the framework for alignment with the relevant *acquis* on energy, environment and renewables (see further Milenković & Pešterić 2021). Cooperation and sectoral alignment are also present in the transportation sector (Transport Community, Open Skies Agreement), as well as extensive participation in the EU programs in the areas of science, education, youth, civil society development, and health. Finally, over the past two and the half decades, the EU has involved candidate countries in over 20 decentralised EU agencies following a different logic of cooperation (Kaeding and Milenković 2023). As of 2020, with the changes of the EU accession negotiation methodology, it is also envisaged that the acceding countries should be gradually included in various EU policies as their negotiations progress (EU Commission 2020). However, although from a legal standpoint undeniably possible, a particular differentiation approach for WB is yet to be operationalised. In sum, the region has already gone through a variety of patterns of integration into the EU, numerous aspects of differentiated integration have been examined, and their potential has already been identified (Milenković 2022; Milenković 2023) – notably, if we concentrate on sectoral integration. However, ‘Confronted with a new war in its direct neighbourhood, the EU was suddenly forced to question its “sit and wait” attitude towards the Western Balkans and to start thinking about the region in a geo-strategic context’ (Ristić 2022). The question arises whether this differentiation for the Balkans should be extended to include more membership benefits or should it resemble the level of integration among members of the European Economic Area (EEA)? And if so, what is the value added for the European Union to pursue this path? The answer to this is not straightforward, but it is certain that if the EU does not firmly involve and incorporate the Balkans, the region will remain vulnerable to foreign influences (Vuksanović 2022), as well as to democratic and rule of law backsliding. The very fact that war is raging in Europe signals that now is the time to act on the Western Balkan enlargement (Dimitrov et al. 2022). Therefore, it is prudent to keep extending the membership benefits to the region, while insisting on fundamentals in the accession process. This complex task can be achieved if the existing legal avenues are utilised and upgraded.

Future possibilities for differentiation

From a legal perspective, the crucial question is how to devise a new short to midterm framework accommodating integration of the Western Balkans before full membership. To this end, we study the possibilities under current Treaties for extending association. It is also worth considering whether the WB region, which will need the EU's ongoing support in order to develop economically and undergo legal and political change, could benefit from the model set for countries belonging to the EEA, i.e., non-members who choose to participate in the internal market while not pursuing full membership (Leruth, Gänzle, & Trondal 2022b). The EEA states are a part of both the Schengen Zone and the internal market of the European Union. However, there are also warnings that the EEA model may not be appropriate for the Western Balkan region, as the wealthy EEA countries have opted out of the EU and do not need the EU's stabilising or transformative power (Raik & Tamminen 2014, 48). Instead, they contribute funds to the EU in order to participate in the internal market, rather than receiving benefits from the Union.

According to article 8 of the Treaty on European Union, the Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation. For this purpose, the Union may conclude specific agreements with the countries concerned. Article 8 also permits such agreements to include reciprocal rights and obligations, as well as the possibility of joint activities. In addition, article 217 of the Treaty on the Functioning of the European Union states that the Union may conclude agreements establishing an association involving reciprocal rights and obligations, common action, and special procedures with one or more third countries or international organisations. In essence, these brief provisions open a wide range of possibilities to (re)imagine relationships with Western Balkan candidates; possibilities that could be realised in a relatively short period of time. It has already been suggested that this could be accomplished by giving the Western Balkan candidates access to the Union's structural funds and by allowing them to take part in the Union's financial stability mechanisms. In other words, it could be accomplished by treating them 'in all other respects as part of the European integration project' (Flessenkemper & Reljić 2017). The main challenge is to determine how to expand an association to provide few or many membership benefits. Considering the limited

scale of the region's economy and populations, as well as the limitations on the free movement of people that will be similar to the past enlargement rounds, gradual integration into the internal market does not appear to pose a significant challenge to the Union. The opening of structural and agricultural funds, the creation of new pre-accession aid to match funds available to less developed Member States, as well as the expansion of the WB candidates' already substantial participation in various programs and activities, could also be included in this new approach. A commendable project advocating for "staged membership" to the EU in four phases was launched in 2021 (Emerson et al. 2021). The EU treaties would need to be amended significantly as to accommodate this model, but all parties involved should give it further thought. Another viable option for the Western Balkans that merits consideration by both academics and policymakers is to reinvent and expand the cooperation and verification mechanisms that were put in place when Romania and Bulgaria joined in 2008 (European Commission 2022). Furthermore, the use of post-accession conditionality tying discharge of the funds with upholding crucial EU norms and values in areas such as rule of law can also be considered a plausible option. Already put in place in recent year as a response to democratic and the rule of law backsliding of some of 2004 EU entrants (Baraggia & Bonelli 2022), it can be replicated, extended and made hard law through the accession treaties for the Western Balkan countries.

Concluding remarks

The search for more effective ways for the EU to engage with the region has been given a crucial impetus with the geopolitical context of the recent Russian aggression against Ukraine. The countries in the Western Balkan region have largely failed to make significant EU accession progress after two decades for a variety of reasons. These include the enlargement fatigue on the side of the Union that has faced multiple crises, the unpreparedness of local elites in the Western Balkans to transform their societies, as well as the mounting influence of non-Western powers. The war context and growing influence of outside actors necessitate concrete proposals and actions by both the EU and the candidate countries. To this matter, the greater engagement (and creativity) of the Commission in proposing new ways of engagement are necessary. While the swift inclusion of the entire region is the politically most prudent move in light of the ongoing conflict in Ukraine and the best-case scenario for the region's

stability, it is extremely unlikely in the short term perspective. However, if done gradually, with extensive cooperation and verification mechanisms, and under the assumption of a post-accession conditionality that had not previously been in place, it might become acceptable. Both the Treaty on the European Union (article 8) and Treaty on the Functioning of the European Union (article 217) offer plenty of room for the inclusion of candidates in various Union policies, as was analysed in this chapter. This inclusion has indeed already happened in a few areas such as energy, transport, research, and beyond. It is certain that there is room for far greater involvement in the EU bodies (such as EU decentralised agencies) as well as inclusion in sectoral policies and regulatory processes even without revising the current treaties. This quest for alternative integration solutions should also be considered for Eastern Partnership (potential) candidates, but with significant differences between two candidate regions in mind. Constructing future ties between the EU and all or the majority of Western Balkan candidates may benefit from the differentiation model(s) similar to those currently in place for EEA states, at least in the medium term. This new model would need to be modified to account for the region's unique characteristics and its current development levels, in order to firmly tie the Western Balkans to the European Union.

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