

KLUWER LAW INTERNATIONAL

citation and similar papers at [core.ac.uk](http://core.ac.uk)

brought

provided by Ulster Unive

# EUROPEAN FOREIGN AFFAIRS REVIEW



Wolters Kluwer

Law & Business

AUSTIN

BOSTON

CHICAGO

NEW YORK

THE NETHERLANDS

Published by:  
Kluwer Law International  
P.O. Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands

Sold and distributed in North, Central and South America by:  
Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
USA

In all other countries sold and distributed by:  
Turpin Distribution Services  
Stratton Business Park  
Pegasus Drive  
Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom

ISSN 1384-6299

© 2009 Kluwer Law International BV

2010 (4 issues): Institutional: USD465.00 / EUR349.00 / GBP256.00 (print).  
Private: USD122.00 / EUR117.00 / GBP73.00 (print).

(2009) 14 EFA Rev. should be used to cite this volume.

This journal is available online at [www.kluwerlaw.com](http://www.kluwerlaw.com).  
Sample copies and other information are available at [www.kluwerlaw.com](http://www.kluwerlaw.com).  
For further information, please contact our sales department at +31 (0) 172 641562  
or at [sales@kluwerlaw.com](mailto:sales@kluwerlaw.com).

For advertisement rates please contact our marketing department at +31 (0) 172 641525 (Marina Dordic)  
or at [marketing@kluwerlaw.com](mailto:marketing@kluwerlaw.com).

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission of the publishers.

Permission to use this content must be obtained from the copyright owner. Please apply to: Wolters Kluwer Legal Permissions Department, 76 Ninth Avenue, 7th Floor, New York NY 10011-5201 United States.  
E-mail: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com).

*EDITORS*

**Jörg Monar**

Professor of Contemporary European Studies,  
Sussex European Institute, University of Sussex

**Nanette Neuwahl**

Professor of European Law, Centre for Research  
in Public Law, University of Montreal

*ASSOCIATE EDITOR*

**Professor Christophe Hillion**

Europa Institute, University of Leiden,  
The Netherlands

*BOOK REVIEW EDITOR*

**Professor Alasdair Blair**

Department of International  
Studies and Social Sciences  
Coventry University  
George Eliot Building  
Coventry CV1 5FB, UK  
Tel: +44 (0)247-688-8014  
Fax: +44 (0)247-688-8679  
Email: a.blair@coventry.ac.uk

*BOOK REVIEW EDITOR*

**Professor Sven Biscop**

EGMONT, Royal Institute  
for International  
Relations (IRRI-KIIB)  
Rue de Namur 69  
1000 Brussels, Belgium  
Tel: +32 (0)2-213-40-23  
Fax: +32 (0)2-223-41-16  
Email: s.biscop@irri-kiib.be

*EDITORIAL OFFICE*

**Said Hammamoun**

Center for Research in Public Law  
University of Montreal  
C.P. 6128, Succursale Centre-ville  
Montreal QC  
Canada H3C 3J7  
Phone: +1 514 343-6111 # 2661  
Fax: +1 514 343-7508  
Email: said.hammamoun@montreal.ca

*ADVISORY BOARD*

**Dr Gianni Bonvicini**

(Director, Istituto Affari Internazionali, Rome)

**Professor Jacques Bourrinet**

(University Paul Cezanne (Aix Marseille III))

**Prof. Dr Günter Burghardt**

(Ambassador (Ret.))

**Professor Marise Cremona**

(Department of Law, European University Institute,  
Florence)

**Professor Alan Dashwood**

(University of Cambridge)

**Professor Sir David Edward**

(Judge of the Court of Justice of the EC, 1992–2004)

**Dr Geoffrey Edwards**

(University of Cambridge)

**Professor Piet Eeckhout**

(King's College London)

**Lord Hannay of Chiswick**

(House of Lords)

**Professor Christopher Hill**

(University of Cambridge)

**Prof. Dr Horst G. Krenzler**

(Former Director-General External Relations  
and Trade, European Commission)

**Prof. Dr Josef Molsberger**

(Emeritus Professor of Economic Policy,  
University of Tübingen)

**Professor David O'Keefe**

(Founding Joint Editor)

**Dr Jacek Saryusz-Wolski**

(Chairman of the Foreign Affairs Committee of the  
European Parliament)

**Ambassador Philippe de Schoutheete de Tervarent**

(Former Permanent Representative of the Kingdom  
of Belgium to the European Union)

**Professor Loukas Tsoukalis**

(University of Athens; President, Hellenic  
Foundation for European and Foreign Policy  
(ELIAMEP))

**Lord Wallace of Saltaire**

(House of Lords)

**Professor Joseph H.H. Weiler**

(New York University School of Law)

**Prof. Dr Wolfgang Wessels**

(University of Cologne)

## **Transforming the Balkans? Lesson Learning and Institutional Reflexivity in the EU Enlargement Approach**

MÁIRE BRANIFF\*

**Abstract.** European Union (EU) enlargement has important implications for the political and economic transition for the candidate and ‘potential’ candidate states of the Western Balkans. Similarly, the enlargement approach has effects on the functionality of EU enlargement. The article explores the development of the relationships between the EU and the Balkans and the politics and functionality of EU enlargement approach. The article examines how through a process of lesson learning and institutional reflexivity the development of the EU enlargement approach has impacted the technical and political basis and operation of the EU enlargement approach. This has evolved because of the interplay of factors, which includes institutional reflexivity within and among key agencies. Consequently, the EU has significantly extended political conditionality, the timeframe for accession, and the mechanisms for enlargement. Hence, the article concludes that EU enlargement has conformed to the policy-learning model with consequences for the enlargement to the Balkans.

### **I Introduction**

The European Union’s (EU’s) history of enlargement has been credited with extending peace, prosperity, and security across Europe and as a normative, self-reflexive power; such EU agencies are undoubtedly impacted by previous experiences. Accordingly:

Past enlargements have generally been a great success, benefiting the old as well as the new EU Member States by fostering economic growth, promoting social progress and bringing peace, stability, freedom and prosperity to the European continent; believes that lessons can be learned from previous accessions and that further ways of improving the quality of the enlargement process must be based on the positive experiences accumulated so far.<sup>1</sup>

\* Dr Máire Braniff, University of Ulster, <m.braniff@ulster.ac.uk>. This article has greatly benefited from comments from Prof. Guelke and Dr Phinnemore at Queen’s University, Belfast, and anonymous reviewers and from discussions at the Symposium ‘The Republic of Macedonia and the Western Balkans’, Centre for European Studies, University of Limerick, March 2008.

<sup>1</sup> European Parliament, ‘Report on the Commission’s 2007 enlargement strategy paper (2007/2271(INI))’, Committee on Foreign Affairs (26 Jun. 2008), pt 1.

The 'lessons learned' have led to an innovative policy adaptation and incremental change in how the EU enlargement approach works, such as the employment of benchmarks, the pressure to achieve progress earlier in the pre-accession process, balancing carrots and sticks, and policy flexibility. Such analysis suggests that the EU has refined and adapted its existing mechanisms as well as developed new ones as a result of the experiential lesson learning in the countries of the former Yugoslavia and ongoing enlargements, hence moving from existing narratives of a reactive and a path-dependent actor. A path-dependent EU enlargement approach obscures the implicit and essential political judgments involved in lesson learning that effect policy-making. At the centre of the implementation of the enlargement approach are the Directorate General (DG) Enlargement, responsible for monitoring, advising, and preparing future Member States for accession and at the same time being very much aware of the impacts, intended and unintended, of their approach both in future Member States and within the EU.

The inbuilt ambitions of democratization, conflict transformation, stabilization, and Member State building embodied within the EU's enlargement approach are not necessarily compatible, and as a result, institutional learning within the EU enlargement approach has affected its operation and implementation. The various strategies of stabilizing, democratizing, Member State building, and transforming conflict have at times been contradictory and have challenged the realization of any of these objectives. There is a tension between and within each of these ambitions and a tension between the capacity of the EU to export EU norms and practices in Western Balkans and the potential side effect of reaction, reproduction, or causing of conflict. According to Karcaska, the situation on the ground in the Western Balkans with unresolved security and constitutional issues forced the EU to provide a framework for association as well as being a direct negotiator in drawing up constitutions and constitutional arrangements.<sup>2</sup> Although the situation on the ground has certainly provided the EU with a set of challenges which it is forced to respond, it is the manner of the response which is of interest in this article. A possible solution to the limitations lies with the EU's capacity to institutionalize and implement lessons gained from experiential learning moving from a path-dependent actor involved in regurgitation of tried and tested policies. According to Jervis, 'we cannot make sense out of our environment without assuming that, in some sense, the future will resemble the past'.<sup>3</sup> Thus, while the existing EU toolbox remains, the selectivity over policy-making is impacted by experiential lesson learning, thus the policy changes.

<sup>2</sup> S. Karcaska, 'Extension of EU Conditionality in the Western Balkans – The Case of the Republic of Macedonia', Working Paper, Presented at Symposium 'The Republic of Macedonia and the Western Balkans', Centre for European Studies (University of Limerick, March 2008).

<sup>3</sup> R. Jervis, *Perception and Misperception in International Politics* (Princeton: Princeton University Press, 1976).

Enlargement is not easy to direct in Europe; aside from it being a political and legal process, sentiments and concerns held by the European public will, through democratic representative politics, find their way into the enlargement process. Enlargement fatigue was the leitmotif in Summer 2005 in the aftermath of the rejection in the Constitutional Treaty in France and The Netherlands. The changing context within the EU, as opposed to policy-learning or reflexivity, affected the mode of the enlargement approach in the Balkans. The Commission confronted 'enlargement fatigue' in November 2005 Commission Strategy Papers on enlargement and the January 2006 Communication to the Western Balkans. According to the European Commission, the EU aims to carry out a 'carefully managed enlargement process' that will address the EU public's 'legitimate concerns'; this suggests a weakening of opinion to the EU.<sup>4</sup> This new situation within the enlargement process was characterized by the intensification of the use of conditionality and monitoring along with the introduction of benchmarks. Additionally, the avis for Former Yugoslav Republic of Macedonia and Croatia was much more explicit than for previous candidate states.<sup>5</sup>

As a strategy for conflict resolution and a mechanism for change, the EU relied upon its existing toolbox when it offered the Western Balkans the prospect of membership and a framework for closer integration into the EU.<sup>6</sup> Although the suitability of this strategy was questionable from the outset, it becomes pertinent to investigate reflexivity in action in the policy-making process. It is possible to argue that changes in policy implementation and direction result purely from lesson learning and carefully considered changes in policy implementation; in other words, it could amount to a simple case of institutional improvisation.<sup>7</sup> Is it a case of responding to evolving political dynamics in the aspirant Member State, being event-led policy-makers, or sitting back, patiently relying on the power of attraction of membership taken from the existing toolbox? It is debatable as to what the EU's intentions in the Western Balkans are, does the EU have a plan or is the EU's strategy just wishful thinking pursued through an ad hoc series of responses? Is their strategy simply to hope for more conducive domestic political situations in which their ambitions to stabilize and integrate the countries transpire? Or, is it a strategy based upon flexible trial/error exercises and programmes through an incremental learning process?

<sup>4</sup> European Commission, *2005 Enlargement Strategy Paper*, COM(2005) 561 final, Brussels, 9 Nov. 2005.

<sup>5</sup> The EU formally uses the name Former Yugoslav Republic of Macedonia in its publications and language.

<sup>6</sup> L. Friis & A. Murphy, 'Turbo-Charged Negotiations: The EU and the Stability Pact for South Eastern Europe', *Journal of European Public Policy* 7, no. 5 special issue (2000): 767–786; and *id.*, 'Negotiating in a Time of Crisis: The EU's Response to the Military Conflict in Kosovo', *EU Working papers*, European University Institute, RSC No. 20 (2000).

<sup>7</sup> E. Pond, 'Serbia's Choice', *Survival* 51, no. 2 (2009): 123–126 and 132.

It is of interest here that the EU is learning lessons from internal EU policy as opposed to other institutional actors such as North Atlantic Treaty Organization, the United Nations, and the Organization for Security Cooperation in Europe. Within the EU enlargement approach, lessons learned have been from policy evaluations and reappraisals of the enlargement policy. Nonetheless, the EU enlargement policy does not face similar scrutiny and monitoring experienced by Common Foreign and Security Policy (CFSP) policies and missions which previous studies about institutional reflexivity.<sup>8</sup> For example, the Policy Unit produces monitoring and evaluation reports on CFSP activities such as Mission Reports and Lessons Identified/Lessons Learned Reports. Since this is not commonly in place in the enlargement process, where rigorous monitoring focuses on candidate and pre-candidate countries, the task of identifying lessons learned is much more challenging. This compounds the difficulty to learn, institutionalize, and implement lessons. Additionally, it has been difficult for the EU to coordinate the lessons that the various agencies of the EU have learned. Nevertheless, a useful methodological tool for assessing lessons learned is the Enlargement Strategy Reports published by DG Enlargement.

The article, firstly, reflects on institutional reflexivity and considers the relevance to learning within the enlargement approach. The increasingly salient role that political conditionality plays in the enlargement process as well as the introduction of new mechanisms including benchmarks represent an indication that the agencies involved in the enlargement approach are reflexive and innovative. This reflexive enlargement approach has the implications of the evolved conditionality for two countries in the accession process considered here: Croatia and Serbia.

## II The Lesson Learning Process

Institutional reflexivity deals with how both organizations and individuals learn usually referred to as social learning. Hall defined:

Social learning as a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information. Learning is indicated when policy changes as the result of such a process.<sup>9</sup>

Consequently, learning facilitates institutions, such as DG Enlargement to rectify flaws in the policy process or alleviate unintended effects stemming from

<sup>8</sup> S. Duke, 'Linchpin COPS: Assessing the Workings and Institutional Relations of the Political and Security Committee', <<http://aei.pitt.edu/5914/>>, EIPA Working Paper 2005/W/05; S. Duke & S. Vanhoonacker, 'Administrative Governance in CFSP: Development Practice', *EFA Rev.* 11, no. 2 (2006): 163–182; K. Glarbo, 'Wide-Awake Diplomacy: Reconstructing the Common Foreign and Security Policy of the European Union', *Journal of European Public Policy* 6, no. 4 (1999): 634–651; and A.I. Johnston, 'Treating International Institutions as Social Environments', *International Studies Quarterly* 45 (2001): 487–515.

<sup>9</sup> P.A. Hall, 'Policy-Paradigms, Social Learning and the State: The Case of Economic Policy-making in Britain', *Comparative Politics* 25, no 3 (1993): 275–296.

policy implementation. This builds on the accepted hypothesis that learning occurs more often from failure than from success. Aguilar pointed out:

Few lessons are learned when the outcome is successful, given that nobody ever inquires into whether this outcome has really been achieved as a result of a political decision, or whether on the contrary, it has been achieved in spite of that decision.<sup>10</sup>

Although faith in the transformative capacity of the enlargement approach remained stalwart, the mechanisms of enlargement evolved, opening the debate about how institutional lesson learning has impacted the development of the enlargement approach as a means of transforming aspiring Member States into Member States.<sup>11</sup>

According to Ernst Haas, international institutional learning and reflexivity is:

A shorthand way to say that the actors representing states and members of the secretariat, working together in the organization in the search for solutions to problems on the agenda, have agreed on a new way of conceptualizing the problems.<sup>12</sup>

Conceptualizing problems and searching for solutions to the problems is a process of change.<sup>13</sup> In other words, reflexivity takes into account the impact of the policy outcomes and integrates lessons into a changed policy. The lesson learning capacity of the EU relates explicitly and directly to the EU's institutional reflexivity. However, this lesson learning capacity surely is predicated on the various EU agencies behaving rationally. Therefore, reflexive behaviour 'springs from an ongoing reflection about the action, its context, its effects on such a context and the feedback of those expected effects on the action'.<sup>14</sup> For the EU's lesson learning to have an impact on its transformative capacity, lessons must be institutionalized and implemented in changed policy. These changes may be incremental and innovative various EU agencies and Member States means that learning is much

<sup>10</sup> P. Aguilar, *Memory and Amnesia: The Role of the Spanish Civil War in the Transition to Democracy* (New York: Berghahn Books, 2002).

<sup>11</sup> H. Grabbe, *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe* (London: MacMillan, 2006); C. Pippan, 'The Rocky Road to Europe: The EU's Stabilization and Association Process for the Western Balkans and the Principle of Conditionality', *EFA Rev.* 9, no. 2 (2004): 230; D. Spence, 'The Evolving Role of Foreign Ministries in the Conduct of European Union Affairs', in *Foreign Ministries in the European Union. Integrating Diplomats*, ed. B. Hocking & D. Spence (Basingstoke: Palgrave, 2002).

<sup>12</sup> E.B. Haas, *When Knowledge is Power* (Berkeley, Los Angeles: University of California Press, 1990), 26.

<sup>13</sup> J.G. March, 'Exploration and Exploitation in Organizational Learning', *Organization Science* 2 (1991): 71–87.

<sup>14</sup> F. Bicchi, 'Our Size Fits All: Normative Power Europe and the Mediterranean', *Journal of European Public Policy* 13, no. 2 (2005): 286–303.



more difficult to assess. Potentially, problems of internal communication and cross-agency communication as well as institutional memory and behaviour can limit lesson learning that can promote policy change. Likewise, a lack of resources will inhibit the lesson learning process.<sup>15</sup> Moreover, rational learners can learn the ‘wrong’ lessons.<sup>16</sup> Ultimately, as Nye argued, ‘shifts in social structure and political power determine whose learning matters’.<sup>17</sup> Hence, institutional learning is dictated by the intellectual, technical, and political processes interacting within EU agencies, which shape EU policy outputs. Therefore, policy outputs are affected by the balance of power among and within EU agencies and indeed the memory of past enlargements. Accordingly, learning is shaped ‘less by history than by the frames applied to that history’.<sup>18</sup>

Institutional learning very much depends upon the capacity of individuals within those institutions to draw upon and incorporate learning into their work life. According to Juncos and Pormorska, Brussels staff are not ‘structural idiots’ purely impacted by the social and normative structures of the institution but rather they are ‘self-reflective and reactive’.<sup>19</sup> Adding to this, Aguilar pointed out that ‘those who take political decisions tend to place excessive emphasis on the lessons which derive from their own personal experience and undervalue the lessons which derive from the experience of others’.<sup>20</sup> This reflexivity extends to explaining the way that the enlargement process adapts and changes. Narrative suggests that external pressures drive the enlargement approach and changing events, which obscured the internal policy-making decisions, which were affected, by experiential learning and reflexivity. In sum: organizational learning involves a multi-stage process in which environmental feedback leads to individual learning, which leads to individual action to change organizational procedures, which leads to a change in organizational behaviour, which leads to further feedback.

The European Commission has alluded to the benefits of a reflexive approach: ‘Every enlargement must be followed by adequate consolidation and political concentration, that is to say, by a serious reassessment of the Union’s policies and means in order to respond to the expectations of European citizens and to guarantee the viability of the Union as a political project.’<sup>21</sup> Additionally, the Commission advocated wholesale institutional learning explicitly: ‘The EU has taken steps

<sup>15</sup> D.A. Levinthal & J.G. March, ‘The Myopia of Learning’, *Strategic Management Journal* 14 (1993): 95–112.

<sup>16</sup> See Hall, *supra* n. 9.

<sup>17</sup> J.S. Nye, ‘Nuclear Learning and US-Soviet Security Regimes’, *International Organization* 41, no. 3 (1987): 371–402 at 381.

<sup>18</sup> See Levinthal & March, *supra* n. 15.

<sup>19</sup> A. Juncos & K. Pomorska, ‘Playing the Brussels Game: Strategic Socialization in the CFSP Council Working Groups’, *European Integration Online Papers* 10 (2006).

<sup>20</sup> See Aguilar, *supra* n. 10.

<sup>21</sup> Committee on Foreign Affairs, ‘Report on the Commission’s 2007 Enlargement Strategy Paper (2007/2271(INI))’ (26 Jun. 2008), pt 1.

to improve the quality of the enlargement process, considering in particular the lessons learned from previous enlargements. Greater focus is now given at an early stage to the rule of law and good governance.’<sup>22</sup>

Accepting this lens, in what ways does institutional reflexivity explain the decisions made and processes of political conditionality in the EU enlargement process? Because the EU claims to learn lessons – Is this an accurate reflection of a lesson learning process? As an evolving process within a dynamic EU, the EU enlargement approach is very much a result of the EU dealing with new challenges posed by extending its boundaries, as well as a degree of institutional reflexivity and reactivity that has engendered the refinement and broadening of the enlargement approach. The article takes its impetus from the idea that as mechanism for encouraging and monitoring change in aspiring EU Member States, political conditionality has evolved and become gradually more relevant to the enlargement process. Such advancement and salience facilitates analysis of the triggers for the changing nature and role of political conditionality as an instrument of Europeanization in the enlargement process.

### III The EU Enlargement Approach in the Western Balkans

The EU enlargement approach is set out in various EU treaties and Commission Reports on Enlargement. It is in these documents and in the functioning of the enlargement approach that we can trace the reflexivity and evolution of the enlargement approach through the institution of membership criteria through to the refinement and expansion of mechanisms used in the enlargement process. Fundamental treaty reform made advancement in an enlargement approach possible. The treaties of the EU, namely, the Treaty of Rome (1957), the Single European Act (1987), the Treaty of Maastricht (1992), the Treaty of Amsterdam (1997), and the Treaty of Nice (2000) have all asserted and preserved the open door nature of the EU. Although the Treaty of Rome was substantially concerned with matters for its own Member States, it established a future scope for enlargement to other states. Each of these treaties progressively advanced the criteria for EU membership, whereas the definition of what makes a ‘European’ state remained open. Throughout the process of widening the EU, political conditionality has increased in its salience in preparing aspirants to become Member States. Although membership criteria were present in previous enlargements, its application became more rigorously applied with the institution of the Copenhagen Criteria as a legally binding framework and a political priority.<sup>23</sup> The Copenhagen European Council in 1993 stated that membership of the EU was based on:

<sup>22</sup> European Commission, ‘Enlargement Strategy and Main Challenges 2008–2009’, COM(2008) 674 final (Brussels, 5 Nov. 2008).

<sup>23</sup> D. Kochenov, ‘Behind the Copenhagen Façade. The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law’, *European Integration Online Papers* 8 (2004), <<http://eiop.or.at/eiop/texte/2004-010a.htm>>.

Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy, as well as the ability to cope with competitive pressures and market forces within the Union, the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.<sup>24</sup>

Moreover, Article 49 of the Treaty on EU as amended by the Treaty of Amsterdam stated: ‘Any European state which respects the principles set out in Article 6 (1) may apply to become a member of the Union.’<sup>25</sup>

Therefore, the basis of the European treaties permits any European state that meets the membership criteria to join the EU with the additional caveat that the institutional, financial, and political stability of the EU should not be threatened by the admission of new Member States: ‘The Union’s capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.’<sup>26</sup>

As with any state aspiring to join the EU, the countries of the Western Balkans must meet the EU’s legal, economic, and political conditions, and be ready to assume the responsibilities of membership. The Copenhagen Criteria formed the basis of a conditionality that has since evolved, particularly in political terms. For the countries of the Western Balkans, political conditionality has been extended significantly including additional conditions specified in the Regional Approach, the Stabilization and Association process (SAP) conditionality. Institutional reflexivity within key EU agencies explains the changing nature and role of political conditionality in the enlargement process.

Regarding the Western Balkans, political conditionality has been a feature of relationships with the EU. Even when in the late 1990s, the EU introduced the Regional Approach for the Western Balkans, political conditionality focused on encouraging reforms in the political area, such as returns of refugees and inter-ethnic reconciliation.<sup>27</sup> The Regional approach, however, failed to provide the prospect of membership as the major incentive of conditionality, and did not deliver tangible results. However, at the cornerstone of all future relations with the Western Balkans lay conditionality buoyed by the potential to achieve membership. Relations with the Western Balkan countries were a unique mix of stabilization, democratization, and accession through conditionality and socialization instruments. Indeed, the EU expanded beyond the traditional scope of political conditionality experienced the countries of the 2004 and 2007 enlargements owing

<sup>24</sup> European Council, Presidency Conclusions, Copenhagen, 21–22 Jun. 1993, pt 7, A. iii.

<sup>25</sup> Article 6(1) of the Treaty on European Union as amended by the Treaty of Amsterdam stated that ‘The Union Is Founded on the Principles of Liberty, Democracy, Respect for Human Rights and Fundamental Freedoms, and the Rule of Law, Principles Which Are Common to the Member States.’

<sup>26</sup> European Council, Presidency Conclusions, Copenhagen, 21–22 Jun. 1993, pt 7. A. iii.

<sup>27</sup> General Affairs Council Conclusions, Luxembourg, PRES/97/129, April 2007.

to the ascertained need to deal with the legacies stemming from the dissolution of Yugoslavia in the 1990s. Political conditionality functioned in several different ways ranging from state building, democratization, and conflict transformation to the more traditional and technical matters of harmonization with the *acquis*.

As events evolved and context changed in the former Yugoslavia during the 1990s, the reflexivity and flexibility of the EC/EU to adapt their policies and approaches specifically to what was happening in the countries of the former Yugoslavia was evident in the strategic policy planning and programme development to deal specifically with Montenegro and Kosovo. In the mid-1990s, the EU developed policies and mechanisms, which Montenegro and Kosovo could access without interference from the central political authority in Belgrade. In terms of the mechanisms and self-confidence, the EC/EU developed mechanisms in response to experiences and lessons learned from their engagement in Yugoslavia. EU policy was a mix of incremental and innovative learning: while the Royau-mont Process and the Regional Approach (based on an idea previously discussed by Greek Defence Minister Arsenis) demonstrated that this was both incremental and innovative policy change in that it was the evolution of a new idea leading to a changed policy. Furthermore, evidence existed in February 1997 that explained that the EU was a reflexive actor that had implications for its policy development and transformative capacity. Obviously, changing events in the Balkans mattered. After the EU carried out a fact-finding mission in February 1997 to Belgrade and as result of lessons learned about the situation in Belgrade and the effects of their existing approach decided to change their approach to Belgrade and ‘apply conditionality gradually with the view to developing a coherent strategy for relations with the countries of the region’.<sup>28</sup> Although the shift was made possible by the change in circumstance, the policy utilized was an existing policy – conditionality and integration. However, academic discourse debates this policy change as Peterson points out, sustaining the policy-learning model, in times of crisis, ‘almost instinctively, the EU becomes highly conservative and tends to fall back on some type of past policy, even if it is clearly no longer appropriate’.<sup>29</sup>

After the war in Kosovo, policy change as a result of reflexivity resulted in the Stabilization and Association process and the offer of the membership perspective. The external shock of the war in Kosovo stimulated EU policy change which had important consequences for the future transformative capacity of the EU, namely, the change in enlargement strategy to include the countries of the former Yugoslavia and how EU leaders perceived the link between security and enlargement.<sup>30</sup> Additionally, the external shock of the war in Kosovo provided a learning experience for the EU. During the war in Kosovo, the EU was preparing

<sup>28</sup> *Agence Europe*, 25 Feb. 1997.

<sup>29</sup> J. Peterson & H. Sjørnsen, *A Common Foreign Policy for Europe* (London: Routledge, 1993), 13.

<sup>30</sup> A. Higashino, ‘For the Sake of “Peace and Security”? The Role of Security in the European Union Enlargement Eastwards’, *Cooperation and Conflict* 39, no. 4 (2004): 361.

for what was to come after the war was over and how they would stabilize the region. Therefore, the EU policy-makers were making a conscious effort to improve their policies and approaches to the countries of the former Yugoslavia in 1999–2000. This argument is sustained by consideration of the insistence of Fischer and the German Presidency that something radical had to be done since the existing EU approach was obviously not working.<sup>31</sup> The Fischer Plan developed in to the Stability Pact, which came about due to the war in Kosovo, the failures of the Rambouillet Conference, and the bombing of Serbia. According to Pippan,<sup>32</sup> the intention of the Fischer Plan may have been to offer an accelerated accession process yet this would have ‘resulted in a discrimination of the [Central and Eastern European Countries] ... thus, in an inconsistent application of Article 49 [Treaty on European Union]’.

In 2003, the countries of the Western Balkans became part of the Stabilization and Association process that from its title indicates that it is not purely about association but includes an added extra of stabilization. This is particular to the EU’s strategy with the countries of the Western Balkans.<sup>33</sup> Conditionality in the Stabilization and Association Agreements was an evolution of an earlier form of association agreement, the Europe Agreements. Distinctiveness from the Europe Agreements lies in the Stabilization and Association Agreements, adding a condition of regional cooperation which was an explicit condition that must be met and which is found only in the Stabilization and Association Agreements.<sup>34</sup> Also, while the Stabilization and Association Agreements did not include an explicit membership framework and, in the Agreements, the associates were named as ‘potential candidates’, the EU had ‘integrated the principle of conditionality into the Stabilization and Association Agreements’.<sup>35</sup> Essentially, Croatia and Serbia, as candidate and potential candidate states who have negotiated or are negotiating a Stabilization and Association Agreement, are subject to conditionality.

Conditionality is a multi-level phenomenon. Firstly, there are the accession criteria as established by the Copenhagen European Council in 1993 and set out in Articles 6 and 49 of the EU Treaty. Secondly, there are the set of criteria that are specific to the Stabilization and Association process that includes ‘full cooperation with the ICTY, respect for human and minority rights, the creation of real opportunities for refugees and internally displaced persons to return and a visible commitment to regional cooperation’.<sup>36</sup> Extending the Copenhagen and Madrid Criteria, the Stabilization and Association Agreements required that the associates met the

<sup>31</sup> Pippan, *supra* n. 11, 226–228.

<sup>32</sup> *Ibid.*, 228.

<sup>33</sup> D. Phinnemore, ‘Stabilization and Association Agreements: Europe Agreements for the Western Balkans?’, *EFA Rev.* 8, no. 1(2003): 77–103.

<sup>34</sup> *Ibid.*, 86.

<sup>35</sup> Pippan, *supra* n. 11, 230.

<sup>36</sup> Council Conclusions of 29 Apr. 1997, *Bulletin EU* 4-1997, pt 2.2.1.

following conditions: 'Respect for democratic principles, human rights and the rule of law; the establishment of a free trade area with the EU; and the achievement of rights and obligations, in areas such as competition and state aid rules, that allow the economies to integrate with the EU.'<sup>37</sup>

The conclusion of Stabilization and Association Agreement negotiations takes place when the specific conditions are deemed adequately met, usually based on a judgment by the Commission's annual monitoring. If the Commission deems the country to be fully meeting the Stabilization and Association Agreement conditionality, the European Council then makes a decision, only when ratified by the European Parliament, to conclude the Stabilization and Association Agreement.

Following this, the path is clear for a membership application and the opening of accession negotiations. This too continues to be conditional on the continued implementation of the Stabilization and Association Agreement. The Stabilization and Association Agreement signed with Croatia stated the following:

If either party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before doing so, except in cases of special urgency, it shall supply the Stabilization and Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the parties.<sup>38</sup>

In other words, the progress of the Stabilization and Association Agreement would depend upon the continued implementation of the agreed terms. In addition to the Stabilization and Association Agreements, at the Thessaloniki summit in June 2003, the EU introduced the common instruments for EU accession, such as the European partnerships and the Progress Reports for the Western Balkans.

EU conditionality in the Western Balkans is qualitatively different to that experienced in previous enlargements; the EU instrumentalized and operationalized lessons learned from previous engagements and enlargements. Foremost, political conditionality is not purely being applied to the *acquis*, but rather confronts issues outstanding from the wars, therefore moves into the scope of conflict transformation. Additionally, the evolving conditionality of the accession process is evident in the employment of benchmarks. According to the Commission, benchmarks are a 'new tool introduced as a result of lessons learnt from the fifth enlargement'.<sup>39</sup> Benchmarks are linked directly to the *acquis*: the opening of negotiations includes taking preparatory steps such as action plans and fulfilling the contractual obligations of the *acquis*, and the closing of benchmarks involves

<sup>37</sup> European Commission, The Stabilisation and Association Process for South East Europe: First Annual Report, COM(2002) 163 final, Brussels, 3 Apr. 2002.

<sup>38</sup> European Commission, 'Stabilisation and Association Agreement Croatia', COM(2001) 371 final, Brussels, 9 Jul. 2001, Art. 120.

<sup>39</sup> European Commission, '2006 Enlargement Strategy Paper', COM(2006) 649 final, Brussels, 8 Nov. 2006.

the implementation of the *acquis*. A unanimous Council decision, on proposal from the Commission, is responsible for confirming that conditions had been met and opening chapters. This means that, at an earlier stage in negotiations, the EU will monitor more closely and expect more from candidates than was the case in previous enlargements. For Croatia, a candidate that is also part of the Stabilization and Association process, relevant benchmarks for opening chapters in accession negotiations also depend upon the fulfilment of commitments under the Stabilization and Association Agreement.<sup>40</sup> The implications for the Western Balkan countries are double-edged: it is much more difficult to become a member of the EU; it will produce a better-prepared candidate. Pippan noted that the introduction of benchmarks into the pre-accession process was inadequate and advocated that:

Clearer benchmarks are needed, defining as precisely as possible the steps to be taken by each country in order to move to the next stage of the SAP [Stabilization and Association Process]. Indeed if the SAP [Stabilization and Association Process] is viewed as the ‘road to Europe’ for the Western Balkans, the countries concerned have to be provided with an appropriately detailed road map guiding them to their desired destination.<sup>41</sup>

Tension between the demands of democracy, accountability, communication, and policy efficacy forced the hand of the Commission in its management of enlargement. The need to continue implementation and monitoring to portray reliability and maintain attractiveness while dealing with the mounting enlargement-sceptic voices within the EU resulted in a measured approach to enlargement post-2004. Acting in response to the pressures about enlargement, the Commission specified in the October 2004 and November 2005 Commission Strategy Papers on enlargement and the January 2006 Communication to the Western Balkans the changing enlargement dynamics. These documents consistently reiterated the European destiny of the countries of the Western Balkans but indicated a tightening conditionality and lengthening the timeframe for Western Balkans enlargement. The European Commission reached the following conclusions that reflect the malaise and disenchantment with the future of the enlargement project: ‘an institutional settlement should have been reached by the time the next new member is likely to be ready to join the Union’ and that ‘integration capacity – can the EU take in new members without jeopardizing the political and policy objectives established by the Treaties? – is achieved’.<sup>42</sup> In the aftermath of the rejection of the Constitutional Treaty and the resultant backlash over enlargement fatigue, the Commission was forced to define when future enlargement would be possible and

<sup>40</sup> European Commission, ‘2005 Enlargement Strategy Paper’, COM(2005) 561 final, Brussels, 9 Nov. 2005.

<sup>41</sup> Pippan, *supra* n. 11.

<sup>42</sup> European Commission, ‘2006 Enlargement Strategy Paper’, COM(2006) 649 final, Brussels, 8 Nov. 2006.

clarify what exactly was meant by the ever-elusive term 'integration capacity'. Accordingly, the Commission defined integration capacity as:

- (1) accession states should contribute to and not impair the ability of the Union to maintain momentum towards the fulfilment of its political objectives;
- (2) the institutional framework of the Union should be able to deliver efficient and effective government;
- (3) the financial resources of the Union should be adequate to meet the challenges of social and economic cohesion and of the Union's common policies; and
- (4) a comprehensive communication strategy should be in place to inform public opinion about the implications of enlargement.<sup>43</sup>

Despite of the evolving EU conditionality, membership for the Western Balkans ultimately retained its attractiveness, attraction undoubtedly ebbing at times. The malleability of the attractiveness of EU membership makes possible and underpins institutional lesson learning.

Although the events of 2005 forced the hand of the Commission to respond to the Parliament's concerns about the enlargement approach and in particular 'integration capacity', the policy change that took place was ultimately self-reflexive and a result from institutional learning. The introduction of benchmarking, more staging posts, and more complicated steps reflects the institutional reflexivity within DG Enlargement and other EU agencies such as the Parliament and Council. The considerable experiences of enlarging in 2004 and 2007 provided opportunities for the EU to learn how to avoid repeating mistakes and side step comparable pitfalls in the Balkans. This marks institutional learning, a departure from path-dependency and also the development of a much more tailored approach for the post-war circumstances. Path-dependency explained a specific European policy-making style, yet as Christiansen pointed out the maturing Commission's emerging role is predicated on its 'ability for organizational learning and the development of administrative practices that are adaptable to different contexts'.<sup>44</sup>

#### **IV Assessing Impact: Delaying Tactics or Better-Prepared Candidates?**

According to the European Commission:

Building on the EU's existing strategy, the present communication analyses the key challenges on the road towards EU integration. It outlines an approach to

<sup>43</sup> European Commission, 'Enlargement Strategy and the Main Challenges 2007–2008', COM(2007) 663 final, Brussels, 6 Nov. 2007.

<sup>44</sup> T. Christiansen, 'A Maturing Bureaucracy? The Role of the Commission in the Policy Making Process', in *European Union Power and Policy-Making*, ed. J. Richardson et al. (London: Routledge, 1996): 77–95, at 79.



adjust the enlargement policy instruments and ensure a tighter focus on areas in urgent need of progress, also taking into account lessons learned from the previous enlargements.<sup>45</sup>

The perceived implications for Croatia and Serbia of the changing nature of the enlargement process post-2004 were two-fold: conditions for accession were both evolving and tougher than for previous enlargements; moreover, the EU was less absorbent.<sup>46</sup> Firstly, for Croatia and Serbia, unlike the experience of previous enlargements, the monitoring process was stricter. This was echoed by the EU's justice and security commissioner, Franco Frattini, who stated that the aspirant's record on human rights, corruption, and media freedom 'will be looked at with a more powerful magnifying glass'.<sup>47</sup> Secondly, the timeframe for eventual membership was lengthened, and more staging posts established. EU membership was credited as being the 'one glue' that holds the region on the path of reform and stabilization; the durability of the glue was questionable.<sup>48</sup> Stricter conditionality, lengthening of the timeframe for accession is made clear in the November 2005 Enlargement strategy paper. In the strategy paper, the Commission established more staging posts and more steps on the path to accession. Perhaps, the EU is seeking better-prepared candidates – a lesson drawn from previous enlargements. However, in some circles, this was perceived with cynicism as a delaying tactic.<sup>49</sup>

Although cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) was very much married to integration into the EU since the dissolution of the former Yugoslavia, the shifting salience of the ICTY condition in pacing the progress of Croatia and Serbia lies in the reflexivity of the European Commission as well as competing preferences of the EU Member States acting reflexively. The condition of ICTY cooperation represented a lesson learning experience for the EU. The EU was able to recognize and operationalize the following lessons, out of a knowledge that its efforts previously had failed to secure Croatia and Serbia's full cooperation with the ICTY: it was beneficial to deal with painful issues earlier in the accession process, the consistent application of conditionality and monitoring matters; their transformative capacity can be increased by using gate-keeping at significant moments in the accession process and that ultimately, on some issues, the prospect of joining the EU is insufficient to bring

<sup>45</sup> European Commission, 'Enlargement Strategy and Main Challenges 2007–2008', COM(2007) 663 final, Brussels, 6 Nov. 2007.

<sup>46</sup> E. İçener & D. Phinnemore, 'Enlargement and the EU's Absorption Capacity: "Oft-Forgotten" Condition or Additional Obstacle to Membership?', *Insight Turkey* 8, no. 3 (2006), <www.insight-turkey.com>; 'The Absorption Puzzle', *The Economist*, 1 Jul. 2006.

<sup>47</sup> 'Suddenly, bigger is no longer better: European enlargement is afflicted with growing pains', *The Guardian*, 1 Jul. 2005.

<sup>48</sup> P. Ashdown, 'EU Must Speed Up Balkans Accession', *United Press International*, 8 Mar. 2006.

<sup>49</sup> Interview with official from European Commission, 31 May 2006.

transformation. In particular, the EU has learned the lesson that in order to achieve desired results in aspirant countries, reforms must be achieved earlier rather than later in the reform process. According to Grabbe, the experience of setting standards and creating monitoring mechanisms for the applicants was 'an important learning process for the European Commission – with potential feedback effects on the existing Union'.<sup>50</sup>

The early engagement between the EU and Croatia and Serbia were elite focused in scope and lacked a direct impact for citizens within the countries. Therefore, for society in the early stages, most within Croatia and Serbia were not well informed about what EU membership meant for them, never mind how the process actually worked and the implications of stricter conditionality and benchmarking. Indeed, 38% said they felt uninformed about Serbia's association with the EU. Furthermore, 62% believed that the EU was constantly introducing new conditions for Serbia, placing it in an unfavourable situation compared to any other country.<sup>51</sup> When Croatia received candidacy for EU membership in April 2005, support for EU membership suffered a downturn, sustaining the hypothesis that the closer a country gets to membership, the concerns and negative impacts become more salient. For example, in June 2005, 47.5% expressed negative attitudes about Croatia becoming an EU Member State, whereas two years previously it stood at 75.5%.<sup>52</sup> Indeed, according to recent Eurobarometer findings, support for EU membership continues to wane in Croatia: in June 2007, 34% polled supported EU membership.<sup>53</sup> Indeed, a 2008 poll showed that the majority of respondents, 38%, felt that EU membership would be a negative thing for Croatia.<sup>54</sup> This continued expression of negativity regarding EU membership extends into feelings of trust about EU agencies and the knowledge of the work of EU integration in Croatia. For example, in Autumn 2009, 42% polled do not trust the EU.

An important and related determinant of the EU's reflexivity is how the EU perceives the following: its policies, what impacts the effect of its policies, and the accuracy to what actually happens on the ground. Central here are the European Commission delegations, which play an instrumental role in highlighting potential pitfalls in the integration process as well as communicating the feedback and outcomes of EU impacts on the ground in the two cases. In both cases, the delegations consisted of experienced and a sizeable number of staff, which reflected the long-term salience of the two cases for the EU (which raises a question for future

<sup>50</sup> Grabbe, *supra* n. 11, 86.

<sup>51</sup> Serbian European Integration Office, *The EU Perspective of Serbian Citizen Trends*, <[www.seio.gov.rs](http://www.seio.gov.rs)>, December 2008.

<sup>52</sup> Croatian European Integration Office, *Attitudes toward EU Integration in Croatia*, <[www.mvpei.hr/ei/default.asp?ru=219&sid=&akcija=&jezik=2](http://www.mvpei.hr/ei/default.asp?ru=219&sid=&akcija=&jezik=2)>, June 2005 and June 2003.

<sup>53</sup> Eurobarometer, *Eurobarometer 68, Public Opinion in the EU, National Report: Croatia*, Autumn 2007.

<sup>54</sup> Eurobarometer, *Eurobarometer 70: Public Opinion in the EU*, Autumn 2009.

research to examine the role of delegations in other conflicts where the EU's interest had not been so substantial). How the EU perceives the impacts of the chosen strategy is significant since it has an implication on how the EU shapes its future engagement that ties in with the reflexivity of the EU's actorness in the two cases. Having a fairly accurate or inaccurate perception of the impacts of the EU's strategy dictated the nature and impact of the EU's policies in Croatia and Serbia. For instance, in both cases, the pursuit of EU conditionality over ICTY had tangible outcomes, for the EU, in terms of the number of indictees transferred to the ICTY yet, the impact on the reconciliation and conflict transformation process was much less clear since compounded by the unintended impact of fostering a sentiment of collective guilt. The EU's impact on conflict transformation in Croatia and Serbia through the chosen strategies of integration and enlargement was affected by the EU's perceptions and responses to these perceptions about the outcomes of the policies.

Although the various EU agencies involved in the enlargement process could be criticized for not fostering an inclusive process involving all parties, lessons have been learned and policy-makers are revising the enlargement approach evidenced by new and tailored mechanisms. The lesson learning has been incomplete. Essentially, the EU seems to have realized that the main obstacle to the impacts of integration and enlargement dynamics lies with the political parties, yet the EU has not sought to engage proactively with all political parties, particularly in Serbia. The EU's transformative capacity could be improved by enhanced contact with the SRS combined with an increased field presence in both cases that would permit the EU to work with and be aware of the positions of all actors rather than the parties at a government level. However, such reforms to the EU's transformative capacity in Croatia and Serbia will be determined by the internal dynamics within the EU which have at times proven to be harmful to the EU's transformative capacity.

## V Conclusions

The article has shown that reflexivity has been at play within the enlargement approach. In DG Enlargement, focus has centred upon the refinement of existing and the introduction of new mechanisms. This is not simply a matter of DG enlargement responding to negative attitudes about enlargement since 2005 within EU agencies, such as the Parliament and the Council, but rather it is a calculated reflection based on experiential lesson learning of Rehn's Cabinet. Frustrated by and reacting to the negative attitudes, to the enlargement process post-2005, the response of Rehn's cabinet conformed to the predictions of the policy-learning model: it developed a more tailored approach to the changing internal context as well as the situations within candidate and future candidate countries. The frames applied to the recent history of the Balkans, by the European Commission, as well as the frames applied to the recent enlargements have influenced the way the enlargement approach has proceeded in the Balkans.

The salience of reflexive policy-making within DG enlargement is increasingly paramount because of the altering effect on the way enlargement works. Previously, it had been understood and accepted that the shadow of both past and future enlargements dictated policy outputs regarding decisions made about integrating the Balkan countries into the EU enlargement process. To an extent, this continues to reflect the way the current enlargement process operates, firmly implementing lessons learned from recent enlargements as well as seeking to manage the future accessions of the Balkan countries with finesse and meticulousness.

This process remains fraught due to the tensions between dealing with the political demands internal in the EU, the intentions, abilities, and the product of transformations in the cases, and the technical operation of the enlargement approach. These tensions complicate the delivery of the enlargement process and impact on the way that individuals learn. The article drew out the perceived motivations and impact of lesson learning using empirical data to confirm that lesson learning is an ongoing part of the daily business of DG enlargement while the pressures of EU integration and Member State politics reflect on the frames in which they learn. The evidence shown here reveals the possibility of the EU seeking to slow down the rate at which new Member States are admitted. The process of learning was paramount and it was the lessons learned from previous enlargements as well as experiences in the countries that embedded tighter conditionality and benchmarking into the enlargement process.

## *AIMS*

The aim of the *Review* is to consider the external posture of the European Union in its relations with the rest of the world. Therefore the *Review* will focus on the political, legal and economic aspects of the Union's external relations. The *Review* will function as an interdisciplinary medium for the understanding and analysis of foreign affairs issues which are of relevance to the European Union and its Member States on the one hand and its international partners on the other. The *Review* will aim at meeting the needs of both the academic and the practitioner. In doing so the *Review* will provide a public forum for the discussion and development of European external policy interests and strategies, addressing issues from the points of view of political science and policy-making, law or economics. These issues should be discussed by authors drawn from around the world while maintaining a European focus.

## *EDITORIAL POLICY*

The editors will consider for publication unsolicited manuscripts in English as well as commissioned articles. Authors should ensure that their contributions will be apparent also to readers outside their specific expertise. Articles may deal with general policy questions as well as with more specialized topics. Articles will be subjected to a review procedure, and manuscripts will be edited, if necessary, to improve the effectiveness of communication. It is intended to establish and maintain a high standard in order to attain international recognition.

## *SUBMISSION OF MANUSCRIPTS*

Manuscripts should be submitted to the Editorial Assistant at the Editorial Office. The manuscript should be accompanied by a covering letter stating that the article has not been published, or submitted for publication, elsewhere. Authors are asked to submit two copies of their manuscript as well as a copy on computer disk. Manuscripts should be 6,000-8,000 words and be typed, double spaced and with wide margins. The title of an article should begin with a word useful in indexing and information retrieval. Short titles are invited for use as running heads. All footnotes should be numbered in sequential order, as cited in the text, and should be typed double-spaced on a separate sheet. The author should submit a short biography of him or herself.

## *BOOK REVIEWS*

Copies of books sent to the Editorial Assistant at the Editorial Office will be considered for review.