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'AND NEVER THE TWAIN SHALL MEET?'
THE EU'S QUEST FOR LEGITIMACY AND ENLARGEMENT

1. Introduction

The European Union in the 1990s is a contested, open-ended polity. It regulates almost as many policy-issues as nation-states and has been accepted by politicians, interest groups and many parts of the public as an appropriate framework for policy-making. Despite the increasing importance of the EU there is however no consensus about what the EU actually is, yet alone where it is heading. The ever-expanding agenda of integration in the 1990s has also led to considerable public scepticism towards the EU-project. Indeed, legitimacy crisis and democratic deficit have become the codewords in the literature and practice of European integration in the 1990s.

At exactly this time of contestation, the EU has launched two major integration projects, the common currency and enlargement to the East both of which have major implications for the polity. The main objective of this chapter is to study the links between enlargement and attempts to enhance the EU's legitimacy. Can the EU, at one and the same time, take on new members and diffuse the perceived legitimacy crisis? Without public backing, the enlargement project is bound to run into severe difficulties and could place the overall EU integration process at risk. However, a shelving or indefinite postponement of enlargement would have equally important consequences for legitimacy and integration. Not only would the EU have to search for a new foundation for its legitimacy - other than its *raison d'être* as a means to create peace, security and democracy on the European continent - but equally certain EU-members (especially Germany) would perceive the EU has having failed to address their central security concerns. This would beg the question of how then to encourage democracy and prevent instability in Central and Eastern Europe given that setbacks could easily spill over into neighbouring EU states e.g. in terms of immigration.

Despite the crucial links between legitimacy and enlargement, the academic literature has largely failed to set the current enlargement project in this context. Instead it focuses on the classical 'deepening-widening dilemma' where institutional, policy and budgetary issues are the focus of attention (cf. for instance Grabbe and Hughes, 1997). This chapter addresses this gap by demonstrating how enlargement concerns deeper issues concerning the nature and construction of the European polity and its normative underpinnings. These issues surface in the integration literature in debates about what the EU is and what the member states conceive and wish it to be. The first part of the chapter asks how the EU, as a contested polity, which is neither a state nor an international organisation, can be and is legitimised. This concludes with a discussion of how enlargement to the East might affect the EU's present, perceived legitimacy crisis. The chapter then turns to the 1996 Inter-Governmental Conference and questions the extent to which the resulting Amsterdam Treaty tackled legitimacy and the capacity of the EU to enlarge. The third and final part of the chapter presents our conclusions. We find that although enlargement could enhance legitimacy, it has thus far actually complicated endeavours to strengthen legitimacy. It is however too early to conclude that the 'twain shall never meet' i.e. that enlargement and legitimacy cannot go hand in hand. Much will depend on the ability to break away from the present conceptualisation of legitimacy - although the EU is not a nation-state it is often implicitly and sometimes even explicitly weighed and found wanting according to state-centric yardsticks for legitimacy.

2. What Kind of Legitimacy for a Contested Polity?

Forty years after the signing of the Treaty of Rome the European Union is still an enigma in international relations which cannot be captured by our present political vocabulary (Schmitter, 1996). Indeed, the most quoted sentence in integration studies is probably Wallace's classic statement that the EU is 'less than a federation and more than a regime' (Wallace, 1983). In the 1990s, however, a growing number of scholars have broken free of approaches which (implicitly or explicitly) analyse the EU in terms of what it is *not* and have launched an approach which sees the EU as a multi-dimensional *polity* which allows for the co-existence or fusion of various levels of governance (Wessels, 1997a, Stone Sweet and Sandholtz, 1998, Banchoff and Smith, 1999). The EU represents a new, heterogeneous centre of governance, which produces directly binding legislation for Europe's citizens, often on the basis of qualified majority voting across a broad range of issues. The emergence of this new centre has not replaced the nation-states with a nascent superstate: on the contrary, internationalised governance (Laffan 1998) is established and produced in a complex web, which links European national and sub-national institutions. The acknowledgement that the EU is a polity in its own right has major implications for how scholars view legitimacy. Unlike intergovernmentalists, which look upon the EU as a state-based intergovernmental bargaining forum where decisions are legitimatized by the very participation of democratically elected governments (Moravcsik, 1994), 'polity-scholars' pledge the need for *legitimacy beyond the state.* H. Wallace presents this as follows:

> 'If the EU is defined essentially as a policy-generating process only, then the issue of how to maintain legitimacy could be argued to rest with the participating member governments...but if the EC is defined as a partial polity, i.e. as an entity that might develop into a form of direct governance in its own right, the questions of what political identity, loyalty and affiliation to the EC level of governance become crucial' (H. Wallace, 1993: 100-101).

Without a direct legitimacy, the EU would (like any other polity) find it difficult to maintain the system intact in the face of serious policy failure or challenge (Beetham, 1991: 118). The key question is obviously *what kind* of legitimacy the EU can and should acquire. In addressing this, we are confronted by major conceptual and practical problems. The conceptual problem is linked to the fact that 'legitimacy', is closely linked to the historical development of the nation-state, i.e. to the notion of a territorially unified, hierarchically organised and more or less centralised system of governance (Jachtenfuchs et. al., 1998, 417). Although the EU is anything but a state, one can easily be caught in the conceptual trap of the nation-state: the EU is not legitimate because it does not live up to the yardstick of a state-centric concept of legitimacy and indeed it can never become legitimate, since it will never become a nation-state.

The conceptual challenge therefore is to un-hinge the concept of legitimacy from that of the nation-state so as to permit consideration of different sources and strategies for legitimation of the EU. The main theoretical approaches to European integration do not easily allow us to embark on such a task. Indeed, both federalism and intergovernmentalism continue to take the model of the nation-state as their analytical point of departure; arguing that a strong shared sense of history and culture are necessary requirements for EU-legitimacy. For

intergovernmentalists, the model of shared identification is the member states which, as representatives of popular sovereignty, legitimise EU decisions. For federalists, in contrast, shared identification refers to a common European identity in the context of an emergent super-state (Banchoff and Smith, 1999: 6-7). One is therefore forced to search for alternative theoretical building blocks. The new (if diverse) theoretical school, which conceptualises the EU as a multi-dimensional governance system or a contested polity provides us with an excellent starting point (Stone Sweet and Sandholtz, 1998, Banchoff and Smith, 1999). Precisely by *not* looking upon the EU as an intergovernmental organisation or a super-state in the making the state-centrist trap is avoided and the door is opened to different yardsticks of legitimacy. Unlike nations and federations, the governance perspectives point to a 'nesting' of compatible regional, national and supranational identities as a viable basis for a stable and legitimate polity. Instead of a monolithic European identity, which replaces the national ones the trust, is on the compatibility of contrasting identities (Banchoff and Smith, 1999: 13; Pantel, 1999: 46).[1] In addition, this unique polity does not require the same degree of legitimacy as a state (or a federation), given that it has 'no need to spill the blood of its population, to dig deep into the taxpayer's pocket, to function as the final rule-making body in all areas of policy, or even to impose a uniform set of rules in all matters' (Lord, 1998: 108).

Turning to the practical side of the legitimacy, another difficulty arises. This concerns the contested character of the EU in which all member states have different polity-ideas concerning the EU i.e. different normative ideas about what the EU is and what a legitimate Union should like in the future (Jachtenfuchs et al., 1998). The divergence of polity-ideas complicates the EU's ability to enhance its legitimacy. Any strategy to strengthen the EU's legitimacy is bound to be assessed on the basis of divergent normative criteria in the member states: that which increases the legitimacy of the EU in one member state can do exactly the opposite in another (as debates on EU citizenship demonstrate - see below). The practical challenge for the EU is therefore to carve out a legitimacy strategy, which is not uni-dimensional but comprises of several sources of legitimacy.

The following section takes up the conceptual challenge by identifying the principal sources of legitimacy which the Union can and does draw upon and which extend beyond a state-centric understanding of legitimacy. By highlighting several potential sources of legitimacy, derived from the broader fields of politics, the section explicitly acknowledges that efforts to enhance the legitimacy of the EU cannot rely upon one-dimensional strategies.

2.1. Sources of Legitimacy and the EU

a) Foundational legitimacy: rule of law, ethnos and demos
The 'rule of law doctrine' refers to the fact that governance systems can obtain legitimacy by being subject to democratic rules and judicial control. Legitimacy can be based on an appeal to a deep structure of rules of recognition or rules about rules (Weber, 1978). Legitimacy can also depend upon the extent to which the law in itself is justifiable and in line with political principles that are rationally defensible (Beetham, 1991: 5). In the case of the EU, which has its own legal order, the member states and institutions are bound to abide by its founding Treaties and are subject to the authority of the European Court of Justice. However, the claim

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[1] In reality, the EU-system can therefore also be legitimised if governments succeed in re-casting European integration as a extension of *national* history, culture and political values (Banchoff and Smith, 1999: 180).

to the priority of EC over national law is contested (see Wind in this volume).

A further foundational source of legitimacy is the existence of *demos* to whom the governance system is addressed. This refers to a sense of collective identity and belonging which legitimates a governance system. To quote Obradovic: 'people unconditionally support a polity to which they see themselves as belonging. There must exist some kind of identification between the citizen and the political system' (Obradovic, 1996: 209). This can also refer to a certain 'we-feeling', a sense of common identity or belief that others are of the same community (Howe, 1996: 44). This affective dimension of legitimacy is critical as it is not reliant on outcomes (utility or performance) or a reciprocal relationship between the governors and the individual. Rather, individuals give their consent to a governance system because it is seen to embody and represent a collective identity. Usually, this identification or sense of community is linked to ethnic affiliation, e.g. to the nation-state (*ethnos)* and equips a governance system with a strong foundation myth.

Since the EU is not endowed with an *ethnos,* one might be tempted to sideline this as a possible source of legitimacy in the EU. This ignores the fact that communities can be constructed or *imagined* and do not necessarily have to centre on ethnos. They may emerge and change over time. In principle, collective identities can be grounded in *civic* rather than national or ethnic bonds, such as respect for democracy and human rights. This accepts the idea of constitutional patriotism (Habermas, 1991) and the co-existence of multiple identities. In other words, civic ties can cement a collective identity (for a sceptical view, see Smith, 1992).

b) Political (democratic) legitimacy

Legitimacy can be grounded in consensus about the institutions and structures of a governance system, e.g. in specific forms of representation and participation. As pointed out by Weiler, 'any notion of legitimacy [in today's Europe] must rest on some democratic foundation loosely stated as the People's consent to power structures and process' (Weiler, 1991: 183). Key yardsticks for democracies are proximity, responsiveness, representation and accountability of the governors to the governed (ibid: 184). In the case of the EU, this involves the representation and participation of both states and peoples in EU governance. Due to the size of the EU, and the physical distance of decision-making from most EU citizens, it should nonetheless be obvious that direct participation is bound to be more limited than in a nation-state. This is exacerbated by the lack of a common culture and language in the EU - two factors, which limit the chances of generating public discourse, which is essential to expansive participation.

c) Utilitarian legitimacy

Drawing upon Mill (1972) and Rothschield (1977), legitimacy can also be obtained by the promise of material (economic) benefits and their actual deliverance. In principle, this concerns an economic *quid-pro-quo* whereby legitimacy is conditional upon the provision of economic goods. The provision of goods can be useful to either states or society and individuals - by enabling them to meet their goals or actually producing goods. Utility is closely linked to capacity to adapt to changing needs and to effectiveness and *efficiency*. It follows that, if a governance system does not fulfil these, it will hardly be able to deliver material benefits. However, utility alone is an inherently fragile basis for legitimacy - a systemic crisis can be triggered should the system cease to be enabling or should economic benefits fail to materialise. As Wallace states:

> 'When the going gets rough, whether prompted by economic strains or the result of political conflict, material needs become harder to satisfy and cohesion becomes more conditional. Disappointment about particular substantive outcomes very easily breeds disaffection, unless tempered by conviction that the collective framework also protects embedded-shared values. A conviction that carries one forward to one's long-term goals' (H. Wallace, 1993: 100).

d) Mythical legitimacy

Finally, a governance system can appeal to and construct a community vision as a means of legitimisation. That vision can refer to a future which the collectivity shares or to a past which distinguishes the community from others. Ideas about a common destiny can also provide an important element of community. This community can be constructed or imagined and is often centred around specific myths (Anderson, 1991). As pointed out by the post-structuralist school of international relations, a sense of community can also be defined against the outside (Walker, 1993). With respect to the EU, Smith (1992) argues that the absence of a pre-modern past or pre-history which could give Europe emotional substance and depth prevents the emergence of a European identity (as the nation has all the aces in this regard) whereas others such as Chryssochou (1996), Howe (1996), Laffan (1996) argue that it can be constructed on the basis *inter alia* of group consciousness, appeals to the future and respect for national identities.

The following section examines how the EU drew upon and developed these sources of legitimacy over time. This is followed by a discussion of how enlargement to Central and Eastern Europe may affect legitimacy in the EU.

2.2. The EU's Quest for Legitimacy - From Monnet to Maastricht

From the outset, the architects of European integration, such as Monnet and Hallstein, both appealed to community and myth as the basis of integration and assumed that this would develop over time. The integration project aimed to tame the dark side of nationalism and build a common future. This objective can be found in the Preamble to the ECSC Treaty (1951) where, national leaders:

> 'resolved to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples.... and to lay the foundations for institutions which will give direction to a destiny henceforward shared' (EC Treaties 1987: 19).

The aim was to create a community among peoples who share a common history (age-old rivalries) and destiny (one of peace and security). The project thus appealed to both governments and their peoples but did not aim to supplant either by forging a unity of them. Indeed, the reference to *peoples* seemed to indicate that these 'peoples' of Europe would retain their distinct identities. Instead of 'imposing' something new, the EU embarked on a 'unity-in-diversity' strategy (Pantel, 1999: 50).

The signatories of the Rome Treaty, continuing in similar vein, 'determined to lay the foundations of an ever closer union among the peoples of Europe' and 'resolved to ensure the economic and social progress of their countries by common action to eliminate the barriers

which divide Europe'. They also called on other European states to join in the venture. This community, then, was based on a shared wish to break with the past: the past was the 'other' around which the EU tried to construct a sense of community. A closer look at the EU's early history reveals that 'the past' was not the only relevant 'other': the EU was defined by the 'other' Europe of communist rule and hence conceived itself as a project rooted in the values of democracy and the market, despite its declared openness to all Europe. With respect to membership, only democratic European states need apply.

In the early decades of the EU, much of its legitimisation was indirect - it was achieved through governments acting in the name of the peoples. Economic integration provided utilitarian benefits for states and sections of society. This was adequate to sustain the project until the 1970s. In addition, at the heart of the Monnet method was the belief that a sense of community would develop automatically: once the EU started to produce results, first the elites and then the public would transfer their loyalties to the new system.

The 'empty-chair-crisis' in the mid-60s, caused by De Gaulle, first revealed the problems with the Monnet method. Certain member states (especially Brandt's Germany) and also the Commission argued that efforts should be made to develop a deeper sense of community by developing direct forms of legitimacy. Brandt specifically referred to the need to give the Community a 'human face'. After De Gaulle's departure - who had emphasised legitimisation through the states - initiatives including the Copenhagen Declaration on European Identity and the Tindemans Report were tabled. The former stated that the EU was built on the principles of representative democracy, the rule of law, social justice, and respect for human rights (Obradovic, 1994: 211). This community vision was fleshed out in the Tindemans report, which, under the heading of Citizens Europe, called for a European citizenship which, would build upon the economic rights already created for European citizens.

In the light of the oil-shock and the recession of the 1970s, these initiatives were not acted upon. The only significant development in this area was the move to direct elections to the European Parliament. Later, the re-launching of integration in the 1980s saw the return of ideas to develop direct legitimacy. The European Commission, led by Jacques Delors, made a direct link between deepening integration through completing the Single Market and strengthening 'the sense of being part of a European culture'. In two central documents ('A Human Face for Europe' and 'A Fresh Boost for Culture in the European Community'), it outlined its vision of a European cultural identity. Emphasis was placed upon a 'shared pluralistic humanism based on democracy, justice and freedom' *and* the fact that this should in no way replace national identities. In other words, Europe should make the most of its diversity and 'turn European culture into a culture of cultures' (Pantel, 1999: 51).

The European Council endorsed the connection between cultural identity and deeper integration. Further efforts were made to construct a sense of community through creating symbols of belonging and a consciousness of being in the EU. The Addonino committee (1984), tasked to prepare a *People's Europe* in the run-up to the Single European Act, led to initiatives for an EU flag, anthem, driving licence and passport which are typical nation or community-building strategies.

The aim of developing a strong community and belonging was heavily affected by enlargement. On the one hand, enlargement increased the internal heterogeneity within the Union by adding several new conceptualisations or polity-ideas about what a legitimate Union should look like. The Union's economic rather than its political character was underlined in the first enlargement to Denmark, Ireland and the UK. In that they joined the Union they also

shared in its vision but clearly were less attracted to its security dimension than the six founding members. Successive UK governments viewed the EU as primarily a free trade area and opposed the deepening of political integration. For Greece, Spain and Portugal, the EU was viewed primarily as an anchor for democracy (thereby, reinforcing the EU's myth of supporting democracy). In the 1990s, the EFTA states, freed of Cold War ties, were attracted by membership largely as a means to manage economic interdependence. These perspectives reflected different normative views about integration and, alongside the increased heterogeneity of interests within the Union, tested its legitimacy in terms of capacity to deliver outputs and a shared sense of community.

On the other hand, however, enlargement also contributed positively to community-building. First, the principles of solidarity and cohesion between the regions, states and peoples of the EU were given added weight after Mediterranean enlargement and in the plan to complete the internal market. These were reflected in the principles and norms underlying integration, in its Treaties and its substantive agenda (e.g. the evolution of the structural and cohesion funds expressed solidarity within the Union). Regardless of the motivation for their introduction, solidarity and cohesion have become cornerstones of integration for poorer member states and are thus central to their perceptions of legitimacy in the Union. Second, enlargement also confirmed the EU's foundation myth: it is a 'club' which is open to all European democracies that want to join.

In the 1980s, a combination of factors including enlargement, the expansion of the agenda of the EU and the limited progress in developing its 'human face' demanded further moves to develop legitimacy in the Union. The Treaty on European Union was largely seen to trigger an acute legitimacy crisis. The fragile basis of popular consent, exposed by the Danish 'petite non' and the French 'petite oui' in their respective Maastricht referenda, catapulted legitimacy to the very top of the political agenda. Several factors contributed to this (perceived) crisis: [2]

1. The Maastricht Treaty contained a number of initiatives, such as those on a common foreign and security policy, an economic and monetary union and a European citizenship which seemed to strengthen the state-like character of the Union. As a result, a large part of the European population saw the Treaty as a threat to their national identities. Linked to this was the fact that the expanded agenda, stemming from the Single European Act, placed the spotlight on the so-called democratic deficit of the Union. Thus, it was one thing for governments to regulate issues like trade liberalisation and agricultural quotas behind closed doors but it was quite another when their negotiations focused on issues such as food additives, parental leave, cocoa in chocolate etc. Suddenly, the EU was no longer perceived as being a club of merchants and bankers but a governance system which had a major impact on the ordinary citizen.

2. The legitimacy crisis was linked to the fact that national governments (and their citizens) could not or would not accept that the political boundaries of their governance system were no longer national but European, if not international. In other words, despite all the rhetoric of interdependence and 'smallness' of the nation-state, the necessity of governance beyond the state was still questioned (Weiler, 1991). Exactly because this was the case,

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[2] To be sure, this chapter shares Banchoff and Smith's (1999:3) view that the diagnosis of a legitimacy crisis was largely based on a (unsuitable) nation-state yardstick for legitimacy. This does however not alter the fact that the *perception* of crisis was dominant and that the EU *is* engaged in a difficult legitimation process.

attempts to improve the democratic credentials of the Union (for instance by strengthening the European Parliament) were seen not as a solution but rather as an aggravation of the problem by some member states.

3. The legitimacy crisis reflected the difficulty of creating a sense of community a) from the top-down (cf. Olsen 1995: for the limitations of agency in this area) and b) by member state which viewed the Union from the basis of different normative ideas. One example should be sufficient to illustrate this point: the EU introduced the concept of citizenship to strengthen the *civic* dimension of community but, despite Treaty-based assurances that 'the Union shall respect the national identities of the member states' (Art. F), the concept still triggered public opposition. This was strongest in Denmark where the very introduction of a European citizenship was seen as yet another indication that the EU was becoming more state-like - a development which, in the long run, was perceived as inevitably threatening to national identity.

4. The legitimacy crisis was also connected to the dilution of the EU's foundation myth. Several decades after the end of the Second World War and with passing of the Cold War, reconciliation between states and peoples had a limited appeal for public opinion. Similarly, it was difficult to rely on the democratic values of the Union as a means to demarcate it from the broader democratic-minded Europe of the 1990s and hence as a basis for a distinct community. To a large extent then, the legitimacy crisis was linked to *relevance:* what purpose did the EU serve? If reconciliation was no longer relevant and the 'other' of communist Europe was gone, what then if the EU was to rest on little more than the limited basis of utility and weak affectation? It was exactly this question which the 1996-Inter-Governmental Conference (IGC) was forced to address.

2.3. The Challenge of Enlargement to the East - Consequences for Legitimacy?

Although the above legitimacy crisis presented the EU with a major challenge, the fall of the Berlin Wall prevented the EU from devoting itself exclusively to this. After the end of the Cold War, it was also forced to deliver upon its promise that it was not simply a 'Rich Man's Club' but was open to all democratic European states including the newly democratised Central and Eastern European Countries (CEEC). This section analyses the link between these two challenges. Does Eastern enlargement provide the Union with a helping hand in building legitimacy or does it rather hinder the process?

Looking at enlargement one is struck by its janus-like character. As with previous rounds of accession, enlargement seems both to strengthen and weaken the possibilities of enhancing legitimacy. On the strengthening side, enlargement could affect the sense of community in several ways. First enlargement to the emerging democracies in the East would (just like, for instance, Spanish accession) reinforce the EU's foundation myth: that of a shared past, a common destiny and of being a community of values. Enlargement could be presented as putting an end to the allegation that the EU was a Rich Man's Club but that it was designed to foster security and democracy among its members based on shared principles and values. Enlargement would extend the foundation myth to the East - it would 'do onto Central Europe what we have already done onto ourselves'. Admittedly, however, this idea of this shared destiny would undoubtedly fit better with, for instance, the German and Danish polity-ideas than the Spanish, UK or Irish.

Secondly, enlargement could strengthen the utilitarian basis of EU legitimacy. It could provide a framework for the adjustment of states to the dramatic changes in the CEEC and new security challenges that this poses (i.e. it extends the mechanisms for managing intra-state behaviour to the East). It provides a mechanism to deliver a new regional division of labour in Europe and creates opportunities for trade and the promotion of economic welfare (Zysman and Schwartz 1998). The strengthening of this strand of legitimacy has differential effects on the existing EU states (and regions or sectors within them) - for states such as Spain, Portugal, Greece and regions within Germany and Austria, enlargement can potentially weaken their economic position in the EU or in specific sectors. The perception of enlargement then is linked to the new balance of utility with respect to states and society.

While enlargement could contribute to legitimacy, two major factors pull in the opposite direction. The first refers to the issue of whether citizens will approve of enlargement of their community to the East, given that there was scant contact between the two halves of Europe during the Cold War. Indeed, because communist Central and Eastern Europe constituted 'the other' for the EU's identity-project, this region was removed from the mental maps of the public if not of its own elites. Cities like Washington and Boston appeared a lot closer than Warsaw and Budapest (W. Wallace, 1995/96: 160). Considering this, it is entirely conceivable that a Spaniard or a Belgian will not look upon a Pole or a Bulgarian as 'one of us'. This is reinforced by the fact that enlargement (even in Scandinavia and Germany) is largely an elite-driven project and, according to Eurobarometer surveys in 1997/98, one for which popular support is declining:

> '....the value preference for extending the European family of democratic countries, while repeatedly articulated by political leaders, is weakly supported by societal engagement, in that the transactions between Western and Eastern Europe remain concentrated among rather small groups of policy-makers, politicians and entrepreneurs' (Wallace, 1998: 14).

Moreover, the liberalisation of Central and Eastern Europe has created an uncertainty as to where the geographical boundaries of the 'European' community lie. Is it only countries like Poland and Hungary which are 'us' or does the definition also include Romania, Estonia and possibly the Ukraine? And how is one to draw the boundary?

Even if the citizens of EU states were convinced that all the present applicant countries are part of their community, one would still have to question whether they would be willing to share the economic costs and benefits of EU membership with newcomers. This raises utilitarian concerns about preserving the existing economic benefits of membership. This is especially relevant when one considers that the GDP of the CEEC-10 combined is only one-fifth of that of the EU and that their purchasing power is about one third of that of the Union. Would then, Enrique Gonzalez of Allicante really give up some of his cohesion-Euro for Pal Kovacs in southern Hungary? A brief look at government positions on this issue only confirms the point: even pro-enlargement states such as Germany, Sweden and Austria refuse to increase their financial contributions to the EU after enlargement takes place.[3] On the contrary, all actually want to pay less to the budget.

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[3] The following statement from the Prime Minister of Luxembourg, Juncker only adds to the above: 'The planned enlargement will more and more become the most unpopular project of the coming years in all the member states' (*Reuters*, 28.10.1997).

Considering that the CEEC-applicants lag considerably behind even the poorest members of EU and are in far greater need of assistance than any of its present members, the EU seems to be faced with two (admittedly extreme) options: either the EU abandons its present principle of assisting laggards or losers or it develops second-class membership for newcomers. Both options would have major repercussions for the legitimacy and governance of the EU. Solidarity is an important legitimating factor for the so-called Cohesion states (Ireland, Spain, Greece and Portugal) who, in an enlarged community look like graduating out of this status and becoming net contributors to the EU budget. For those states which have stressed solidarity and access to funding as a cornerstone of EU membership, this could impinge on continued public support for the EU and enlargement. This is also relevant for all states which have implemented tough cost-cutting measures (which, in some cases encountered deep public hostility) in order to fulfil the EMU convergence criteria.

The possible abandonment or weakening of the solidarity principle would also impinge on a another EU norm - that of the uniform application of EU legislation and policies. The solidarity principle provides a cushion for the negative social and regional effects of adopting EU policies such as completing the internal market and EMU. That trade-off could be jeopardised by a reduction in EU transfers - states could then demand opt-outs or derogations which, in turn, would affect the unity of the enterprise. The alternative solution of granting second-class membership to the CEEC - by for instance offering the CEEC less aid from the structural funds than that afforded to the present members - could create official and public disaffection toward the EU and weaken their sense of belonging in the Union.

Finally, enlargement can also impact on the efficiency of the Union, an important dimension of utilitarian legitimacy. An enlarged Union would need to deepen its structures, i.e. to move to more qualified majority voting (QMV) in the Council and reduce its numbers of Commissioners in order to retain efficiency. Enlargement also affects the intra-state dimension of utilitarianism in that the states face difficult choices in forging institutional arrangements which preserve their influence in the system and at the same time guarantee its effectiveness. This could also prejudice the goal of moving the EU closer to the citizens. This could be aggravated by the possibility that, if, for example, Danes, Germans and Greeks do not view Hungarians and Poles as part of their community, they will hardly view an EU decision in which they are outvoted by the newcomers as legitimate.

In conclusion, although enlargement can also strengthen the EU's legitimacy, so far it has rather acted as a complicating factor. Indeed, considering that enlargement coincides with the general legitimacy crisis and requires the EU to make room for applicants which are economically significantly weaker than any of their predecessors, this enlargement does appear more complicated than the previous rounds of accession. How complicated this accession will be, will obviously depend on how the EU tackles the two core issues, enlargement and legitimacy. The EU's Amsterdam Treaty, negotiated in 1996-1997, provides some evidence of how this might be done.

3. The Amsterdam Treaty: A First Response to the EU's Dual Challenge

While in 1991, the second-in-command in Delors' cabinet, Pascal Lamy, could still argue that the elites should deepen the integration process 'without telling [the public] too much about what was happening' since the 'people weren't ready to agree to integration' (Ross, 1994: 194), the tune was radically different in 1994-1995. The change of approach was summed up by slogans such as 'bringing the EU closer to its citizens'. That this was not simply a change

of rhetoric became clear once the Reflection Group began to prepare the groundwork for the IGC: it argued that the theme of '*The Citizens and the Union*' should be a key concern of the IGC (Reflection Group, 1995). This was quickly taken up by EU governments, who asked the IGC 'to base its work on the fact that the citizens are at the core of the European construction: the Union has the imperative duty to respond concretely to their needs and concerns' (European Council, 1996: 2). By putting this issue at the top of the agenda, alongside that of institutional reform, this was the first IGC to deal 'with questions of European governance, notably effectiveness, legitimacy and diversity' (Laffan, 1997: 3).

Enlargement was the second major item on the IGC-agenda. In principle, the objective of making the EU's institutions fit for enlargement had already been agreed upon at the Copenhagen Summit in June 1993 (for the EU's decision to offer membership, see Friis and Murphy, 1999). Then, the promise of membership for the CEEC was given provided that it would not undermine the EU's institutional capacity. Even regardless of enlargement, institutional adaptations were needed to improve efficiency (attempts to re-weigh voting in the Council to deal with the earlier EFTA enlargement had failed). Following the advice of the Reflection Group, the IGC was not however mandated to prepare the Union as a whole (i.e. its policies and finances) for enlargement, but restricted itself to institutional issues only. This was based on the rationale that an attempt to re-think both institutions and policies such as the CAP could overload the system (Reflection Group, 1995: 44).

3.1. The Treaty of Amsterdam and Legitimacy

The Amsterdam Treaty which materialised after fifteen months of IGC-negotiations contains provisions which attempt to strengthen each of the four categories of legitimacy outlined above. The objective of combining a utilitarian with a community-building strategy for legitimisation appeared dominant. The following section highlights the various sources of legitimacy and how their introduction was prompted by the prospect of enlargement.

a) Enhancing Legitimacy by making the EU more Relevant to its Citizens (utilitarianism with a dose of community-vision)
The core of this approach was captured in the first sentence of the Draft Treaty of the Irish Presidency: 'the EU belongs to its citizens' (Draft Treaty, 1996). As a logical consequence, the EU should concentrate on issues of key concern to citizens e.g. unemployment, crime, immigration and social rights. Although guided by utilitarianism, this differed from the original Monnet-approach according to which the elites determined the issues independently of the people, the Amsterdam-approach was to deal with those issues which were high on the citizens' agenda. This was clearly linked to attempts to strengthen the *civic* dimension of community. By addressing unemployment and social rights, the EU could convey the image that it was a community guided by social values and not just market liberalisation. It could represent the existence of a 'European social model', which reflected the tradition of the welfare state in Western Europe (Commission, 1996: 9).[4]

In concrete terms, this strategy resulted in new Treaty provisions which aim to make the Single Market more relevant to the citizen. As indicated in Box 1 issues such as environmental protection, public health, consumer policy, unemployment, immigration and social policy are given far greater attention than in earlier Treaties. Although the proof of the

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[4] It should be noted that this model is somewhat mythical given different social/welfare traditions in the member states and is largely constructed with reference to the 'other' of the US'.

pudding is in the eating, one can at least argue that the EU now has the legal doorhandles to transform itself into a polity of greater relevance to the European public.

Box 1: Amsterdam´s 'Citizen-Relevant' Face

• Environmental protection: becomes a core goal of the Union; emphasis on sustainable development (Art. 2) and strengthening of the environment 'safeguard clause' Art. 95: 3-10).[5]
• Social policy: becomes a core goal of the Union; the Social Protocol is written into the Treaty (Art. 136-137).
• Employment: new Treaty objective to reach high level of unemployment (Art. 2); co-ordination of employment policy (Chapter VIII); The Amsterdam Resolution on Growth and Employment and the Stability and Growth Pact).
• Health policy: becomes an EU-policy (Art. 152)
• Consumer protection: henceforth to be taken into account in defining and implementing other Community policies and activities (Art. 153)
• Justice and Home Affairs (Schengen Co-operation is incorporated in the Treaty; part of Pillar III is 'communitarised'

b) Enhancing Legitimacy by Clarifying and Protecting the Civic Community
The IGC also tried to hammer out political values at the core of the EU's civic community. In other words: by clearly stating 'who is us' the EU lent greater weight to its political identity and sense of belonging. This move was also motivated by the prospect of enlargement to the CEEC: before enlarging, the EU had to clarify who 'we' are and who can become part of 'us'. This was important in that a functioning democracy was deemed critical to successful integration into the Union (i.e. ability to live with the Union). The Union could also be discredited were it to include a member who practised non-democratic rule.

Several articles in the Amsterdam Treaty refer to the political values of the Union. Of central importance is the new Art. 6 which, for the first time in the EU's history, sets out the various principles which lie behind the project: liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. To a large extent, this article removes one of the paradoxes of EU integration: while the EU always pictured itself as a democratic community, this was not expressed in Treaty provisions. Strikingly, Art. 6 makes respect for these principles an explicit condition of membership. Moreover, a 'serious and persistent breach by a member state of the principles' can now lead to the suspension of membership rights (Art. 7). Where protection of human rights was previously a matter for the members states alone, it is now an issue for the EU. This introduction of this article was also triggered by the prospect of enlargement to the CEEC where, in some cases, democracy has not been consolidated, where the protection of human rights is not fully guaranteed and where inter-state tension over minority rights persists.

Box 2: Amsterdam's 'Civic' Face

• 'Founding principles' of the Union concerning democracy and human rights are now written into the Treaty (Art. 6)
• Acceptance of 'founding principles' is an explicit condition of accession (Art. 49)
• New membership-suspension provision (Art. 7)
• Social rights are now written into the Treaty (Art. 2, Art.136)

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[5] All references to Treaty articles refer to the new numbering.

• Fight against non-discrimination becomes an area of EU competence (Art. 13), sexual equality is emphasised (Art. 2, Art. 3, Art. 142)
• New provision stating that the Union respects national identity (Art. 6, 3)
• New provision states that European citizenship complements and does not replace national citizenship, Art. 17,1)

That the EU aimed to create a *civic* rather than an *ethnos*-based citizenship is underlined in at least two articles. In Art. 6 (3), the Treaty clearly states that the Union respects the national identity of its member states, and Art. 7 (1) affirms that 'the European Citizenship shall complement and not replace national citizenship'. By underlining that the EU should 'respect and promote the diversity of its cultures', EU leaders once again tried to drive home the point that an EU identity should *not* replace national ones (Pantel, 1999: 60).

Although the above strategy clearly indicates that there is a 'definitive move from an economic institution to the Union as a community of shared values' (Laffan, 1997: 16), it is not yet clear that this actually enhances the legitimacy of the EU. Again, the proof of the pudding is in the eating - first in the debates on the ratification of the Treaty and then in its implementation.

c) Enhancing Legitimacy Through Democracy (Accountability)
Not surprisingly, much of the effort to increase democratic accountability was focused on the European Parliament. Indeed, most scholars agree that the Parliament emerged as the institutional winner at Amsterdam (Nentwich & Falkner, 1997, Wessels, 1997b). In the future this 'democratic chamber' will be a true co-legislator; having secured for itself as a ground rule, secured itself the power of co-decision in those areas where the Council decides by qualified majority voting (Nickel, 1997). Although the powers of the Parliament still fall short of those of national parliaments, it made remarkable strides since the Single European Act.

The fact that the Amsterdam Treaty did not confine itself to the European Parliament reflected difficulties arising from the fact that member states have different ideas of what a legitimate Union should be. A more powerful European Parliament would not necessarily improve the legitimacy of the Union for all member states. Indeed, for countries like the UK and Denmark which emphasise the indirect legitimacy of the Union through the national parliaments, this could be counterproductive. Reflecting this, the Treaty contains a broadly formulated declaration to strengthen the role of national parliaments in the EU.

In addition, the Amsterdam Treaty incorporated a number of protocols on transparency and openness: the very first article of the European Union Treaty now states that decisions in the EU are to be taken 'as openly as possible'. The Treaty codifies rights concerning data protection and public access to EU documents. However, the new provision leave plenty of room for interpretation and do on balance, do not redress the complexity and incomprehensibility of EU governance for its citizens.

Box 3: Amsterdam's 'Democratic' Face

• New powers for the European Parliament (i.e. expansion of co-decision to 23 new areas, assent of EP required to activate provision on membership-suspension (Art. 7, 1); consultation procedure introduced for justice and home affairs; EP acquires right to sanction the nominee for Commission President, Art. 214)
• Declaration urges governments to send proposals for legislation 'in good time' to national parliaments (Declaration number 13)

> • Provision on commitment to transparency and openness (Art. 1)
> • Provision establishing a general right of access to documents (Art. 255)
> • Provision on data protection (Art. 286)

d) Enhancing Legitimacy through Efficiency

Relatively little progress was made with respect to improving the efficiency of the Union in the IGC. Although the member states clearly aimed to streamline the EU's institutions, the Amsterdam Treaty does not introduce major institutional changes but contains a *triple postponement* whereby questions of the size of the Commission, voting weights in the Council and moves toward more qualified majority should be addressed in the future. Minor changes include the extension of qualified majority voting into a few new areas; constructive abstention with respect to decision-making on the CFSP; and a strengthening of the role of the President of the Commission (see Box 4). One exception, however, is the introduction of the so-called flexibility clauses which, for the first time, 'constitutionalise' the principle that all members should not necessarily be obliged to participate to the same degree in all aspects of EU business. Even though these clauses, in the absence of fundamental reform could, in theory, be used to overcome institutional deadlock, early academic assessments of their utility are sceptical. Many strings are attached to their use -for example, flexibility can only be used as a last resort, if it does not affect the *acquis*[6] or the functioning of the institutions).

Box 4: Amsterdam's 'Efficiency' Face

> • The role of the Commission President is strengthened (Art. 219)
> • Qualified majority voting (QMV) is extended to a number of new areas
> • 'Enhanced co-operation' or a flexibility clause is introduced in Pillar I (EC) and Pillar III (Justice and Home Affairs)
> • Streamlining of decision-making in Pillar II (CFSP); introduction of concept of constructive abstention and QMV with regard to implementation

Considering what few institutional changes were made, one has to conclude that the strategy of obtaining legitimacy through efficiency bore little fruit. As a matter of fact, one cannot exclude the possibility that the EU - due to its cumbersome decision making procedures - will not be able to deliver the legislative and policy output which could increase its (utilitarian) legitimacy.

3.2. The Amsterdam Treaty and Enlargement

As already highlighted, the IGC was not only mandated to bring the EU closer to its citizens, but also to gear its institutions for enlargement. As argued above, this task was largely postponed. Nentwich and Falkner go so far as to argue that Amsterdam is 'a failure....with respect to the preparation of enlargement' (1997: 15, cf. also Bieber, 1997). In the final hours of the IGC, governments attached a protocol to the Treaty which underlined the need for further institutional reform. In order for the EU to facilitate the next wave of enlargement, a

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[6] The reference to the *acquis* underlines that 'enhanced co-operation' (which flexibility clauses are intended to permit) will probably not play the role in the enlargement process that some had hoped for i.e. that of facilitating the absorption of new members. As pointed out by de la Serre and Wallace, it is precisely the *acquis* which lies at the heart of accession negotiations (de la Serre & Wallace, 1997: 37).

solution should be found to the size of the Commission and the voting weights in the Council (Protocol 11, Art. 1). Art. 2 of the Protocol adds to this by stating that at least one year before the membership of the EU exceeds twenty, a new IGC must be convened to 'carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions' (Protocol 11, Art. 2).

Even if one might not deem this to be a catastrophe, as Delors did (*European Voice*, 26.6.1997), the postponement of institutional changes appears to complicate the enlargement process. As argued earlier in this chapter, the member states, in order to avoid overload, decided to separate the institutional issues from the reform of CAP and reform of EU finances. However, failure to agree institutional reform adds to that very risk of overload. The very fact that some applicants will have to wait for possibly two rounds of institutional change before they can join is also appears worrying. For some countries the road towards EU-membership might simply appear so long and difficult that their perspective of membership is weakened. Moreover, there is a danger that the enlargement process will be delayed or suspended after the first wave. Enlargement could run out of steam precisely because yet another round of enlargement would require even more substantial institutional changes. Despite these shortcomings, agreement in Amsterdam at least avoided the worst-case-scenario of a failed IGC and postponement of accessions talks. This is confirmed by the decision to open substantive accession negotiations with six applicants, Poland, Hungary, Estonia, Slovenia, the Czech Republic and Cyprus, at the European Council in Luxembourg in December 1997.[7]

In considering the Amsterdam Treaty's attempt to both enhance legitimacy and prepare for enlargement one has to conclude that the member states had great difficulty in reconciling these two aims. Indeed, at that stage in the enlargement process the two objectives appeared to conflict. The first example of this conflict concerns the postponement of institutional adjustments. Substantial institutional reform could have been counter-productive to efforts to bring the EU closer to its citizens. At a time when the prospect of enlargement had hardly caught the imagination of the West European public there was at least a danger that the loss of a Commissioner or a radical extension of qualified majority voting could be perceived as follows: *look the EU has not learned anything from Maastricht. It is still pursuing integration in blinkers.* Partly because of this, the member states were quick to postpone the most prickly 'enlargement-thorns' to yet another IGC.[8]

Secondly, tension between legitimacy and enlargement is clear when attention is turned to the 'civic' face of Amsterdam. By increasing its legitimacy vis-à-vis the citizens of the Union, the EU unintentionally increased the membership threshold for the CEEC. In reality, it placed more stress on those issues where the CEEC are lagging most behind - such as environmental protection, social policy, consumer policy - thereby making it even more difficult for them to join. This tension has not been publicly acknowledged. Indeed, some governments, in particular the Scandinavian ones, have made an explicit link between a developing a more Nordic Union (e.g. with greater stress on issues such as consumer and social policy) *and* public acceptance of the enlargement project - they ignore the fact that a

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[7] The remaining candidates were not simply left out in the cold but were offered a means to speed up their preparations for membership (see Friis & Murphy, 1999).

[8] It should be said that the postponement of preparations for enlargement was also linked to the fact that member states gave top-priority to the EMU (and tackling unemployment) and that as enlargement was not looked upon as being just around the corner, the EU would have other opportunities later to reform its institutions (cf. Grabbe & Hughes, 1997).

more 'Nordic Union' will make it more difficult for the CEEC to join. To quote the Danish prime minister directly:

> 'Enlargement is the greatest challenge of our generation, but in order to accomplish enlargement we have to be in close contact with the people's wishes.....Therefore the new Treaty must bear the *Nordic stamp*' (*Weekendavisen*, 15-21.8.1997; authors' italics and translation).

This dilemma is anything but eased by the fact that an increased EU emphasis on the so-called European Social Model (or the Nordic model above) will not necessarily ease acceptance of enlargement by the Southern member states. A more Social or Nordic Union is not high on their list of priorities. As a matter of fact, the increased use of the European Social Model as a legitimating device could trigger some thorny questions for enlargement: can the EU at one and the same time develop the image of preserving a European Social Model rhetoric *and* offer the new members substantial transition phases with respect to the social *acquis*? If not, how is the EU to take on new members, which do not have a chance of fulfilling these core parts of the acquis within the next decades? Conversely, if long transition phases can be agreed, how is one to persuade for instance the Southern members that they should fulfil the entire *acquis*, whereas their competitors, for instance with regard to cheap labour, will not have to?

4. Conclusion

This study has revealed real tensions between enlargement and attempts to enhance the EU's legitimacy. This arises from different normative views about what is legitimate, if and how legitimacy can be constructed and the inter-related debate about what the EU polity should be. Although enlargement can strengthen legitimacy, there is a risk that it will instead exacerbate the EU's problems of developing closer bonds between the member states and with their citizens. Enlargement requires the EU to improve the efficiency of its institutions - an improvement, which could be seen as undermining the representation of the member states and citizens in the EU (e.g. through for example losing a Commissioner or seeing an individual Commissioner's position decline *vis-á-vis* the rest). Moreover, enlargement could undermine utilitarian legitimacy in at least two important ways - by introducing costly competition in labour markets or re-directing economic aid from the present member states to the newcomers in the East and by adding complexity if not hampering efficiency in decision-making. It adds to existing tension between representation and efficiency.

Despite these difficulties with respect to preserving and strengthening existing levels of legitimacy, the EU cannot simply throw in the towel and drop the enlargement project. As this chapter has argued, a strategy of no-enlargement would have just as severe consequences for legitimacy and the integration process as a whole. To a large extent, the EU is therefore condemned to make the twain meet - it has to enlarge and it has to improve its legitimacy. Whether and how the EU will shoulder this twofold task in the long-run remains unclear. So, instead of opting for the pessimistic conclusion that 'the twain shall never meet', we prefer to draw comfort from the fact that the EU has always been a contested, evolving polity, which has been able to adapt to significant internal and external changes over time. Taking this perspective, the Treaty of Amsterdam was only the first round in the contest. This was followed by Agenda 2000 which opened up possibilities for addressing future challenges

including that of enlargement. At the moment of writing, the EU is already taking the first steps towards yet another Intergovernmental Conference.

That being said, Amsterdam may, in time, be seen to have introduced one of the core pivotal points of contest in the future, namely the idea of flexibility. This idea opens a polity-perspective in which all (twenty or more) members need not necessarily participate to the same degree in all areas of integration. This fits with the theoretical approach lying behind this chapter: a multi-dimensional polity not only opens the door for different overlapping, compatible identities, but also for different kinds of membership. Undoubtedly, and in clear confirmation of the EU's defining characteristic as being that of a contested polity, the move to a more flexible Union would meet opposition. Indeed, for some member states flexibility could undermine the legitimacy of the Union. In a flexible Union, where member states have greater freedom to design their scope of participation, it would be more difficult to persuade richer countries to show solidarity with less affluent members. This could threaten one of the cornerstones of legitimacy.

Although Europe should undoubtedly prepare itself for a long-drawn, dramatic 'polity-contest' (which will probably never produce the final polity-formation), one should not overlook the fact that also legitimacy is likely to be 're-imagined' or re-constructed as the developments in the discourse of integration, most recently with respect to the social model, suggest. Over time, governments and citizens might settle for different kinds and standards of legitimacy for their enlarged multi-dimensional polity. After all, as this chapter has argued, legitimacy is not a static (nor a statist) term, but a concept which changes over time and in respect to polity-formations.

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