Thesis LL.M. European Law

Promoting democracy, human rights and rule of law in the enlargement process

Enlargement of the EU, ASEAN and the EAC in theory and practice

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Introduction and methodology

All over the world sovereign nations have been cooperating to pursue various objectives including the protection of human rights and trade. Among these types of organisations are the European Union (EU), the Association of Southeast Asian Nations (ASEAN), the Caribbean Community (CARICOM), the Southern African Development Community (SADC) and the East African Community (EAC). In this thesis I have limited the scope of my research to the European Union, ASEAN and the EAC.

As the question what countries to admit to an organisation and on what terms and conditions in this thesis I will research how the theory as prescribed in the Treaties and procures has been translated into practice. I will therefore answer the following research question: "How is the legal theory of enlargement procedures, including the protection of democracy, human rights and the rule of law, translated into practice in the European Union, the Association of Southeast Asian Nations and the East African Community?" This will also involve analysing what the increased complexity as a result of growth entails for the procedure.

Apart from personal interest, the reason for choosing the East African Community is the Leiden Centre for Legal and Comparative Studies of the East African Community (LEAC).[1] This centre has the objective of combining research on European and EAC law. It also cooperates closely with the East African Court of Justice.

These organisations with supranational aspects all have their core values enshrined in their respective treaties and charters. For example, they all have promotion and protection of human rights, respect for democracy and the rule of law enshrined in their respective Treaties and Charter.[2]

For these organisations enlargement can have a big impact on their wellbeing and balance. In admitting new Member States the sitting member states can assert their influence to make enlargement the most powerful policy.

The three chapters of this thesis all follow the same structure: firstly, a study of enlargement in theory and secondly an analysis of the enlargement in practice. The chapters are ordered chronologically by the date of establishment of the respective organisations. For every organisation that I compare in this thesis I will start the analysis by describing how and why they were founded as these reasons can contain indications for how these organisations and its Member States approach potential new Member States.

As the oldest of the three organisations I will research in this thesis, the European Union has the most extensive history when it comes to enlargement. Over the years it has grown from the six

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[1] See: http://law.leiden.edu/organisation/publiclaw/europainstitute/leac/about/about-leac.html

[2] Article 2 Treaty for the European Union, Article 6(d) Treaty for the Establishment of the East African Community and Article 2.2(h,i) of the ASEAN Charter.

founding fathers of the European Coal and Steel Community (ECSC) to the current 28 Member States of the European Union. In comparison, the EAC has grown from from the original three Partner States to the current six while ASEAN has also doubled in size with a growth from five to ten Member States.

To bridge a comparison of the enlargement policy of the European Union and the EAC I have chosen to include the Association of Southeast Asian Nations as it is, in term of size and date of establishment, right in between the EU and EAC. The ASEAN has had five enlargements to this date spread across 15 years ranging from 1984 tot 1999.

In this thesis I will analyse the two enlargements of the EAC (the accession of Rwanda and Burundi in 2007 and the accession of South Sudan in 2016) in comparison with ASEAN's 1984 enlargement when Brunei acceded and the 1990s enlargements and with four enlargements of the European Community in 1973 (Denmark, Ireland and the United Kingdom) and 1986 (Greece Portugal and Spain), the 'big bang enlargement' of 2004 when ten, mostly former Communist, countries from Central and Eastern Europe joined the EU and the 2007 enlargement when Bulgaria and Romania acceded to the EU. The focus of this comparison will be on what weight has been given to fundamental values such as democracy, the protection of human rights and the rule of law over economic and/or political interests as well as how these organisations incorporate aspiring Member States before their accession, by granting them the status of observer for example.

As the EAC has only had two 'rounds' of enlargement (Burundi and Rwanda in 2007 and South Sudan in 2016) I will analyse both of them. In the analysis I will cover the motives for these accessions from both the EAC and the aspiring Partner States and will describe the procedures that were followed in order for these countries being able to join the EAC.

For this thesis I have spent a month at the EAC Headquarters in Arusha as an intern at the East African Court of Justice. During this period I have done extensive research in the EAC (digital) archives and have I spoken with multiple people familiar with the matter of EAC Enlargement including the Counsel to the Community, Dr. Kafumbe, and the former Head of Infrastructure, mr. Wambugu.

1. European Union

Introduction and establishment of the European Union

When the dust of the second World War settled the allied forces wanted to prevent such an outburst of violence and violations of human rights in the future. France, West Germany, Italy and the Benelux countries formed the European Coal and Steel Community (ECSC). The idea of the creation of this Community, which would provide for a common High Authority under which the production of coal and steel would be placed, was presented by French foreign minister Robert Schuman in order to prevent another devastating war: "The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible."[3] This declaration underlines the objective of the earliest stages of post war European cooperation, preventing war, while making no reference to principles such as democracy, human rights and the rule of law.

In this chapter I will analyse the developments in the process of the enlargement of the European Union. Firstly I will describe the theory of enlargement according to the respective Treaties and the Copenhagen criteria. And, secondly, I will analyse the practice of enlargement by studying various moments of enlargement. These will include the first enlargement (Denmark, Ireland and the United Kingdom), the second and third enlargements (Greece, Portugal and Spain), the fifth, 'big bang', enlargement of 2004 at which 10 mostly Central and Eastern European countries joined the EU and the sixth enlargement of 2007 when Bulgaria and Romania joined the EU.

[3] The Schuman Declaration, 9 May 1950, https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en (last visited on 21 August 2017).

European Union Enlargement in Theory

From the moment of establishment of the European Coal and Steel Community the possibility of enlargement was already provided for in the Treaty. Article 98 of the Treaty of Paris states that "any European State may request to accede to the present Treaty. It shall address its request to the Council, which shall act by unanimous vote after having obtained the opinion of the High Authority. Also by a unanimous vote, the Council shall fix the terms of accession."[4] This treaty provision provides one single criterion, namely the geographic location of the aspiring Member State.

Article 98 of the Treaty of Paris was repeated in Article 237 of the Treaty of Rome and Article 205 of the Euratom Treaty. Kochenov describes the various Treaty provisions for enlargement in five stages with the fifth stage being the Treaty of Amsterdam.[5] This Treaty not only renumbered Article O of the EU Treaty into Article 49, but it also stipulated, by referring to Article 6(1) (now Article 2 TEU) that only European states which respect "the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities".[6] Kochenov argues that the introduction of the respect for these values "might be misleadingly taken for an innovation, which it was not. In reality it was an incorporation of a long standing practice."[7]

Implementation of the Copenhagen Criteria

At the 1993 European Council held in Copenhagen the Council decided that the associated countries in Central and Eastern Europe would join the European Union when they would fulfil the economical and political criteria for membership. In the conclusions from this Council the criteria for membership were set. These are now known as the Copenhagen criteria. These criteria include "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 capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union."[8]

This focus on the protection of human rights should be seen in the context of the Maastricht Treaty which was signed in the year before the European Council in Copenhagen. This Treaty states that: "The Union shall respect fundamental rights, as guaranteed by the European Convention for the

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[4] Article 98 of the Treaty establishing the European Coal and Steel Community, signed on 18 April 1951.

[5] Kochenov 2008, p. 21.

[6] Article 2 Treaty on European Union.

[7] Kochenov 2008, p. 21.

[8] Conclusions of the Presidency - European Council Copenhagen, June 21-22 1993, p. 13.

Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law."[9]

Whereas the Copenhagen criteria were drafted in the specific context of the EU's enlargement to Central and Eastern Europe Hillion notes that these criteria "have seemingly become more 'objective' standards which are used as a basis for a more articulate policy based on benchmarking, conditionality and compilation of regular reports and monitored in an institutionalised framework."[10] Hillion concludes that the strict conditions for accession to the European Union have 'allowed the European Union and its Member States to shape the 'model' Member States before its accession.[11]

The Copenhagen criteria are not only directed at aspiring Member States as one criterion only applies to the European Union itself. This fourth criterion prescribes that the European Union should have the capacity to 'absorb' new Member States. De Witte writes that the EU's enlargement has raised debates on the consequences for its internal operation. On this debate on deepening and widening de Witte writes that "the Union's widening has so far been accompanied by some degree of deepening of the integration process."[12] In terms of the institutional absorption capacity he writes that this was addressed in some areas by 'easing the conditions for decision making'. Other, more practical, areas remain, according to de Witte, problematic. Examples provided include the number of languages used and the amount of Council configurations and committees. In 2006, the European Commission addressed the point of the absorption capacity by stating that this capacity "is determined by development of the EU's policies and institutions, and by the transformation of applicants into well-prepared Member States"[13] The Commission calls the absorption capacity criterion "first and foremost a functional concept" and stresses that, in the future, it will conduct "impact assessments of enlargement at all key stages of the accession process."[14]

Critique of double standards

Since the implementation of the Copenhagen criteria there has been critique that the European Union is using a double standard when it comes to scrutiny of possible human rights violations. De Burca writes that candidate countries have "been held to standards to which several existing EU

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[9] Treaty on European Union, Article 6.

[10] Hillion 2004, p. 15.

[11] Ibid, p. 22.

[12] De Witte 2003, p. 214.

[13] Communication for the Commission to the Council, Enlargement Strategy and Main Challenges 2006-2007, 8 November 2006, p. 17.

[14] Ibid.

Member States clearly do not conform."[15] As an example de Burca provides the violation of the rights of minorities which according to her "was largely ignored when the charter was drafted."[16] One would think that measuring aspiring Member States to a standard to which the present Member States do not all adhere to could potentially result in a lack of effort to protect and promote fundamental values in the post-accession period. De Witte argues that the problem of double standards "could lead to a reduction of the European human rights standards for the candidate countries" post-accession.[17] He then further hypothesises that this could lead to a reduction of the respect for human rights in the new Member States. Research has however demonstrated that this was not the case in the first years after the 2004 enlargement round with the eight new Central and Eastern European Member States being on the receiving end of less infringement decision than many older Member States.[18]

Association agreements as a potential step towards membership

Since 1961 the European Community, and later the European Union, has concluded agreements with third countries to "establish an association involving reciprocal rights and obligations, common action and special procedure."[19] Because Article 217 TEU does not provide a clear framework of what an association agreement entails the contents of these agreements vary. For example, the 'Europe' agreements from the 1990s explicitly stated that the association agreement was a way to help the Central and Eastern European countries to become Member States.[20] In comparison, the association agreement with Ukraine does not contain such a statement and after the Dutch referendum on the Agreement the European Council emphasised that: "While aiming to establish a close and lasting relationship between the parties to the Agreement" based on common values, the Agreement does not confer on Ukraine the status of a candidate country for accession to the Union, nor does it constitute a commitment to confer such status to Ukraine in the future."[21]

From this it can be concluded that the signing of an association agreement between the European Union and a third country can, in theory, be a stepping stone towards membership. This is however decided on a case by case basis.

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[15] De Burca 2003, p. 700.

[16] Ibid, p. 700.

[17] De Witte 2003, p. 240.

[18] Sedelmeier 2011, p. 822.

[19] Article 217 TFEU.

[20] Europe Agreement, establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, preamble.

[21] European Council Conclusions on Ukraine, European Council, 15 December 2016.

European Union Enlargement in Practice

First enlargement: Ireland, United Kingdom and Denmark

In 1973 the founding six Member States of the European Coal and Steel Community welcomed three new member into the European Community. The United Kingdom submitted its application to join the EEC on 10 August 1961. Ireland, aware of the economic consequences of the United Kingdom joining the European Community, had lodged its application two week earlier on 31 July that year while Denmark applied on the same day as the United Kingdom.[22] Initially the application of United Kingdom to join the European Community was vetoed by French President de Gaulle who considered the UK to be a Trojan Horse.[23]

In its opinion accompanying the Treaty the European Commission gave no regard to basic values such as democracy or the protection of human rights and the rule of law. Instead it focused on the candidate countries accepting the *acquis communautaire* and the direct effect and priority of certain provisions and certain acts of the European Community.[24]

Second and third enlargement: foray into southern Europe

While the with first enlargement of the European Community gained three Member States with comparable cultures and economies the second and third enlargements were focused on a number states that previously were ruled under autocratic regimes, namely Spain under Franco, Greece under the military junta and Portugal under the National Salvation Junta.

1981: Greece

After the July 1974 collapse of the Greek military regime the new Greek government formally submitted its application on 12 June 1974 to join the European Economic Community.[25] In its opinion the European Commission points out that for the first time it was presented with an application for membership from a country with which it already had close contractural links, in the form of the 1962 Association Agreement.[26] The Commission also stated that, referring to "Greece's return to a democratic government" and "the avowed aims of the Community in establishing the Association" it "must now give a clear positive answer to the Greek request."

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[22] Tatham 2009, p. 13

[23] Ibid.

[24] European Commission, *Commission opinion of 19 January 1972 on the applications for accession to the European Communities by the Kingdom of Den mark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland.*

[25] A. Tatham 2009, p. 30.

[26] European Commission, *Opinion on Greek application for membership*: Bull. EC, Supp. 2-1976, 7.

1983: Spain and Portugal

Emmert and Petrovic contribute the absence of Spain and Portugal from the European integration to their respective fascist dictatorial rulers.[27] Spain, still under the rule of Franco, first applied for membership in 1962. According to Emmert and Petrovic Spain did not receive a formal response to this application though it did create a discussion in Spain "on the lack of democracy and liberty in that country."[28] In 1964 Spain again reached out to the European Community which led to a preferential trade agreement.

Both Spain and Portugal applied for membership in 1977 (Portugal on 28 March and Spain on 28 July). In its opinion on the Portuguese application the European Commission argues that "The Treaties of Rome and Paris signify the clear intention that other European States sharing the democratic ideal of the European Community Member States should be able to accede to the Community."[29] and says that "democracy is now an established political fact" which has "already ridden out testing times due to the aftermath of the revolution and the problem of reabsorbing the refugees from Angola and Mozambique". Based on this, and referring to grave political consequences of disappointment, the Commission concluded that it could not "leave Portugal out of the process of integration."[30]

The Commission uses similar wording to welcome Spain's application for membership of the Community and it stresses the unanimous support for membership amongst the political parties represented in the Spanish Parliament: "Such unanimity makes it all the more desirable that Spain should play its part in European integration at a time when new and decisive ground is broken- with commitment to extend membership to Greece and Portugal and the drive for greater internal cohesion, involving the setting up of the European monetary system and direct elections of the European Parliament."[31]

In contrast to the Treaty of Accession relating to the first enlargement in 1973, the opinion of the European Commission in both treaties of accession relating to the Greece's and Spain an Portugal's accession does contain the following paragraph: "Whereas the principles of pluralist democracy and respect for human rights form part of the common heritage of the peoples of the States brought

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[27] The Past, Present and Future of EU Enlargement, F. Emmert and S. Petrovic, *Fordham International Law Journal*, Vol. 37:1349, 2013-2014.

[28] Ibid.

[29] European Commission, *Opinion on Portuguese application for Membership*: Bull. EC, Supp. 5-1978, p. 7.

[30] Ibid.

[31] European Commission, *Opinion on Spain's application for Membership*: Bull. EC, Supp. 9-1978, p. 9.

together in the European Communities and are therefore essential elements of membership of the said Communities."[32] [33]

At the 1982 Copenhagen Council, when the negotiations with Portugal and Spain were still ongoing, the European Commission issued a communication titled 'Problems of enlargement, taking stock and proposals.' In this communication the Commission set out three general principles for the accession of Portugal and Spain. Firstly the terms of accession would have to be clear, secondly the *acquis communautaire* had to be fully adopted and, thirdly, the simultaneous accession of Portugal and Spain. Notably, the Commission stressed that "enlargement of the Community must not jeopardize its efforts or the results achieved."[34] This statement echoes the 1976 opinion on the Greek application for membership in which the Commission states that "the on-going integration process must not be delayed by further enlargement."[35]

Fifth enlargement: big bang

In 2004 the European Union admitted ten new Member States bringing the total amount of members to 25. Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia all acceded the Union on the first of May of 2004. With the exception of Cyprus and Malta these countries were all under the influence of the Soviet Union until its collapse in 1991.

As the 2004 enlargement would be the first test of the Copenhagen criteria the European Commission reiterated the substance and importance of these criteria in its opinion on the applications of the ten aspiring member states: "the political criteria requires applicant States to ensure the stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities; these requirements are enshrined as constitutional principles in the Treaty on European Union and have been emphasised in the Charter of Fundamental Rights of the European Union"[36] The Commission concluded its opinion by stating that 'enlargement is a continuous, inclusive and irreversible process; the accession negotiations with Bulgaria and Romania should continue on the basis of the same principles that have guided the

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[32] European Commission, *Commission Opinion of 29 May 1979 on the application for accession to the European Communities by the Hellenic Republic.*

[33] European Commission, *Commission Opinion of 31 May 1985 on the application for accession to the European Communities by the Kingdom of Spain and the Portuguese Republic*.

[34] European Commission, Communication, 'Problems of enlargement: Taking stock and proposals.': Bull. EC, Supp. 8-1982,

[35] European Commission, *Opinion on Greek application for membership*: Bull. EC, Supp. 2-1976, 7.

[36] European Commission, *Commission Opinion of 19 February 2003 on the applications for accession to the European Union by the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic,* p. 3.

negotiations so far, and the results already achieved in these negotiations should not be brought into question."[37]

At the 1999 Helsinki European Council summit a new criterion was added, namely that an aspiring member state should be a 'good neighbour'.[38] The reason for adding this criterion was to guarantee that a new Member State would not import conflicts into the European Union. This has, however, not prevented the European Commission from taking a stand in the situation on Cyprus as, in its opinion, it stated that it hoped "to see a re-united Cyprus acceding to the European Union on the basis of a comprehensive settlement, as the best outcome for all concerned."[39] Hillion argues that the EU approach to Cyprus illustrates a 'case-by-case definition' of the obligation go being a good neighbour. Hillion provides the example of the absence of an agreement on the recognition of borders between Estonia and Latvia and the Russian Federation which did not present difficulties in the accession of Estonia and Latvia. In contrast, the European Union has strongly reaffirmed the good-neighbour criterion in relation to the West Balkans.[40] [41]

The 2003 Treaty of Accession contains a provision which introduces a post-accession conditionality. In Article 38 of this Treaty a transition period of three years is established in which the European Commission may, upon its own initiative or upon a motivated request from a Member State, take appropriate measures.[42] This is however limited to the failure of a Member State "to implement commitments undertaken in the context of the accession negotiations, causing a serious breach of the functioning of the internal market, including any commitments in all sectoral policies which concern economic activities with cross-border effect, or an imminent risk of such a breach."[43] First of all this is high threshold for such measures. Secondly, this Article only concerns economic matters without giving regard to the values pursued by the Copenhagen criteria.

Emmert and Petrovic describe the 2004 enlargement and the events which led to it as shift "from a procedure to a fully fledged policy"[44] This description illustrates the over the years increased complexity of EU enlargement. What was initially a relatively straightforward procedure with a limited amount of parties involved has become a complex policy with negotiations spread over a total of over 30 chapters.

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[37] Ibid, p. 4.

[38] Hillion 2004, p. 17.

[39] European Commission, *Commission Opinion of 19 February 2003.*

[40] European Commission, Final declaration, Zagreb Summit 24 November 2000.

[41] European Council, EU-Western Balkans Summit Declaration, Thessaloniki, 21 June 2003.

[42] Treaty of Accession 2003, Article 38.

[43] Ibid.

[44] Emmert and Petrovic 2014, p. 1379.

Bulgaria and Romania

Three years after the 'big bang' enlargement of 2004 two more Eastern European countries joined the European Union: Bulgaria and Romania. The accession of these two countries created a two tiered membership of the European Union, albeit temporarily.[45] During a transition period the people of Bulgaria and Romania, who had become European citizens, were not enabled to enjoy all the rights as EU citizens. In the Treaty of Accession a provision was included which would suspend the freedom of movement of workers from Bulgaria and Romania.[46]

Furthermore, the European Commission monitored Bulgaria and Romania "under the Cooperation and Verification Mechanism, with judicial reform, the fight against corruption and, concerning Bulgaria, the fight against organised crime."[47] This mechanism was created as Bulgaria and Romania had not yet reached the desired level "in the fields of judicial reform, corruption and (for Bulgaria) organised crime."[48] A similar mechanism was not been created for the accession of Croatia which emphasises the special cases of Bulgaria and Romania.

Turkey: the quest for democracy, human rights and rule of law

Except for Morocco which was rejected on geographic grounds, to this date no application for membership of the European Union has ever been rejected. There is, however, the enduring case of Turkey. The Republic of Turkey applied for membership on 14 April 1987. Thirty years later the country has still not acceded to the EU.

In its opinion on the Turkish application for membership to the European Community, the European Commission described the Turkish efforts to establish democracy after the 1980 military coup.[49] It argues that the parliamentary democracy in Turkey had got closer to the level of the Parliamentary democracies in the Community, but also says that the developments "in the human rights situation and in respect for the identity of minorities (…) have not yet reached the level required in a democracy." Even before the implementation of the Copenhagen criteria with this opinion the European Commission clearly emphasised the importance of these values to the European Community. Hughes writes that while concerns over Turkey's human rights record are

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[45] Although not included in this thesis, the same provisions have been included in the 201 Treaty of Accession regarding Croatia.

[46] Treaty of Accession 2005, Article 20.

[47] The reports on progress in Bulgaria and Romania, https://ec.europa.eu/info/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en (last visited on 21 August 2017).

[48] Cooperation and Verification Mechanism for Bulgaria and Romania, https://ec.europa.eu/info/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en (last visited on 21 August 2017)

[49] European Commission, *Commission opinion on Turkey's request for accession to the Community,* 20 December 1989, p. 7.

real, Turkey "is not unique in this regard and both countries which most recently acceded to the Union, Romania and Bulgaria, shared similar problems, particularly in relation the the protection of minorities."[50] This suggests that the EU's application of these criteria is selective and dependant on political realities. The Turkey situation has also shown what can happen when accession talks stall or do not progress at the desired pace as Turkey's Foreign Minister, Ali Babacan, said suggested "that without a clear target date for membership, there is not impetus to push through further reforms."[51] This suggestions demonstrates the temporary aspect of conditionality as the EU will only be able to assert its influence as long as it does not remove the carrot from its carrot and stick approach.

In early 2016 the European Union concluded an agreement with Turkey on the settlement of refugees. It was agreed that Turkey would not let refugees get across the border into the European Union and it would accept refugees being sent back into Turkey. In exchange the EU started "disbursing the 3 billion euro of the Facility for Refugees in Turkey for concrete projects" and Turkey was rewarded with visa liberalisation.[52] Furthermore the accession talks would be 're-energised'. This was the first time that membership (or at least negotiations about membership) was included in a broader agreement. In the aftermath of the coup d'état attempt on 15 and 16 July 2016 and the way in which the Turkish authority reacted the European Parliament adopted a resolution, based on Article 5 of the Negotiating Framework with Turkey to temporarily freeze the accession talks with Turkey.[53] Article 5 of this Framework provides for the suspension of negotiations "in the case of a serious and persistent breach in Turkey of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded."[54]

The case of Turkey appears to be a de facto rejection of the application which was submitted over 30 years ago. Before the events of 2016 the talks with Turkey already reached a near standstill as the EU continued to press Turkey into reforms in order to comply with the Copenhagen criteria. As Hughes stated these criteria have been used in a stricter way than with other candidate countries such as Bulgaria and Romania.

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[50] Hughes 2011, p. 77.

[51] Ibid, p. 78.

[52] EU-Turkey statement, 18 March 2016, European Council.

[53] European Parliament resolution of 24 November 2016 on EU-Turkey relations (2016/2993(RSP)).

[54] Article 5, Negotiating Framework regarding the accession talks with Turkey, Luxembourg, 3 October 2005.

Conclusion

The enlargement procedure of the European Community and, later, the European Union has undergone change and formalisation since the first enlargement in 1973. This first enlargement was completely focused on economic aspects with little to no attention given to democracy, the rule of law and the protection of human rights. It is only when former autocratic nations (Greece, Portugal and Spain) applied for membership of the European Communities that the European Commission stressed the importance of democracy.[55]

With the introduction of the Copenhagen criteria in the context of the enlargement to former communist countries in Central and Eastern Europe the European Union has broadened its criteria for membership and expanded these to include the rule of law, the protection of human rights and respect for and protection of minorities.

When the EU was awarded the Nobel Peace Prize in 2012, "on the grounds that the organisation had advanced peace, reconciliation, democracy and human rights in Europe", the Nobel Committee praised the EU for its strengthening of democracy in Greece, Spain and Portugal and noted the similar trend in the Central and Eastern European Countries that joined the European Union after the Cold War.[56]

The negotiations with Turkey that have been ongoing since its application for membership in 1987 , before the implementation of the Copenhagen criteria, have demonstrated how the European Union has used the enlargement procedure to make a candidate Member State adapt to the EU's standards. This has, however, not lead to Turkey's accession which at the time of writing looks farther away than ever.

The EU's enlargement procedure has become an intricate process with many parties involved. Disparity between theory and practice. The description as a "fully fledged policy" is fitting as it describes the new character of EU enlargement.[57] This does not mean that political interests are absent in this process as the Copenhagen criteria are still open to interpretation and their implementation has been selective. The European Union's absorption capacity, for example, was not brought up when a total of ten countries were set to join the bloc, but the European Commission did bring it up in 2005 when it concerned the application of Turkey.

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[55] Although not part of this thesis, it is worth pointing out that the Commission reiterated this stance when Austria, Sweden and Finland joined the European Union in 1995, see European Commission, *Commission Opinion of 19 April 1994 on the applications for accession to the European Union by the Republic of Austria, the Kingdom of Sweden, the Republic of Finland and the Kingdom of Norway*.

[56] The European Union, Nobel Peace Prize 2012, nobelpeaceprize.org, https://www.nobelpeaceprize.org/Prize-winners/Prizewinner-documentation/The-European-Union-EU (last visited on 21 August 2017).

[57] Emmert and Petrovic 2014, p. 1379.

2. Association of Southeast Asian Nations

Introduction and establishment of ASEAN

The Association of Southeast Asian Nations (ASEAN) in an organisation established in 1967 by five countries: Indonesia, Malaysia, the Philippines, Singapore and Thailand. On the 8th of August 1967 the foreign ministers of these five countries signed the ASEAN declaration in which they declared the establishment of the EAC and, among other aims, declared to "promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;" with the primary aim being "To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations;"[58]

ASEAN's approach to inter-Member State relations has become known as 'the ASEAN way'. This approach is the sum of the principles as set out in 1967. Among these are an emphasis on the sovereignty of the Member States and consensus.

[58] ASEAN Declaration

ASEAN Enlargement in Theory

The admission of new ASEAN Member States is governed by Article 6 of the Charter. It is the Summit that, upon the recommendation of the ASEAN Coordinating Council, decides whether a new Member State will be admitted.[59] The criteria for joining ASEAN are as follows: "location in the recognised geographical region of Southeast Asia", "recognition by all ASEAN Member States", "Agreement to be bound and to abide by the charter" and "ability and willingness to carry out the obligations of Membership."[60]

Former ASEAN Secretary General Severino argues that with "membership criteria related to the character of the political regime, ideological system and orientation, economic policy or level of development" a regional association would be impossible in Southeast Asia given its diversity.[61] [62] He further argues that this diversity in the region made membership in one association"no only possible, but necessary."[63] This statement touches the very essence of ASEAN cooperation and it explains the absence of complex procedures and criteria.

Road to full membership via observer status

The rounds of enlargement as described in this chapter show that ASEAN's procedure, in contrary to that of the European Union, works with the granting of observer status before an aspiring member state will be granted full membership. Although this is not prescribed by the ASEAN Charter the various enlargements have set a precedent. Laos and Vietnam became observers in July 1992[64] while Cambodia was an observer from 1995 to 1996 before becoming a full member in 1997.[65] Myanmar was granted observer status in 1996 at the 29th ASEAN Ministers Meeting.

Though not formally a criterion for being granted the status of observer or full member, the Treaty of Amity and Cooperation in Southeast Asia has since the accession of Brunei preceded all accessions making it a de facto criterion. Brunei signed this Treaty on 7 January 1984, just one day before its accession to ASEAN, Laos and Vietnam signed the Treaty in 1992 with Cambodia and Myanmar signing the Treaty in 1995.

The advantage of a system with observer status before full membership, at least in theory, is that instead of one moment in which an aspiring member state is weighed and measured there are two:

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[59] Article 6.3 of the ASEAN Charter.

[60] Article 6.2 of the ASEAN Charter.

[61] Serino 2015, p. 80.

[62] Rodolfo Certeza Severino served as ASEAN's Secretary General from 1 January 1998 to 31 December 2002.

[63] Severino 2015, p. 80

[64] Ibid., p. 50.

[65] 30th ASEAN Ministerial Meeting.

first when it applies for the status of observer and secondly when it applies for full membership status. A second advantage of granting observer status is that it gives new members the time to get to know how the organisation works. Especially the latter can increase the efficiency of the inner workings of the organisation and smoothen the post-accession integration process.

ASEAN Enlargement in Practice

First enlargement in 1984: Brunei

In 1984 the ASEAN admitted its first new Member State since its creation in 1967. Barely a week after becoming independent, Brunei was formally admitted into ASEAN.

Weatherbee called the accession of Brunei to ASEAN a potential "sine qua non" for its independence.[66] Although not substantiated this shows that Brunei's membership of an international organisation was of importance to the United Kingdom and it gave Brunei immediate recognition on the international stage.

Former ASEAN Secretary General Rodolfo Severino calls Brunei's accession to ASEAN 'extremely smooth and uncomplicated' as Brunei only had to agree to subscribe or accede "to all the Declarations or Treaties of ASEAN".[67] As ASEAN's *acquis communautaire* at the time was still relatively limited in size this was not complicated matter for Brunei. In addition, Prince Mohamed Bolkiah of Brunei, in the capacity of observer, had attended ASEAN ministerial meetings in 1981, 1982 and 1983. Brunei's intention to join ASEAN upon becoming independent in 1984 was formally declared at one of these meetings in 1983.

ASEAN's enlargement in the 1990s from six to ten

The 1990s were characterised by growth of the ASEAN region. Cambodia (1999), Laos (1997), Myanmar (1997) Vietnam (1995) all joined the original five and Brunei. By the time of their accession all these countries had been observers for several years.

In 1994 at the 27th ASEAN Ministerial Meeting all foreign ministers of the ten Southeast Asian Countries were present for the first time.[68] The communiqué of this meeting states that "they hoped that relation of ASEAN with the four other Southeast Asian states would further intensify, and

[66] Weatherbee 1983, p. 723.

[67] Severino 2015, p. 53.

[68] The Communiqué states that these ten countries represent all of Southeast Asia.

reiterated their commitment to building a Southeast Asian community through common membership in ASEAN."[69]

Vietnam was admitted into ASEAN at the 1995 Bangkok Summit.[70] Three years after the 27th Ministerial Meeting, at the 30th ASEAN Ministerial Meeting the foreign ministers of the then six Member States welcomed the admission of Laos and Myanmar.[71] Though intended Cambodia was not admitted at this time due to political unrest. Because of these circumstances the ASEAN Foreign Ministers expressed their regret in not being able to admit Cambodia as a Member of ASEAN and reaffirmed that its observer status would remain unaffected. In the communiqué the foreign ministers "expressed the hope that a peaceful solution would soon be found so that Cambodia would be able to join ASEAN and fulfill the vision of an ASEAN community of 10 as envisaged by the Founding Fathers of ASEAN."[72] This statement provides a clear example of ASEAN's approach toward new Member States. Even when an aspiring Member State is facing a coup d'état in which the second prime minister Hun Sen ousted the senior prime minister, Prince Norodom Ranariddh, and little to no regard is given for democracy, human rights or the rule of law ASEAN Member States cling on to their original idea and still hope to be able to admit that country as soon as possible.

Gates and Than argue that ASEAN's enlargement has been used "to address its own inherent problems within the Asian Regional Forum" and "within the post-Cold War strategic strategic context, the enlargement may strengthen ASEAN" as it could not yet manage its regional security order.[73]

Weatherbee describes ASEAN's 'two-pronged defence' of Myanmar's accession as 'logically inconsistent'.[74] ASEAN's first argument in its defence of admitting Myanmar was that it didn't interfere in domestic affairs of other nations while the second argument was that they hoped to steer Myanmar's junta 'in the direction of political change and greater respect for human rights.'

The accession of Myanmar has, however, lead to calls for a change in ASEAN's approach to enlargement. Narine states that due to Myanmar's status as 'an international pariah' its accession to ASEAN 'has seriously weakened ASEAN's international standing'.[75] He further writes that, at the 1994 Foreign Minister's Meeting ASEAN wanted 'a conciliatory gesture' from Myanmar's State Law and Order Restoration Council (SLORC). To fulfil this request the SLORC decided to end Aung San Suu Kyi's house arrest earlier than intended. After this Myanmar was able to sign the

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[69] Joint Communiqué of the Twenty-Seventh ASEAN Ministerial Meeting, Bangkok, 22-23 July 1994.

[70] Bangkok Summit Declaration, 14-15 December 1995.

[71] Joint Communiqué of the Thirtieth ASEAN Ministerial Meeting, Subang Yaya 24-25 July 1997.

[72] Ibid, para. 15.

[73] Gates and Than 2001, p. 9.

[74] Weatherbee 2009, p. 95.

[75] Narine 2002, p. 114.

Treaty of Amity and Cooperation in Southeast Asia which enabled it to become an ASEAN observer state.

Severino illustrates ASEAN's approach to new Member States by saying that when you would ask why ASEAN admitted Myanmar they would ask you 'on what grounds should ASEAN have rejected them?'.[76] Severino elaborates by comparing using the African Union's criteria for membership which, apart from 'the usual principles pertaining to inter-state relations', include a plethora of other criteria including 'respect for democratic principles, human rights, the rule of law and good governance'. In contrast, ASEAN's conditions for membership do not go further than the geographical criteria of being located in Southeast Asia and 'the usual principles of inter-state relations.'

[76] Severino 2015, p. 51

Conclusion

ASEAN is an organisation that was established primarily with an economic objective and secondly, to preserve and promote peace in the Southeast Asian region.

The various rounds of enlargement of ASEAN in which the organisation has doubled in size from five to ten Member States are characterised by ASEAN's economic focus and the desire to form a regional block encompassing all countries of Southeast Asia.

Most notably, the accession of Myanmar and Cambodia have shown that, although enshrined in the Treaty, the protection of human rights, the rule of law and democracy take a back seat. Guided by the principles of sovereignty and consensus it is not likely that ASEAN will change this approach. On the one hand is can be argued that this approach is not satisfactory as it gives autocratic regimes such as the military junta of Myanmar standing on the international stage, but on the other hand it is undeniable that this approach of regional integration has provided peace in the Southeast Asian region for over 50 years.[77]

[77] Van Middelaar 2017.

3. East African Community

Introduction and establishment of the East African Community

The East African Community (EAC) was established in 2000 by the three countries that border on Lake Victoria: Kenya, Tanzania and Uganda. After the collapse of the the original East African Community in 1977, to which dissatisfaction over the distribution of benefits among the parter states played a significant part, the assets of the original Community were divided among the Partner States.[78] Besides dividing the EAC Assets and liabilities the 1984 Mediation Agreement also included a provision for re-establishment of the EAC in the future.

In the the 1990s Kenya, Tanzania and Uganda negotiated the creation of the EAC. This resulted in the Treaty of Establishment of the East African Community on 30 November 1999. On the 7th of July of 2000 this Treaty went into force and thereby the EAC was established. The EAC has the ambition and to establish a monetary union with a single currency and to, ultimately, become a political federation.[79] [80]

The East African Community comprises of six Partner State: the original three founding fathers plus Burundi and Rwanda which acceded in 2007 and South Sudan which acceded in 2016. Masinde and Otieno Omolo describe the EAC with its combined population (over 170 million people in 2016)[81], land are and gross domestic product (over 155 billion US dollars in 2016)[82] "as a key driver of regional integration in the entire East African region."[83]

In this chapter I will first provide an overview of the theory of EAC enlargement based on the Treaty for the establishment of the East African Community and on the Procedure for admission into the East African Community. I will then analyse the enlargements of 2007 (Burundi and Rwanda) and 2016 (South Sudan).

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[78] Masinde and Otieno Omolo 2017, p.17.

[79] http://www.eac.int/integration-pillars/monetary-union (last visited on 21 August 2017).

[80] http://www.eac.int/integration-pillars/political-federation (last visited on 21 August 2017).

[81] International Monetary Fund, Report for Selected Countries and Subjects, http://www.imf.org/external/pubs/ft/weo/2016/02/weodata/weorept.aspx?sy=2014&ey=2021&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=71&pr1.y=7&c=618%2C714%2C733%2C738%2C746%2C664&s=LP&grp=0&a= (last visited on 21 August 2017).

[82] International Monetary Fund, http://www.imf.org/external/pubs/ft/weo/2016/02/weodata/weorept.aspx?sy=2014&ey=2021&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=73&pr1.y=13&c=618%2C714%2C733%2C738%2C746%2C664&s=NGDPD&grp=0&a= (last visited on 21 august 2017).

[83] Masino and Otieno Omolo 2017, p.17.

EAC Enlargement in Theory

Procedure for admission to the East African Community

In contrary to the European Union, the EAC does not first require, neither de facto nor de jure aspiring Parter States to engage in an Association Agreement. The Treaty of establishment does however provide for the possibility of granting an aspiring Parter State the status of observer before granting it full membership. However, to this date this provision has not been utilised.

In 2001 the Presidents of the the three EAC Partner States signed the Procedure for admission to the East African Community. In this document the conditions for aspiring Partner States and the prescribed procedure were laid out. This procedure elaborates on the Treaty and provides for the granting of either full membership of the EAC or Associate membership.[84] The third article repeats the criteria for membership and the Summit's prerogative in regards to the granting of membership as prescribed by Article 3 of the Treaty for the establishment of the East African Community whereas the fourth article provides for the involvement of the Council of Ministers in the decision making regarding enlargement. According to Article 3(6) of the Treaty for the establishment of the EAC it is the Council that prescribes the procedure to be followed with respect to enlargement with, according to Article 3(2), the Partner States (the Summit) having the power to admit new Partner States. Similarly, the Summit has the right to suspend or even expel a Partner State in case "it fails to observe and fulfil the fundamental principles and objectives of the Treaty" or "for gross and persistent violation of the principles and objectives of this Treaty" in case of expulsion.[85] Both the Articles relating to admitting and the suspension and expulsion of Parter States place a strong emphasis on fundamental principles which shows how the East African Community's Member States have, on paper, enshrined these values as a strong condition for obtaining and maintaining membership.

[84] Article 2 of the Procedure for Admission to the East African Community.

[85] Treaty for the establishment of the East African Community, Articles 146, 147.

EAC Enlargement in Practice

From three to five: the first enlargement (Burundi and Rwanda)

Seven years into the existence of the new EAC it embarked on its first enlargement. Burundi and Rwanda were set to join the bloc. Even before the establishment of the EAC these two countries had already submitted their applications in 1998 and 1996 respectively.[86] In 2002 the Council of Ministers decided that "since the Community is still in the formative stage it would not be prudent to admit new members at this stage" and that new member would be admitted when the Customs Union is operational.[87] After being put on hold for a number of years during the period in which the EAC was established these two countries finally joined in 2006.

By 2004 Rwanda had applied for membership of the East African Community. The eighth Council of Ministers formulated its response to the applications of Rwanda and Burundi, the first time the East African Community was faced with the prospect of enlargement.[88] It referred to the first extraordinary Summit's decision to establish the Customs Union first before considering applications of other countries to join the EAC and the Fifth Ordinary Summit which 'directed the Council to consideration of the application of the Republic of Burundi and the Republic of Rwanda to join the East African Community and make appropriate recommendations'.[89] In its report the Council sets out the procedure, objectives and principles of enlargement:

a. 'Adoption of systematic expansion'
Referring to precedents from the European Union and the Caribbean Community and Common Market (CARICOM) the Council of Ministers argued that a step-by-step admission process to enlargement may had been needed. CARICOM expanded from its four founding member states to fifteen in 2017. In this organisation membership is granted in stages beginning with an observer states, then associate membership and ultimately full membership.

b. 'Need for consolidation of achievements'
Before the EAC admitted additional member states its heads of States intended to first establish the Customs Union. Only after this was achieved they considered the applications from Burundi and Rwanda. This objective echoes the fourth Copenhagen criterion of enlargement capacity and the debate between deepening and widening of regional integration. With this objective the Council of Ministers choose for deepening integration and only thereafter widening by admitting new Parter States.

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[86] Report of the second extraordinary meeting of the Council of Ministers, EAC Secretariat, Arusha April 2002, p. 27.

[87] Ibid. p. 28.

[88] Report of the eighth meeting of the Council of Ministers, EAC Secretariat, Arusha September 2004, p. 136-142.

[89] Report of the fifth summit of East African Community Heads of State, EAC Secretariat, Arusha March 2004, p. 13-14.

c. 'Identification of the need to enhance existing interaction'

Referring to the positive effects of 'geographical situations and historical economic ties of potential applicants in the neighbourhood of the EAC' on the development of the Community, the Council of Ministers note that the Community would 'find it necessary to establish some working relationship with such non member countries at different times and within specific parameters'.[90]

d. 'Need to provide for ensuing structural changes'

In the report the Council of Ministers notes that structural consequences of 'expanded or changed membership' should be considered. These include financial matters, organisational structure and legal issues.

e. 'Principle of Progression'

In light of the principle of progression the Council of Ministers proposed that the applicant countries should be considered for 'different levels of membership after the signing of the EAC Protocol for the Establishment of the Customs Union' with full membership being given at a later date when the Customs Union is established and the candidate countries comply with the criteria for full membership.

The 9th meeting of the Council of Ministers adopted the budget for the Verification Committee and directed the Committee "to undertake study missions to the Republic of Burundi and the Republic of Rwanda"[91]. At the 11th meeting of the Council adopted the report of the Verification Committee, which visited Rwanda from February 28-March 2 2005 and Burundi from October 17-23 of that year, was adopted. Based on this report negotiations were opened with the two aspiring Member States.[92]

During the negotiations which took place in 2006 the Task Force on Legal and Political affairs was charged with the the membership criteria including the acceptance of fundamental principles according to Article 6 of the Treaty. In the document relating to these negotiations the Republic of Rwanda accepted the Treaty and subscribed to the fundamental principles.[93] Examples provided by the Republic of Rwanda on it's adherence to these principles include the establishment of the Office of the Ombudsman, the National Commission for Human Rights, the National Commission for the fight against genocide, the gender monitoring office and the National Youth Council. Furthermore

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[90] Examples given by the Council of projects that would be affected include the eradication of the water hyacinth, the control of trans-boundary animal and communicable diseases, the development of the East African Road Network and the Development of the East African Power Master Plan.

[91] Report from the 9th Meeting of the Council of Ministers, EAC Secretariat, Arusha November 21-24 2004, p. 21-22.

[92] Report from the 11th Meeting of the Council of Ministers, EAC Secretariat, Arusha March 28-April 4 2006, p. 13-14.

[93] High level negotiations on the admission of the Republic of Rwanda to join the EAC, Agreed minutes of the meeting of the task force on legal and political affairs, 3 October 2006, p. 1-2.

the Rwanda's constitution prescribes "that at least 30% of all positions of decision making in the Public Sector are held by women."[94]

In November 2006 the Council of Ministers, based on the reports from the high level negotiations ,recommended the Summit to admit the Republic of Rwanda and the Republic of Burundi to the EAC because they had 'satisfied the criteria and benchmarks set out for their admission'.[95] Based on the Council's recommendation, on 30 November 2006 the Summit decided to admit both countries effective from the first of July of 2007.[96]

After the accession of Burundi and Rwanda a roadmap on how to integrate these countries was drafted. Firstly, the Summit decided that Burundi and Rwanda had to nominate judges for the Court of Justice and elect members to the Legislative Assembly and that the staffing rotation should be adapted for 'the needs occasioned by the enlargement of country membership to the Community.[97] Secondly, the roadmap itself was focused on integration the new Partner States in the programmes of the Community as these were not in place on 1 July 2007. For example, Burundi and Rwanda formally joined the Customs Union in 2008 with applying its instruments in July 2009, two years after their accession.[98] This roadmap had created, albeit temporarily, a two-tiered membership by not having new Partner States fully participating in all EAC programmes.

When asked whether Burundi fulfilled the membership criteria in the same way Rwanda did, dr. Wambugu admitted that this wasn't the case. These possible objections, or reasons for rejecting Burundi's application, were put aside in fear of creating political unrest in the event that they admitted Rwanda, but rejected Burundi. With the Rwandan genocide of 1994 fresh in de memory this approach appears to be justified.

Baregu writes about the reasons for the slow progress in admitting Rwanda and Burundi. Firstly he points out that the Kenya, Tanzania and Uganda were all former British colonies sharing a same language and history while Burundi and Rwanda as former Belgian colonies were speaking French which, according to Baregu, 'created difficulties not only in communication but also in mentations with the feeling that Rwanda and Burundi were francophone while the others were anglophone'.[99]

The second reason that according to Baregu lead to the slow progress in admitting Rwanda and Burundi is dat both countries have had a history 'characterized by ethnic conflicts' which were

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[94] Article 10.4 of the 2003 Constitution of Rwanda.

[95] 13th Meeting of the Council of Ministers, Report of the meeting, Arusha 28 November 2006, p. 20.

[96] Report of the 8th Summit of East African Community Heads of State, Arusha 30 November 2006, p. 6.

[97] Report of the 5th Extraordinary Summit of East African Community Heads of State, Kampala, 18 June 2007, p. 3.

[98] EAC Integration at a glance, Ugandan Ministry of East African Community Affairs, http://www.meaca.go.ug/index.php/eac-roadmap.html (last visited on 21 August 2017)

[99] Baregu 2012, p. 142.

'frequently violent resulting in endless waves of refugees across East Africa's borders, exerting pressure on resources and straining relations with the host communities.'[100] The fear for such conflicts, in reaction to a rejection while Rwanda was admitted, eventually played part behind the decisions in admitting admitting Burundi at the same time as Rwanda.[101]

The accession of South Sudan: the world's youngest country joins the EAC

South Sudan applied for Membership on the tenth of November of 2011, only four months after it became an independent country by separating itself from the Republic of the Sudan. In the application General Salva Kiir Mayardi, President of the Republic of South Sudan, argues that "South Sudan has been intimately linked with East Region, geographically, historically, economically, culturally and politically to such an extent that her citizens view themselves as an inseparable part of the Region" and admits that "as a young State the Republic of South Sudan needs time to build the requisite institutional capacity that goes hand in hand in full (EAC)"[102]

At the tenth Extraordinary Summit the EAC heads of State directed the Council to expedite the verification process with the objective to establish the conformity of South Sudan with the criteria for membership as stipulated by the Treaty and with the Acquis Communautaire of the EAC.[103]

Before a verification team was sent to South Sudan the EAC asked the RSS to fill in a questionnaire to verify the country's application. In this questionnaire the RSS was asked what it's state of constitutionalism was in relation to separation of powers, good governance[104] and its institutional framework for good governance. The only example provided by the RSS was the following: "An indication of South Sudan good governance is declaration of Assets where senior government officials are requested to declare their Assets with that of spouse and children, government is accountable to people through institutions."[105]

From July the 15th until the 31st of July of 2012 an EAC verification team was sent to South Sudan 'to establish the Republic of South Sudan's level of conformity with the Criteria for Admission of Foreign Countries into the EAC as provided under Article 3 of the Treaty'. This team then sent a

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[100] Ibid.

[101] Interview with Philip Wambugu, conducted on 3 July 2017.

[102] Application for Membership Status in (EAC), President of the Republic of South Sudan, 10 November 2011.

[103] Final report of the 10th extraordinary summit of heads of State, 28 April 2012 p. 6.

[104] "Including adherence to the principles of democracy, rule of law, accountability, transparency, social justice, equal opportunities, gender equality as well as recognition, promotion and protection of human and people's rights."

[105] Response to the questionnaire on the verification of the application of the Republic of South Sudan to join the East African Community, Republic of South Sudan, June 2012, p.14.

report to the Permanent Secretaries of the EAC.[106] In this report the committee finds, amongst others, that the RSS had a "limited understanding of EAC and its objectives", that the "RSS has not acceded to most international human rights convention" and "although the Constitution provides for the independence of the judiciary implementation is still a challenge."[107] These findings illustrate the problems the problems of a young nation.

At the 14th Ordinary Summit the EAC heads of state decided, based on the progress report, to open accession negotiations with the Republic of South Sudan.[108]

In the document which concluded the negotiations, and thereby paving the way for accession, the Republic of South Sudan committed itself to the EAC criteria for membership including the Acquis Communautaire and the various principles.[109] As part of this reference is made to the EAC programme of Good Governance and its five pillars.[110] The importance of this programme is underlined as it is"is based on the fundamental principles of the Community that also constitute the benchmarks for admission of new members.[111] Philip Wambugu, who was part of the negotiations representing the EAC Secretariat, admitted that the EAC Partner States could not justify refusing a new member because it doesn't comply with these benchmarks as not all of the EAC Partner States fully adhere to these principles themselves.[112]

In 2016 it was reported that the Summit of Heads of State would decide to grant the Republic of South Sudan an observer status in the East African Community.[113] [114] The reasons for the decision not to grant South Sudan full membership, but an observer status instead was driven by concerns over "over instability, bad governance, democracy and its human-rights record".[115] This of possible ex Article 3.5 a. Three years earlier, however the Tanzanian Minister for East African Cooperation objected to giving South Sudan the status of observer as the Treaty did 'not provide for an

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[106] Report of the verification committee on the application go the Republic of South Sudan to join the East African Community, Kigali, Rwanda, August 13-14 2012.

[107] Ibid, p. 42-43.

[108] Final report of the 14th extraordinary summit of heads of state of the East African Community, 30 November 2012, p. 10.

[109] Negotiations between the East African Community (EAC) and the Republic of South Sudan for its admission into the EAC, Session of ministers/cabinet secretaries, 7 October 2015, Arusha, Tanzania.

[110] These pillars are: 1. Human rights and social justice, 2. Rule of law and constitutionalism, 3. Transparency and accountability, 4. Democracy and electoral processes, 5. Conflict prevention, management and resolution.

[111] Negotiations between the East African Community (EAC) and the Republic of South Sudan for its admission into the EAC, Session of ministers/cabinet secretaries, 7 October 2015, Arusha, Tanzania, p. 7.

[112] Interview conducted on 3 July 2017.

[113] Ihucha 2016.

[114] Ligami 2015.

[115] Ihucha 2016.

intermediate stage of admission in the form of observer status for a foreign country applying for membership.[116] For the East African Community this would have been the first time that a country would join as an observer and this would be in line with the above mentioned 'principle of progression', according to which an aspiring Parter State would obtain different levels of membership before being granted full membership states.

In 2016 the Republic of South Sudan, the world's youngest country, became the sixth Partner State of the East African Community. During a signing ceremony on the 15th of April 2016 the President of South Sudan, Salva Kiir Mayardit, along with John Pombe Joseph Magufuli, acting as Chairperson of the East African Community Heads of State Summit, signed the Treaty of Accession of the Republic of South Sudan into the East African Community.[117] On the fifth of September of 2016 South Sudan deposited the Instruments of Ratification of the Treaty and became thereby the sixth Parter State.[118]

As a country torn by a civil war that started in 2013 South Sudan lacked political stability going into the accession talks with the EAC and its Partner States. A peace agreement in 2015 appeared to pave the way for the accession of South Sudan. This 'Compromise Peace Agreement' was however violated in July 2016.[119] From the autumn of 2016, around the same time as the depositing of the Instruments of Ratification, the civil was reignited by a new uprising against the sitting president.

On the 2nd of March of that year the heads of state of the EAC Partner States decided that South Sudan was welcome to join the EAC after the Council of Ministers sent the report on the negotiations for the admission of the Republic of South Sudan into the EAC.[120]

The current state of the Republic of South Sudan made its accession a surprise, including to people familiar with the matter within the EAC. Bar Somalia the country ranks lowest on the Corruption Perceptions Index, one place below the Democratic Peoples Republic of Korea.[121]

When asked whether the Republic of South Sudan fulfilled all the criteria as prescribed by the Treaty both Dr. Kafumbe, Counsel to the Community, and Philip Wambubu, former head of Infrastructure, acknowledged that the RSS only fulfilled about 70% of these criteria. Reasons for

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[116] Proposed follow-up on the application of South Sudan, letter from the Tanzanian Minister for East African Cooperation to the EAC Secretary General, 28 January 2012.

[117] http://www.eac.int/news-and-media/press-releases/20160412/signing-ceremony-treaty-accession-republic-south-sudan-east-african-community (last visited on 21 August 2017).

[118] http://www.eac.int/news-and-media/press-releases/20160905/republic-south-sudan-deposits-instruments-ratification-accession-treaty-establishment-east-african (last visited on 21 August 2017).

[119] Conflict Resurgence and the Agreement on the Resolution on the Conflict in the Republic of South Sudan, A hurried and Imposed Peace Pact?, C.H. Vhumbunu, http://www.accord.org.za/conflict-trends/conflict-resurgence-agreement-resolution-conflict-republic-south-sudan/ (last visited on 21 August 2017).

[120] Final report of the 17th Summit of heads of state of the East African Community, 2 March 2016, p.15.

[121] Corruption Perceptions Index 2016, Transparency International, https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table (last visited on 21 August 2017).

admitting the RSS given in these interviews included historical links, trade interests (especially from Kenya and Uganda) and mr. Wambugu pointed out that rejecting the RSS on the basis of a deficit in democracy, the protection of human rights and the rule of law would have been difficult because not all the EAC Partner States themselves are fulfilling these criteria for membership.[122] Furthermore mr. Wambugu stated, pointing to the political realities, that criteria are there to reject an application when accession is not politically desirable, whereas a lack of compliance with these criteria can be remedied with sufficient political will. Mr. Wambugu then countered the argument of not admitting South Sudan because it did not meet all criteria by arguing that it is in the Community's own interest to incorporate South Sudan by placing it under the Treaty and the East African Court of Justice and thereby encouraging peace and promoting democracy, the protection of human rights and the rule of law.

Ultimately the decision to approve the accession of a new Parter State is a political one as the power for this lies almost exclusively with the leaders of State. These leaders of State all have their own interests which can influence their decision making. For example, it was reported that the admission of South Sudan was "most likely to be influenced by Kenya, Rwanda and Uganda who stand to fully benefit from Juba most as a member of the Northern Corridor Infrastructure Projects."[123] According to people at the EAC familiar with the matter, in the case of the Republic of South Sudan among these interests is very likely the abundance of oil and other natural resources that are present there.[124] Now South Sudan is part of the EAC these natural resources can be imported at a lower tariff.[125] According to people within the EAC another interest of the Heads of States in admitting new Parter States is that it delays the process of the EAC becoming a federation with a single president.

In contrast to accession of new Member States to the European Union, the moment of obtaining Membership of the East African Community does not automatically give the new Partner State access to all aspects of the Community. At the end of 2016, months after the accession, the EAC has send a mission to South Sudan in order for the RSS to 'smoothly implement the EAC Customs Union.[126] In comparison, Bulgarian and Romanian nationals were barred from the Freedom of movement of workers during a transition period of multiple years after the accession of both countries.

An example of South Sudan's lack of readiness to join the EAC can be found in the cars before the First Instance Division of the East African Court of Justice (EACJ). In this case the Court was asked to rule on the appointment of South Sudan's appointed member of the East African Legislative

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[122] Interviews conducted on Friday June 30th and Monday July 3rd 2017.

[123] Ligami 2016.

[124] See 'Negotiations between the East African Community (EAC) and the Republic of South Sudan (RSS) for its admission into the EAC, Report of the meeting', Arusha 7 October 2015, pp. 50-55.

[125] Ibid.

[126] Integration of Republic of South Sudan (RSS) into EAC; Mission by Director General of Customs and Trade, 17 November 2016.

Assembly (EALA). These were handpicked by President Kiir instead of elected by the South Sudanese Members of Parliament. At an ex parte hearing (the South Sudanese government was not represented) the EACJ granted the applicant the interim measures he requested by blocking the appointment of these EALA members. At the next stage of proceedings the government of South Sudan rescinded the appointment of the EALA members in order to appoint EALA member according to the by EAC law required procedure.[127]

The European Union's enlargement policy is criticised for the use of a double standard where the aspiring Member State is judged to a standard to which existing Member States do not comply. In comparison, the EAC's standards for enlargement are not extensively used to reject application from aspiring Partner States or press these countries to improve their standards. As a reason for this Mr. Wambugu explained that this is because the EAC has not been able to guarantee these standards in the existing Parter States.[128] The EAC thus, in contrary to the EU, does not set double standards. An example of this can be found in the situation in Burundi that reached a hectic point in late 2015.

[127]Attorney General and Speaker of the Transitional Assembly of South Sudan revoke the nomination of nine Members to EALA, East African Court of Justice, July 24 2017, http://eacj.org/?p=3378 (last visited 21 August 2017).

[128] Interview with Philip Wambugu, conducted on 3 July 2017 in Arusha, Tanzania.

Future enlargement: Somalia and Democratic Republic of the Congo

On the same day on which the Summit of the East African Community approved the accession of South Sudan it also considered the progress report on the Verification of the Application of the Republic of Somalia to join the East African Community and directed the Council to undertake the verification exercise.[129] The Republic of Somalia had applied to join the East African Community. As noted in the above, Somalia currently ranks lowest in the Corruption Perceptions Index.[130] With the exception of Rwanda, corruption remains a significant problem in the region.

The 18th ordinary summit of EAC heads of state decided, based on a report of the verification for the admission of Somalia into the EAC, to direct that report for followup by the Council of Ministers.[131] This conclusions in this report are inconclusive to provide an answer to the question whether Somalia will be admitted into the EAC although the Counsel to the Community, Dr. Kafumbe, rated the chances of Somalia joining within the next five years at more than 50%.[132] Similarly to South Sudan's accession, Kenya's economical interests will also influence the the decision making.

As of August 2017 the DRC is yet to officially apply for the membership of the EAC, though it has repeatedly expressed its interest in joining the bloc on several occasions.[133] [134]

[129] Final report of the 17th summit of heads of state of the East African Community, 2 March 2016.

[130] Corruption Perceptions Index 2016, https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table (last visited on 21 August 2017).

[131] Joint communiqué: 18th ordinary summit of heads of state of the East African Community, 20 may 2017.

[132] Interview with Dr. Anthony L. Kafumbe conducted on June 30th 2017 in Arusha.

[133] Michael 2010.

[134] http://www.thecitizen.co.tz/magazine/politicalreforms/DR-Congo-set-to-put-EA-region-to-the-test/1843776-3413904-format-xhtml-op94r5/index.html (last visited on 21 August 2017).

Conclusion

The procedure and the required criteria for joining the East African Community provide clear guidelines for both the aspiring Member State as well as the EAC Partner States and the various institutions involved. From the application to the verification mission and ultimately the negotiations on which the Council and Summit may decide to accept a new member. In practice, however, the actual scrutiny of aspiring Partner States appears to be limited and influenced by political desires. This political approach fits the East African Community's vision to become a political federation.

The cases of the Republic of South Sudan and the Federal Republic of Somalia form a perfect example of the practice in the EAC. While South Sudan was admitted in its state of civil war Somalia was rejected. Both these countries have severe domestic issues that affect the very stability of these nations. To the letter of the EAC Treaty both these countries' applications could have been rejected on the basis of Article 3(3) by not respecting human rights, democracy and the rule of law, but only Somalia was rejected. The difference between these countries can be found in cultural and historic aspects, as also cited in the application of South Sudan.

Noteworthy is that the procedures that were followed by the EAC that led to the admission of the Republic of South Sudan were virtually identical to those that led to the admission of Burundi and Rwanda a decade earlier.

Conclusion

Regional integration, as the term suggests, is a ongoing process that is never a finished product. A Community of Member States is constantly moving by widening and deepening. And as the planned withdrawal of the United Kingdom from the European Union shows it sometimes shrinks as well. In this thesis I have focused on the widening of the European Union, the Association of Southeast Asian Nations and the East African Community. These three organisations all strive to safeguard democracy, human rights and the rule of law in their respective treaties and procedures for admitting new Member States.

While the main focus of this thesis is on the protection and promotion of fundamental values a democracy, human rights and the rule of law I have also touched on tiered membership. various forms of membership and steps toward membership.

The European Union has grown from the founding six Member States to the current 28. During this period of growth the procedure for enlargement has changed significantly. With the first enlargement was mainly centred around economic aspects and the latest enlargements, mainly the 2004 and 2007 rounds, focused on the fundamental values of democracy, the protection of human rights and the rule of law. Not only has the procedure changed substantively, it has also become more complex. This complexity is demonstrated by the more than 30 negotiation chapters.

The Association of Southeast Asian Nations is characterised by its principles of sovereignty and consensus. Because of this the ASEAN's nature differs from the European Union and the East African Community. This character is demonstrated itself by ASEAN's limited focus on human rights. The only example of human rights in ASEAN enlargement can be found in the premature ending of Aung San Suu Kyi's house arrest as a condition for observer status , though it is more likely that this was an attempt not to harm ASEAN's reputation on the international stage.

The East African Community's enlargement rounds have followed the same procedure and structure in both rounds. It is a compact and relatively quick procedure on multiple levels of decision making. The negotiation papers themselves contain numerous commitments without actually providing proof that these commitments will be executed. This is an area which can be improved by introducing post-accession conditionality in these areas.

From the overview in the above it is clear that the nature of cooperation affects how potential new member are approached. In that regard ASEAN is similar to the early beginnings of the European Union with the European Community for Coal and Steel. The focus on human rights, democracy and rule of law only found their way in the enlargement procedure when Greece, Portugal and Spain applied for membership of the European Community and from there these principles have taken centre stage and have been, and are being, used to model candidate countries before their accession.

In comparison, the East African Community shares more of the current day European Union's values and principles on paper. However, practice has shown that so far it hasn't been able to translate these provisions into practice when allowing new Partner States. This is exemplified by the accession of South Sudan. In the negotiation documents the world's youngest country commits, among others, to the principles of democracy, protection of human rights and the rule of law, but in practice this country remains engaged in civil war and only months after closing the negotiations the Compromise Peace Agreement was violated.

The EAC enlargement procedure is thus similar to those of the second and third enlargement of the European Communities. When Greece, Portugal and Spain joined the EC the first attention to values such as democracy can be found. As in the EAC these can, however, only be found on the surface as the core of the negotiations were focused on economic aspects such as the state of industry in the aspiring member states. In contrast to the present day EU enlargement the EAC does not have a good-neighbour criterion to prevent the import of conflicts into the community.

Based on all the above it can be concluded that these organisations show a disparity between theory and practice. In the end the decision to grant membership status and on what conditions is political. The evolution of the European Union has resulted in a highly complex enlargement procedure with a double standard, though this has not made it immune from politics as the application of the Copenhagen criteria has been selective in several cases. In comparison, the procedure to accede into the East African Community is well structured on paper, but is affected by both political ambitions and commercial interests.

The set of five principles for enlargement as set out by the East African Council of Ministers in 2004 can provide an objective standard for the EAC and aspiring member states. Although these were created in the specific context of the applications from Burundi and Rwanda the principles are as valid today as they were in 2004. Not unlike the Copenhagen criteria which were drafted in the context of Central and Eastern European countries joining the European Union these criteria

The three organisations in this thesis all have various forms of membership or at least a phase before full membership. For the EAC this is the yet unused observer status, while ASEAN has granted this status to all member states that acceded after establishment. The EU does not have such a membership, but it has concluded association agreements with third countries that contain a provision on future membership.

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