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# Those Who Knock on Europe's Door Must Repent?

## Bilateral Border Disputes and EU Enlargement

## Andrew Geddes and Andrew Taylor

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## Abstract

This paper explores a neglected aspect of the wider debate about EU enlargement; namely bilateral disputes between a Member State and an applicant, where the former uses, or threatens to use, its membership to block membership to resolve a dispute. As we show through analysis of three cases - Italy and Slovenia, Slovenia and Croatia, and Greece and Macedonia - the EU's transformative power does not always flow 'outwards' towards the state seeking membership. This raises interesting questions about enlargement as international bargaining between sovereign states filtered via a supranational entity formally responsible for the negotiations. Our cases suggest limits to the EU's transformative power in the context of disputes that are linked to the meaning and significance of borders. When enlargement intersects with identity politics, the result can be potentially destabilizing in ways that can lead to a decline in the EU's legitimacy. It is not surprising that the Commission prefers disputes to be resolved bilaterally or via a third-party.

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*'Those who knock on Europe's door such as Ljubljana must make a gesture of repentance'.*
*(Gianfranco Fini in Corriere della Sera 1994: 5)*

## 1.    Introduction

Studies of enlargement focus on the relationship between the European Commission as an agent of the Member States and the applicant country. Enlargement has, and continues to generate substantial and sophisticated theoretical and empirical work, but this paper explores a gap in the literature. Central to enlargement is that Member States *collectively* view a country's application and that progress (or not) is determined by satisfying the EU's criteria as a collectivity, a process concerned with satisfying supranational, not national criteria. Member States are, therefore, advancing a collective supranational interest. A neglected aspect of this process is bilateral disputes between a Member State and an applicant, where the former uses, or threatens to use, its membership to block membership to resolve a dispute. These disputes can be extremely contentious and we examine three, between Italy and Slovenia, Slovenia and Croatia, and Greece and Macedonia.

We show that the EU's transformative power does not always flow 'outwards' towards the state seeking membership and this raises interesting questions about enlargement as international bargaining between sovereign states filtered via a supranational entity formally responsible for the negotiations. European integration has been interpreted as an 'unbundling' of territory while Europe's borders have been characterized as blurred, permeable and fuzzy (for example, Ruggie 1993; Friss/Murphy 1999; Christiansen et al. 2004). However, borders embody and signify power relationships between 'insiders'/'outsiders' and members/non-members, with the power asymmetry decisively in favor of the former. This paper examines three cases: contestation between Italy and Slovenia over territory in Dalmazia, Istria and Fiume; in the Piran Bay between Croatia and Slovenia; and, the name dispute between Greece and Macedonia. These disputes flow from the complexities of Balkan politics but are framed by European integration, providing an opportunity to explore the relationship between European integration and 'obstinate' nation states (Hoffmann 1966). The role and resonance of enlargement in EU integration process is captured by Lavenex and Schimmelfennig who write that: 'the experience of enlargement is illustrative of both the magnetic force of European integration and the transformative power of its norms on candidate countries' (2009: 791-92). This transformative power and the diffusion of institutions and policies across borders have been linked to interplay between instrumental, social and communicative behavioral logics and their effects (Börzel/Risse 2012). However, in our three cases, we find unexpected outcomes. In the Italy-Slovenia case we see evidence of the transformative effects of European integration on the 'insider', in the Croatia-Slovenia dispute, the EU, while insisting on a bilateral solution was drawn into finding a solution, and in the Greece-Macedonia case we see the EU successfully resisting involvement.

Borders are geo-political delineations embodying complex social and political processes shaped by history: they specify the 'inside-outside' (Walker 1993) and 'inclusion-exclusion' (Linklater 1998), shifting attention to 'how actors constitute themselves or are constituted, which inevitably involves identities, orders and borders' (Brown 2001: 119). The EU is skeptical of borders, but composed of bordered national-states, it

must recognize and accommodate its members' concern with borders. Borders might be arbitrary but their effects are most definitely not. The disputes examined point to the coexistence of borders and identities, and the Westphalian state-system will remain the major bearer of identity and border delineation (Newman 2001: 147).

## 2. Borders and European Integration

In a speech in Albania, Guido Westerwelle, the German foreign minister, cautioned Balkan states against nationalist sentiment especially at election time: 'The common goal of the states in the region is, one day, to be part of the European Union, where we have freedom of movement for everybody. That is why a redrawing of national boundaries is out of the question, including the Balkans. In Europe, borders are losing their significance' (Deutsche Welle 2013). Westerwelle captures the centrality and contingency of EU borders.

Friss and Murphy (1999) show how the EU 'produces' effects on members and non-members, effects that remake Europe's boundaries by 'unbundling' of territory. Unbundling is therefore inherent in EU governance (Ruggie 1993). Friss and Murphy (1999), drawing on Smith (1996), identify geo-political, institutional/ legal, transactional and cultural boundaries that can be maintained, strengthened, blurred or moved, and then consider how EU governance leads to 'outsiders' becoming 'potential insiders', then 'pre-ins' and finally 'ins' (Friss/Murphy 1999: 217). This connects with work on 'fuzzy' boundaries. Christiansen et al. (2004) argue the effect of European integration is to blur boundaries, even when 'new' borders emerge as in Yugoslavia's break-up. It is easy to overstate unbundling, thereby obscuring the dynamics of complex border relationships. For example, in this paper we find that territory has been unbundled and then re-bundled and that the EU contributes to re-bundling, not unbundling (Ansell 2004).

In enlargement, we would expect to find a power asymmetry between 'insider' and 'outsider' producing outcomes in the former's favor. This realist view of integration sees applicant's ceding sovereignty in return for membership benefits and increased governing capacity (Mattli 2002; Geddes/Taylor 2013). Each involves an 'insider' (a Member State) and an 'outsider' (applicant state) and focuses on a single issue with no 'securitizing' element. For both insiders and outsiders, there are identity overtones, which have the potential to deepen and strengthen a dispute, making resolution harder. History shows that EU involvement in identity politics can adversely affect pro-EU domestic forces through a loss of support or the co-opting of nationalist sentiment. Far better is the resolution by those most closely involved, albeit within EU norms and politics (Kelley 2004; Stroschein 2012). Each party is a liberal democracy and one of the EU's achievement's (see, for example, the EU's receipt of the Nobel Peace Prize) is resolving inter-state conflict, but neither liberal democracy nor integration rules out inter-state conflict. The EU's involvement is, potentially, a complicating factor. Enlargement could be interpreted as an 'out' being compelled by an 'in' into making concessions not in the national interest but to advance EU negotiations. This potentially undermines the stability of domestic politics and stimulates anti-EU hostility and nationalism, which are outcomes opposite to those sought by the EU.

Diez et al. (2006) identify four EU impacts on border disputes. The first, *compulsory impact*, meshes with the rational incentives model of enlargement (Schimmelfennig/Sedelmeier 2004) which captures the power asymmetry and credibility of the membership perspective and has most effect during the negotiation process (Diez et al. 2006: 575). The inherent power asymmetry and the applicant state's overwhelming desire for membership means we should expect border disputes to be resolved in favor of the 'insider' but in none of cases do we find a compulsory impact. If the EU cannot (or will not) compel a solution, what strategies can it pursue?

Our cases show the EU mixes the enabling and the connective. *Enabling* entails encouraging actors to link their agendas to the EU's to promote and justify domestically unpalatable changes. The objective is for domestic elites to use the demands and attractiveness of EU membership to justify dropping national demands. Do the rewards of integration exceed the costs of nationalism (Diez et al. 2006: 578)? Any sustainable solution must, therefore, involve elites and society interacting extensively over-time: this is the *connective* impact (Diez et al. 2006: 581). The EU has a key role, but it is not a role that it relishes. This is shown by the *idée fixe* that these conflicts are bilateral, a polite fiction that captures the EU's fear of being accused of gross interference or of partiality, which makes the EU a destabilizing influence.

EU engagement is a context-driven mix of the enabling and the connective but the EU aspires to, and sees itself as embodying, a particular conception of peaceful inter-state behavior. Engagement with the EU involves, therefore, a *constructive* impact (Diez et al. 2006: 584). Sustainable dispute resolution rests on the society-wide diffusion of norms that downgrade sovereignty and identity. The EU's aim is that over time these atavistic responses become obsolete (as argued by Hoffmann 1966), losing attractiveness and legitimacy, neutralizing their ability to sustain conflict. This has two problems: first, the state is far from obsolete, retaining sufficient resources and legitimacy to be 'obstinate'; and second, context-dependency means it takes time to work and contexts can change. The EU is, irrespective of its preferences, an actor but its role is not neo-functionalist. Rather it assumes the EU's passive and active leverage (Vachudova 2005) are sufficient to overcome (or at least neutralize) domestic opposition and stimulate change. The constructive impact is most likely to overcome conflict but is very demanding and it takes a long time to work. A constructive impact necessarily requires elite and societal involvement, so is vulnerable to domestic political exigencies and can be disrupted if the EU is perceived as partial or autocratic. Thus, we find 'unexpected' outcomes. In the Italy-Slovenia case, the 'insider' (Italy) changed its policy; in Croatia-Slovenia the EU, despite its assertion of bilateralism, was instrumental in facilitating a solution; and finally, in the Greece-Macedonia case neither moved from their established positions, despite the latter's desire for EU membership and the former's 'insider' status.

## 3.    Italy - Slovenia

Between Italy and Slovenia lies a 199km land border and 29km sea border that 'denies all the commonly known principles of border setting [and] provides the theory of political geography with an excellent example of an exception' (Klemenčić/Gosar 2001: 130). The Italy-Slovenia border has also been embedded within a broader historical debate. For example, Cattaruzza (2007) discusses 'the fascism of the borders'

and the importance of the north eastern borders in shaping Italy's imperial ambitions during the fascist period and then subsequently as an area of international friction during the Cold War. Within the Italian political system the sense of grievance was felt most strongly on the 'post-fascist' right of Italian politics.

At the end of the Second World War around 350,000 ethnic Italians fled Dalmazia, Fiume and Istria (many who fled died in the caves, *le foibe*); their property and possessions were nationalized by Tito. The neo- and post-fascist right in Italian politics protested loudly at the 'silence' about *le foibe*, and the neglect of the official memorial day (February 10) instigated by a 2004 law.

The Treaty of Paris (February 1947) ceded to Yugoslavia Zara, the island of Pelagosa, the city of Fiume and most of the Istrian peninsula, with the 'free territory of Trieste' under UN supervision. In 1954 Yugoslavia re-stored Trieste to Italian control. Under the Treaty of Osimo (November 1975) between Italy and Yugoslavia, Italy renounced territorial claims on the Istrian peninsula and this was supplemented by a series of proto-cols (Trieste 1980, Udine 1982 and Ljubljana 1988) on border related issues (Klemenčić/Gosar 2001). The break-up of Yugoslavia and Slovenia's declaration of independence and speedy EU recognition, including by Italy, meant acceptance of the territorial boundaries as agreed at Paris and affirmed by the Treaty of Osimo. Left open was the question of property rights of the Italians that fled after the war. Article 68 of the Slovenian constitution of 1991 prohibited the buying of land by non-Slovenian citizens. In 1992 a post-inde-pendence meeting held in Rome between diplomats from both countries led to an agreement to recognize and implement previous agreements.

The path to resolving property rights began under the technocratic government of Carlo Azeglio Ciampi (April 1993 – May 1994) and then continued by the first, short-lived Berlusconi coalition government in the final months of 1994, which included ministers from the neo-fascist Movimento Sociale Italiano-Alleanza Nazionale (MSI-AN). In October, the Italian foreign minister Martino noted that there were still serious issues to be resolved: restitution of property and preferential access to the property market for exiles. Martino stated that 'the situation is Europeanised, the EU has understood that our case has its merits' (La Repubblica 1994).

There was the clear expectation that the EU impact would work in Italy's interests but this became en-tangled with the 'modernization' of the neo-fascist right and the transformation of the MSI into the AN (January 1995). The tensions involved in this transition were evident in a speech delivered by party leader Gianfranco Fini in the north eastern city of Trieste in October 1994. The Istrian question was particularly emotive for the AN with a particular resonance in Trieste that had helped gain votes for the MSI. The di-lemma for the AN was that it had become a party of government in a state with a strong European identity: the nationalist line ran counter to the demands of coalition government and the need to not to disturb rela-tions with the EU. The MSI-AN rank and file would have preferred to veto the opening of negotiations with Slovenia until an amendment of the Slovenian constitution was made regarding foreign property rights. However, as the Corriere della Sera (1994) wrote, Fini is 'not the leader of a tiny nostalgic party, rather he is the second leader of a coalition government with some ambition to sooner or later become the first leader'. Fini was seeking international credibility, for example by visiting the U. S. and nothing was more likely to upset than a display of ultra-nationalism. The U. S. was also very keen to see former Yugoslav states move towards the EU. The dilemma for Fini was that after the democracy/fascism and liberalism/populism

debate, he was now faced with another difficult choice: Europeanism or nationalism? The Slovenian issue was one of the steps that signaled the MSI's evolution into a different and more convincingly center-right party, the AN.

Fini's problems were evident when he spoke at a party rally in Trieste (October 1994). Introduced by a local member of parliament renowned for his hard-line position, who warmed-up the crowd by asking: '*Triestini*: do you believe in the friendship of the Slovenians?' To which the crowd responded 'No!'. Earlier in the day, Fini had declared that the AN had broken with fascism and chosen democracy ('we are all children of democracy') and in his speech that night, Fini said that 'on the principle of national identity we will not accept compromises', criticizing the 'semi clandestine' accord in 1994 between the Italian and Slovene foreign ministers agreed in Aquileia that had not been presented to Parliament. Fini argued that those who knock on Europe's door must make a gesture of repentance; Slovenia had to 'recognize that the lands in Istria and Dalmazia were Italian and they have to kneel before the caves (*le foibe*) into which were thrown the victims of the ethnic cleansing unleashed by Tito's followers' (Corriere della Sera 1994).

The fall of the first Berlusconi government (December 1994) produced another technocratic government led by Lamberto Dini, which indicated a readiness to make concessions to Slovenia to unblock bilateral relations and open the way for accession negotiations. This risked tension with the center-right who still held a parliamentary majority at that time. The government took a dual track approach: Italy would not seek to veto talks about Slovenian accession while Slovenia would negotiate on the issue of ex-Italian property. This provoked hostility from the AN with Fini insisting the matter be brought to Parliament but this did not form part of the technocratic government's program presented to Parliament. Fini was strongly critical of the failure to consult Parliament when the Under-Secretary for Foreign Affairs, Susanna Agnelli, announced (4 March 1995) that the Italian government would not block the opening of accession talks with Slovenia. Dini signed the Association Treaty between Slovenia and the EU in June 1996 – the first ex-Yugoslavian country to move towards the EU. The EU played a key role in this outcome. The 'Solana compromise' (August 1995) was proposed by Spanish Foreign Minister Javier Solana during the Spanish EU presidency. It required that Slovenia would, within four years of the opening of accession negotiations, recognize the right of EU citizens to buy property in Slovenia with that right immediately extended to EU citizens that had resided for at least three years on Slovenian territory, this included the Istrian peninsula refugees. The question of compensation or restitution of property was left open.

In May 1996 the Dini government was replaced by a center-left government led by Romano Prodi. The Under-Secretary for Foreign Affairs was Piero Fassino from the center-left Olive Tree government. In his autobiography, *Per Passione*, Fassino (2003) writes that Prodi had been told by President Clinton that he expected resolution to facilitate Slovenian accession. Under Prodi, the Italian government made it clear that it would surrender claims for restitution of property of those that fled while Fassino secured assurances from the Slovenian government that they would accept the Solana compromise. This unblocked the dispute for the Italian government. There was strong international pressure on the Italian government. Slovenian membership was strongly supported by the German government while Slovenia was also amongst the first former Eastern Bloc countries to move towards joining the EU and NATO.

Integration's transformative effects worked 'inwards'. This was clearly linked to the historical location of remembrance of *le foibe* on the right of Italian politics and the modernization of the post-fascist right under Fini. Fini's quest for international and domestic political respectability meant that he embraced Europeanism. The technocratic governments of Dini and Prodi were very susceptible to pressure from the US, and were also strongly pro-European, which counter-acted any recourse to nationalist sentiment in the context of the dispute about property rights.

## 4.      Croatia - Slovenia

In the early-1990s Croatia and Slovenia seemed to have much in common (a western orientation, a perception of being trapped in a Serb-dominated federation) but from independence bilateral relations were poor, symbolized by the dispute over the Bay of Piran (Balkan Report 2004) that generated 'years of petty incidents and squabbles (…) polarized attitudes among both the general public and political leaders in both countries' (RFE/RL News 2009a). The border dispute was generated mainly but not exclusively by Yugoslavia's break-up, which produced a border of 668km whose demarcation became a powerful symbol of national politics and affected profoundly both countries' relations with the EU (Arnuat 2002; Černic/ Aubley 2007).

Draft proposals dating from Slovenian independence declaration accepted the existing 'republican' boundaries (*'uti possidetis juris'*) but the following year Slovenia declared sovereignty over the entire gulf (Sancin 2010: 93-111). Croatia, citing the first part of Article 15 of the UN Convention on the Law of the Sea, claimed the border should be equidistant from the shore whereas Slovenia emphasized the second part citing the principle of *'ex aequo et bono'* ('according to the right and good' or 'from equity and conscience') which permits arbitrators to dispense with the letter of the law in favor of what they consider fair and equitable. A solution seemed close in July 2001 when the Slovenian and Croatian prime ministers, Janez Drnovšek and Iviča Račan, formulated the Drnovšek- Račan Agreement that proposed a 3.6km by 12km sea corridor (about 80 percent of the Piran Bay) for Slovenia and was seen by both sides as both a positive contribution to EU membership as well as regularizing bilateral relations between the new republics and symbolizing 'new' politics in the Balkans. However, ominously, some Slovenian parties (for example, the Slovenian National Party and the Slovenian Democratic Party) opposed the agreement and an activist, Josko Joras, who fought for ten years to keep his house in Slovenia, attacked the agreement as 'the latest in a series of territorial "losses": the 1918 loss of Carinthia to Austria, the 1945 loss of Trieste and Gorizia, the 1954 loss of Slovene ethnic territory north of the Mirna River (…)' (Balkan Report 2001). Slovenia's parliament ratified the Drnovšek- Račan Agreement but Croatia's never discussed the agreement and attacked Račan for surrendering Croatia's interests to Slovenia, insisting the dispute be referred to the International Court of Justice at The Hague (ICJ). Matters were exacerbated by Croatia's 2003 declaration of a 'fishing and ecological zone' in the Adriatic. Croatia's original intention was an exclusive economic zone but it backed down after pressure from the EU and its neighbors. Croatia's elections were due in November and some parties (such as the Croatian Peasants' Party and Party of Historical Rights) declared that not to declare the ecological zone constituted a Slovenian victory. One party, the Democratic Party of Retired Persons, compared the proposal to an act of the fascist Independent State of Croatia and there was widespread public criticism of the government for failing to defend Slovenia's sovereignty (Balkan Report 2003).

In 2007 Croatia's and Slovenia's prime ministers, Ivo Sanader and Janez Janša, agreed in principle to refer the dispute to the Hague. This time the so-called Bled Agreement enjoyed strong Croatian support, with Slovenia less than enthusiastic, and a joint commission worked on the border for eighteen months. In the 2007 Slovenian and Croatian elections bilateral border disputes (of which the Piran Bay was only one) were not of major significance but assumed a symbolic importance out of all proportion to their strategic or geo-political significance, becoming tied to Croatia's EU's accession with Slovenia's foreign minister, Dimitri Rupel, threatening to block negotiations. A Slovenian veto was now a factor in domestic and bilateral relations with the Slovene National Party led by Zmago Jiliničič and others, such as Dimitrij Rupel (then of the Slovenian Democratic Union) and Dušan Mramor (a former finance minister) urging this course of action. The veto threat grew when twelve Slovenes (including the leader of the Slovenian People's Party) were arrested by Croatian border police attempting to visit Josko Joras (see above). The Prime Minister, Anton Rop, declared in the run-up to the 2004 elections (which Rop lost) that Croatia was not a suitable member of the EU.

The EU, conscious of the sensitivity of the problem, insisted this was a bilateral issue. Conflict was precipitated by Croatia submitting documents and maps (some claim this was deliberate; others that it was an oversight) to the Commission not marked with the disputed areas, which Slovenia interpreted as a formal claim even though Croatia insisted the maps held no great significance. Olli Rehn, the enlargement commissioner, with the unresolved issue of Cyprus before him, warned both sides that 'the Commission views all border disputes as bilateral issues that do not belong to the accession process' (Balkan Insight 2008a). The Croatian and Slovenian presidents, Stipe Mesic and Danilo Turk, called for dialogue, with Turk citing the Drnovšek- Račan Agreement as a possible way forward despite the hostility of nationalists in both countries. The Croats rejected the agreement in favor of third-party arbitration. In 2007 the Slovenians agreed to the proposed reference to the ICJ but subsequently backed out, and in an effort to move the process forward the French government, then holding the EU Presidency, offered a solution. Sarkozy proposed both Slovenia and Croatia sign an agreement not to pre-judge the border issue in order to facilitate progress with enlargement. This proposal produced a three-day discussion of Slovenia's suggested amendments to Sarkozy's scheme at the Committee of Permanent Representatives (COREPER). Of the EU's members only Slovenia opposed the French plan and no progress was made. Slovenia agreed membership negotiations should not be used to resolve bilateral issues, even though this is what happened, but the EU's members were unwilling to strong-arm an EU member because of the precedent this represented. Significantly, France put more pressure on Croatia than Slovenia to concede.

On 19 December 2008 Slovenia blocked the opening of new chapter negotiations with Croatia. The other EU members approved continuing accession negotiations and some criticized Slovenia's 'un-European' stance. Some Croat politicians, including its president, argued Slovenia's unilateral actions effectively made the EU responsible for finding a settlement but the Commission stuck to its position that this was a bilateral, not an EU or enlargement question (Balkan Insight 2008b). Justified as a legitimate defense of Slovenia's sovereign rights, on 23 June and 23 July Slovenia blocked the closure of further chapters with Croatia. In January Slovenia hinted at blocking Croatia's accession to NATO. The extra-parliamentary Party of the Slovenian Nations and the Institute of 25 June amassed 5,000 signatures for a referendum on Croatia's accession, which gave it until March to gather the additional 40,000 needed to trigger a national referendum. This effort failed dismally (only a further 2,500 were gathered) and Croatia joined NATO in April

2009. Although enlargement negotiations with Croatia continued, progress inevitably slowed and Slovenia reiterated frequently there would be no progress until the dispute was resolved.

With Rehn's support, contacts continued at official and expert level, where a consensus developed that the only viable way forward was international arbitration but progress was limited by differences between the two sides on the form this should take (Croatia was still insisting on the ICJ). Nevertheless, in early 2009 there were signs matters were coming to a head with the EU insisting on bilateral negotiations, coupled with some variant of third-party arbitration. No progress was made at a meeting between Sanader and Pahor at Mokrice in Slovenia, because of Croatia's insistence on using the ICJ and the latter's on a European-level solution. Rehn refused any formal EU role but conceded the Commission would facilitate mediation: 'It is the stance of the European Commission that this is a bilateral issue (…) but this issue has now become a European issue, although it is not directly connected with negotiations or Croatia's joining the EU' (Balkan Insight 2009). Rehn proposed a five-strong panel of legal experts to develop a joint statement not prejudging the dispute and build trust, and then move on to finding a settlement process.

Slovenia and Croatia saw this as a way forward but little was achieved until Ivo Sanader's resignation on 1 July 2009. He was succeeded by Jadranka Kosar. After two meetings earlier in the year, the third (on 11 September in Ljubljana) settled the final details of an agreement and Kosar informed the Swedish Presidency that the Croatian government would not prejudge the border (essentially the French proposal) and Pahor announced that Slovenia's veto would be lifted, negotiations would take place under the EU's auspices. The final shape of the arbitration process was settled in Zagreb (26 October); on 2 November the Croatian parliament approved the arbitration agreement, which was signed in Stockholm on 4 November 2009 (RFE/RL News: November 4, 2009a). Despite the Slovenian government continuing to block three chapters (environment, fisheries, and foreign, security and defense) a referendum approved international arbitration by 51.4 to 48.5 percent in June 2010. The final agreement (25 May 2011) created a five-member tribunal composed of international legal experts (three were to be jointly selected from a panel of five by the two governments, who would also appoint a member each) and this ad-hoc tribunal was registered with the UN. It was expected to take three years to reach a settlement and its decisions would be binding. Neither the European Commission, nor the EU, was a party to the agreement, confirming the dispute's bilateral status, but the Commission would 'provide its good offices', lauding the agreement as 'a positive political signal for the further development of the good neighborly relations between the two countries as well as for the Western Balkans regions [sic] showing how difficult issues could be solved' (CEC 2012, 1).

## 5.    FYROM - Greece

Macedonia declared independence from Yugoslavia (September 1991); its constitution proclaimed it the 'Republic of Macedonia' and thereafter it and Greece have been mired in a dispute over the former's name. The Greek foreign ministry argues this 'contravenes the fundamental principles of international law and order [and] respect for good neighborly relations, sovereignty and territorial integrity'. Macedonia is accused of 'irredentist and territorial ambitions (…) through the counterfeiting of history and usurpation of Greece's national and historical heritage'; independence was based on 'the artificial and spurious notion

of the "Macedonian nation", which was cultivated systematically through the falsification of history and the exploitation of ancient Macedonia (…)'. In these circumstances 'Greece reacted strongly to the theft of its historical heritage and the treacherous territorial and irredentist intention [of FYROM]' and blocked NATO and EU membership (Hellenic Republic, n.d.; see also REF/RL 2011). The Macedonian government's position was that the country's constitutional name could not be surrendered and to attempt to force this risked destabilizing the region. Many Macedonians regard the FYROM appellation and the external imposition of a new flag and constitutional amendments 'as humiliating and insulting' (RFE/RL 2005).

Macedonia's independence reflected the increasingly complicated practice of recognition (Turk 1995). The European Communities' (EC) foreign ministers meeting in Brussels issued the Declaration on Yugoslavia (16 December 1991). This concluded that prior to recognition any ex-Yugoslav state must 'adopt constitutional and political guarantees ensuring that it is has no territorial claims towards a neighboring Community State and that it will conduct no hostile propaganda activities versus a neighboring Community State, including the denomination of a name which implies territorial claims' (ASIL 1992: 1486). The Declaration outlined a process under which the Badinter Commission (the Arbitration Commission for Yugoslavia, created as part of the EU peace process in Yugoslavia) would pronounce on Macedonia's request for recognition, although its opinions were not legally binding. Badinter concluded (the full reasoning is given in Opinion 6, delivered on 11 January 1992) Macedonia 'satisfies the tests' for recognition and, having explicitly renounced all possible territorial claims, concluded 'that use of the name "Macedonia" cannot therefore imply any territorial claim against another State' (Turk 1993: 77-80). EC foreign ministers meeting at Guimares (2 May 1992) declined to recommend recognition, because a name acceptable to all parties had to be found. A solution that did not accept the name Macedonia was not acceptable to the Macedonian government, while the name's inclusion was unacceptable to the Greek government and 'the issue has been reduced to a contest of strength and influence between Athens and Skopje, with the former (…) exercising a de facto veto of EU policy making on the question' (Rich 1993, 53).

On 30 July 1992 Macedonia applied for UN membership but the application stalled for a year largely as a result of the internal security situation (Phillips 2004). However, during 1992 international bodies, such as the IMF and World Bank, increasingly adopted the appellation 'the former Yugoslav Republic of Macedonia' (FYROM) which, in January 1993 (on the proposal of France, Spain and the UK), was accepted by the UN Security Council but rejected by Greece and Macedonia. Under intense pressure from the EU and NATO, Constantine Mitsotakis, the Greek Prime Minister, endorsed the FYROM proposal in March, as did the Skopje government. On 7 April the Security Council recommended to the General Assembly FYROM be granted UN membership with its 'official' name to be decided (UN 1993a; 1993b). This compromise was carefully constructed but Greece rejected FYROM being seated under 'M' and FYROM rejected 'F', it was eventually seated under 't' ('the former…') next to Thailand. Although the UN's decision was not mandatory, 'FYROM' was gradually accepted as the norm.

Bilateral relations were formalized by the Interim Accord (13 September 1995). This has overtones of a Marx Bros film; the names of neither country were used (Greece was 'the Party of the first Part' and FYROM 'the Party of the Second Part') but formal diplomatic relations were established, frontiers were accepted as inviolable, Macedonia abandoned the Vergina Sun as a national symbol and changed its constitution, historical and cultural patrimony would not be exploited by either side, the movement of people and goods

(a trade embargo imposed by Greece in 1993 was removed under U.S. pressure) would not be allowed, and negotiations would take place under UN auspices to settle the name dispute (UN 1995). After signing, the issue descended into stalemate despite successive bouts of negotiation (RFE/RL 2005b).

FYROM's admission to the UN led the former Greek foreign minister, Antonis Samaras, to defect from New Democracy, leading to the fall of the Mitsotakis government and its defeat by Papandreou's PASOK in October 1993. The new PASOK government adopted an even harder line. The Macedonian parliament accepted the UN deal – 30 to 28 with 18 abstentions – but the opposition VMRO-DPMNE (Internal Macedonian Revolutionary Party – Democratic Party for Macedonian National Unity) called a vote of confidence which the government survived. Negotiations on the name dispute continued sporadically under article 5 of the Interim Accord but there is little point in detailing them as little progress has been made. The central problem was Greece's concern over the word 'Macedonia', despite pragmatically accepting the provisional name and by the use of modifiers (for example, 'Nova Makedonija', or 'Vardar Macedonia'); Greece remains opposed to the international use of the Republic of Macedonia and suspects that over time any qualifier will fall into desuetude. The government in Skopje feels that accepting a qualifier would lead to questioning of its identity; President Crvenkovski, for example, 'made clear that Macedonia will not accept anything but the name Republic of Macedonia in its dealings with the rest of the world' (RFE/RL 2005b). Greek attempts to persuade international organizations to drop FYROM failed. In March 1997, for example, when relations appeared to improve, the Greek foreign minister, Theodhoros Pangalos, met the Macedonian President, Kiro Gligorov, and 'reportedly avoided any reference to Macedonia's name during nearly two hours of talks' (Naegele 1997).

Under the Interim Accord Greece was not to obstruct FYROM's membership of international organizations. At the NATO Bucharest summit (April 2008) Greece's case for the 'non-invitation' of FYROM was accepted (NATO 2008: para 21). With respect to the EU, the June 2008 EU Council expressed its conviction that FYROM would make progress in its relations with the EU through satisfying the conditionality laid down in the enlargement process but 'a negotiated and mutually acceptable solution on the name issue remains essential' (CEC 2008, 6). Thus, the name dispute became part of the enlargement process.

Greek hostility was increased by the VMRO-DPMNE's policy of 'Antikvizatzija' ('antiquization'). The VMRO-DMNPE claims to be the inheritor of the VMRO, a resistance organization formed in 1893. It can be described as center-right/Christian democrat, pro-NATO and EU membership, and nationalist, drawing but the bulk of its support from ethnic Macedonians. After 1990 VMRO-DPMNE was the largest party but refused to form a coalition with ethnic Albanians and boycotted the 1994 elections; in 1998 it did enter coalition with the Democratic Party of Albanians. In 1999 the VMRO-DPMNE's candidate also became president. In 2002 the VMRO-DPMNE government was defeated and in 2004 it lost the presidency. Recovery in 2006 saw the incoming government adopt the antiquazion policy, which accelerated after the NATO non-invitation which boosted VMRO-DPMNE support in the 2008 elections, with its calls to resist external pressure (RFE/RL 2008). In the 2008 parliamentary elections the VMRO-DPMNE electoral coalition polled 48.7 percent of the votes cast. In December 2006 Skopje airport was renamed 'Aleksandar Veliki' ('Alexander the Great') and several statues of Alexander and his father Philip II of Macedon were erected, culminating in the unveiling of the 22m high 'Warrior on a Horse' in Skopje in 2011 and an even larger statue of Philip II is planned for the same square as part of the 'Skopje 2014' urban renewal program. Sports stadia, highways and airports,

as well as streets and squares have all been renamed (RFE/RL 2011). A government statement argued, 'we see this as an expression of our identity, a kind of nation-building exercise, and a confirmation of our state-hood' (Kuzmanovski 2009). The 'Skopje 2014' project and the 'antiquization' policy 'represents for many a nationalist vision of the state that leaves little room for minorities, especially Albanians – and alienates those many Macedonians who do not share it either. The project has nothing to do with an EU future and, by gratuitously provoking Greece, is actually postponing it' (ICG 2011: 23).The most recent provocation (from the Greek perspective) was Macedonia's decision to introduce new car license plates with 'MK' as the national identifier. Justified as harmonization with EU rules, Greek border officials covered the offend-ing letters with sticky-tape (O'Connor 2012).

Antiquization is proving costly financially and in international sympathy. It has also been blamed for the growing nationalism and authoritarianism of the VMRO-DPMNE, which threatened to undermine the Ohrid Agreement and worsen relations with the Albanian community and jeopardize internal stability. The name is fundamental to Macedonian identity, hardly at all for Albanians, and any split along ethnic lines would produce a political crisis. Albanian politicians have sought to avoid involvement whilst expressing disquiet at the way Gruevski and the VMRO-DPMNE have used the dispute to strengthen their domestic popularity at the cost of progress towards the EU by refusing to compromise with Greece. Confrontation is bound to fail; the only solution is third-party intervention. Politicians have committed to putting any solution to a referendum, which also poses problems as approval requires a two-thirds majority but about 55 percent (64 percent outside the Albanian areas) of voters oppose a name change in return for EU mem-bership (ICG 2011: 20-21).

In November 2008 FYROM instituted proceedings against Greece at the ICJ, alleging a breach of Article 11 of the Interim Accord in blocking FYROM's NATO membership. In its judgment (5 December 2011) the ICJ found (by 15 to 1, only the Greek judge voted against) that Greece had breached the Interim Accord but that it could not order Greece to comply or instruct Greece not to repeat its actions with any other organization (ICJ 2011). EU involvement with Macedonia (Taylor et al. 2012) is extensive but the mem-bership issues dates from the Stabilization and Association Process (SAP) under which a feasibility study (16 June) recommended negotiations should begin. A Stabilization and Association Agreement (signed on 9 April 2001) came into force on 1 April 2004, making FYROM the first Western Balkans country to have an agreement in force. On 9 November 2005 the Commission issued its Opinion on FYROM's application for membership and recommended granting candidate status, which the European Council approved in December. In June 2007 the European Parliament passed a resolution that, in effect, supported Macedonia, the first time an EU institution had taken a clear position, arguing 'the name issue must in no way be used as an obstacle to the opening of negotiations and EU accession' (RFE/RL 2007).

The EU's official position is that this is a bilateral issue in which the lead is being taken by the UN and is therefore separate from enlargement (RFE/RL 2009a). The Commission wants to avoid importing unre-solved bilateral disputes into the EU but all 27 EU members must agree to the opening of negotiations. In October 2009 the Commission recommended opening negotiations on accession but these were blocked by Greece until the name issue was resolved. The High Level Accession Dialogue (HLAD) was instituted by the European Council in December 2012 to maintain progress in the face of Greece's veto. A component of the HLAD is resolving the dispute under UN auspices and negotiations took place in New York (29-30

January; 8-9 April) but there was no progress (CEC 2012: 11-12). In 2009 Dimitris Droutsas, who shared the foreign ministry portfolio with Prime Minister Papandreou, declared, 'The name issue must be solved before we can even think of opening accession negotiations with Skopje (...). We are calling this the national red line' (RFE/RL 2009b). This remains the position. The Commission will not force the issue while Greece is restructuring its economy and thereby posing a threat to the coherence of the Euro-zone and when the nationalist right is gaining influence in domestic politics.

## 6.      Conclusion

Is the state 'obstinate' or 'obsolete? The evidence presented here is that in the context of EU enlargement and border conflict national states are both, simultaneously. Our cases testify to some limits to the EU's transformative power in the context of disputes that are linked to the meaning and significance of borders. The three cases presented in this paper suggest that the notion of Europe's transformative power can benefit from a more nuanced approach in understanding its impact on both member and applicant states alike. Evidence from Central and Eastern European (CEE) enlargement and, to a lesser degree, in the Western Balkans is that when enlargement intersects with identity politics the result is potentially destabilizing in ways that can lead to a decline in the EU's legitimacy. It is not surprising that the Commission prefers disputes to be resolved bilaterally or via a third-party.

In all three of the cases assessed in this paper, borders have the potential to stimulate identity politics and nationalist opposition to the integration project marked by a political discourse that is not of the type sought by the EU.

The cases have three major points of comparison: first, to a greater or lesser degree all involve the issue of identity; second, their domestic impact is to stimulate nationalist sentiments; and third, the conflicts pose major problems for elites, articulating a tension between 'national' and 'European' orientations. All three pre-date the EU but have become folded into enlargement, part of the wider integration agenda and discourse and they are inimical to this agenda and discourse. However, they are integral to the politics of the national-state. That these conflicts became an aspect of enlargement inevitably draws in the EU and the obvious solution is to use the power asymmetry and the applicant's desire for membership to engineer a solution that would be in favor of the 'insider'. Noticeable, however, is the EU's reluctance to engage, reflected in its insistence that these are bilateral issues not related to enlargement. The EU's compulsory impact (see Diez et al. 2006) explains *none* of the outcomes. At the heart of the EU's role in border conflicts is a paradox: the power asymmetry integral to enlargement, which points to a compulsory impact, in reality limits the EU's transformative power because its assertion could destabilize both domestic politics and enlargement by stimulating illiberal politics. At least two other outcomes are possible: one that favors the 'outsider', or stalemate, which challenges the view that power resides with the 'insider'. We find outcomes favoring the 'outsider' (Italy-Slovenia), mutual adjustment (Slovenia-Croatia) and stalemate (Greece-Macedonia) that can be explained by, first, the specifics of each case; and second, the mixed strategy pursued by EU that is intended to encourage the adoption of the EU's preferences.

The reorientation of the 'post-fascist' right in Italian politics and its 'choice for Europe' played an important domestic role on external pressure from the EU and the U. S. The EU's transformative power flowed inwards. In the Slovenia-Croatia case we see elites slowly moving away from a 'national-interest' stance (approved by substantial sections of domestic opinion) to one of compromise based on the recognition that integration offered greater long-term gains. The Greece-Macedonia dispute shows clearly the inhibitions on the EU's transformative power, notably its refusal not just to compel a resolution but to become actively involved.

These disputes reflect the tension between the EU's unbundling and re-bundling of territory: the tension between Westphalian and post-Westphalian sovereignty, a tension articulated in Westerwelle's speech cited earlier. Our cases show the EU to be promoting a constructive impact, seeking to embed the 'EU way' into domestic politics to transform inter-state relations. Embedding an EU identity, discourse and norms focuses on *enabling* (linking domestic political agenda to integration to justify extensive, and invariably painful, adaption) and *connectivity* (multiplying contacts between actors over time). The resilience (or 'obstinacy') of the national-state (acute in the Greece-Macedonian case because of the strength of the identity dimension), pushes against the EU's active and passive leverage, which encourages movement along the road to integration (towards 'obsolescence'). The EU's task is to balance these powerful tensions.

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