

SCHOLARLY ARTICLE

Conditionalities in International Organization Accession Processes: Spreading Business and Human Rights Norms in Central and Eastern Europe?

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Abstract

Governments sometimes adopt policies that are not aligned with their preferences or have not come onto their agendas when doing so is linked to a reward. International organizations can therefore set conditions for coveted membership that include adopting new human rights and regulatory policies. As international organizations increasingly converge around the UN Guiding Principles on Business and Human Rights, how might they promote national uptake of these guidelines? This article considers the prospects of accession conditionality in answering this question. The focus of the article is on European Union and Organization for Economic Cooperation and Development (OECD) expansion in Central and Eastern Europe, where uptake of business and human rights policies remains comparatively low. The article argues that while these organizations increasingly include business and human rights conditionalities in accession negotiations, there remains significantly greater scope for promoting the Guiding Principles.

Keywords: Accession conditionality; European Union; International organizations; Organization for Economic Cooperation and Development

1. Introduction

In February 2022, the Russian invasion of Ukraine brought worldwide attention to atrocities against Ukrainian civilians. It also brought attention to business and human rights (BHR) in Central and Eastern Europe (CEE) as foreign companies withdrew from the Russian market or considered whether to continue operating in Ukraine, and many governments implemented sanctions. The war also drew attention to a political question that typically attracts less interest: accession to international organizations (IOs).

The day after the invasion, the Organization for Economic Cooperation and Development (OECD) announced it was formally terminating Russia's accession process. Three days later, Ukraine applied to join the European Union (EU). The European Parliament adopted a resolution calling for granting Ukraine 'candidate country' status and declaring that Serbia's non-alignment with EU sanctions damaged its own accession prospects.¹ In

¹ European Parliament, Resolution of 1 March 2022 on the Russian Aggression against Ukraine, 2022/2564(RSP), paras 37–38.

April, the President of the European Commission presented Ukrainian President Volodymyr Zelenskyy with a questionnaire to inform the Commission's opinion on Ukraine's candidacy.² The EU gave both Ukraine and Moldova candidate status in June.³ The war also motivated Finland and Sweden to pursue accession to the North Atlantic Treaty Organization (NATO).⁴ Even the 2014 protests in Kyiv that partially precipitated these events were arguably more about identity and status related to IO accession than about economic policy or security.⁵ These developments may be unsurprising provided that 'creating national identities or avoiding wars' are key motivations for joining IOs.⁶

Beyond the war, other CEE states also experienced frenzied debate over IO accession in early 2022. Bulgaria blocked North Macedonia's path to EU accession just before negotiations began, insisting North Macedonia change its constitution to recognize its Bulgarian minority. Bulgaria's veto also threatened to imperil Albania's membership bid, as the two states are meant to enter simultaneously,⁷ although the path cleared in June when the Bulgarian parliament voted to remove its veto.⁸ Bulgaria is also undergoing its own IO accession process: in January 2022, the OECD announced it would open accession talks with six candidates, including Bulgaria, Croatia and Romania.⁹

Clearly, IO accession is not merely symbolic politics when it dominates foreign policy amidst geopolitical and humanitarian crises. Governments so badly want to join IOs that they may even agree to adopt policies they do not want. 'Policy transfer' from IOs to national governments is most often described as 'coercive' (as opposed to 'voluntary' learning from previous adopters), and IOs can play a key governance role by stipulating the conditions that governments must meet to receive benefits.¹⁰ It is not only existing members to whom IOs transfer policies; they are also capable of policy transfer by imposing conditions non-member states must meet to acquire the benefit of membership. These 'accession conditionalities' constitute a special governance modality.

This article examines the prospects of leveraging accession conditionality to promote adoption of BHR norms in CEE, where BHR policy is relatively under-developed and IO

² Deutsche Welle, 'Ukraine: EU Chief Offers Kyiv Fast Track to Membership', *Deutsche Welle* (8 April 2022), <https://www.dw.com/en/ukraine-eu-chief-offers-kyiv-fast-track-to-membership/a-61409635> (accessed 24 April 2022).

³ Alexandra Brzozowski, 'EU Leaders Grant Candidate Status to Ukraine and Moldova', *Euractiv* (23 June 2022), <https://www.euractiv.com/section/europe-s-east/news/eu-leaders-grant-candidate-status-to-ukraine-and-moldova/> (accessed 29 June 2022).

⁴ Pär Karlsson, 'Uppgifter till SvD: Andersson vill in i Nato', *Svenska Dagbladet* (13 April 2022), <https://www.svd.se/a/Wj5gW2/uppgifter-till-svd-magdalena-andersson-vill-ga-med-i-nato-i-juni> (accessed 24 April 2022).

⁵ Christina L Davis, 'More than Just a Rich Country Club: Membership Conditionality and Institutional Reform in the OECD', Princeton University Working Paper (26 June 2016), <https://scholar.harvard.edu/files/cldavis/files/davis2016b.pdf> (accessed 10 December 2021).

⁶ Monika Bauhr and Naghme Nasiritousi, 'How Do International Organizations Promote Quality of Government? Contestation, Integration, and the Limits of IO Power' (2012) 14:4 *International Studies Review* 541, 558.

⁷ Alice Taylor, 'Bulgaria's Veto Hurts Future of North Macedonia – Diaspora Leader', *Euractiv* (9 February 2022), <https://www.euractiv.com/section/enlargement/interview/bulgarias-veto-hurts-future-of-north-macedonia-diaspora-leader/> (accessed 10 April 2022).

⁸ News Wires, 'Bulgarian Parliament Votes to Lift Veto on EU Accession Talks with North Macedonia', *France24* (24 June 2022), <https://www.france24.com/en/europe/20220624-bulgarian-parliament-votes-to-lift-veto-on-eu-accession-talks-with-north-macedonia> (accessed 29 June 2022).

⁹ OECD, 'OECD Takes First Step in Accession Discussions with Argentina, Brazil, Bulgaria, Croatia, Peru and Romania' (25 January 2022), <https://www.oecd.org/newsroom/oecd-takes-first-step-in-accession-discussions-with-argentina-brazil-bulgaria-croatia-peru-and-romania.htm> (accessed 10 April 2022).

¹⁰ David Dolowitz and David Marsh, 'Who Learns What from Whom: A Review of the Policy Transfer Literature' (1996) 44:2 *Political Studies* 343. Other scholars refer to IO-led policy transfer as 'learning' or 'emulation', depending on the motivations and mechanisms.

accession activity is high. Although the EU and United Nations (UN) have called for member states to adopt National Action Plans (NAPs) to implement the UN Guiding Principles on Business and Human Rights (UNGPs)¹¹ – and while all OECD member states, including in CEE, must promote the OECD Guidelines for Multinational Enterprises, which incorporate the UNGPs¹² – only six states in CEE had a NAP at the time of writing.¹³ Given lagging regional uptake of the UNGPs, it is pertinent to consider how IOs can promote BHR policies in CEE through accession conditionality. This article therefore asks whether and how IOs use, or could use, accession conditionality to increase uptake of the UNGPs, focusing on CEE.

In this article, I review the international relations (IR) and public policy literature on accession conditionality to provide an analytical framework. I focus empirically on two IOs expanding CEE membership: the EU and OECD. While other IOs promote the UNGPs in CEE – including the UN, the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe (CoE) – all CEE states except Belarus, Kosovo and Russia are already members of these IOs; *ergo*, they are less relevant for accession. Applying insights from the literature to empirical material on the EU and OECD accession processes, I argue that conditionality provides great promise for these IOs to spread BHR policies, but they have failed to fully exploit the opportunity, although there are promising signs of a turn towards BHR conditionalities. Conditionality may provide a valuable governance tool for fostering greater uptake of the UNGPs for IOs in general, and international convergence around the UNGPs makes this approach especially promising and potentially highly effective. This article offers a policy-oriented contribution by suggesting strategies for engendering adoptions of BHR policies in CEE. I also make scholarly contributions by introducing an IR debate to the BHR field, applying theoretical insights to IOs and issues that have been neglected in past research and identifying avenues for future research.

Before proceeding, I offer several clarifications. First, by ‘Central and Eastern Europe’, I refer to post-communist European states, excluding the former German Democratic Republic and former Soviet Republics in Central Asia, but including the Western Balkans and former Soviet Republics in the Caucasus. In line with the EU’s usage of ‘Eastern Europe’, I include Belarus and Russia.¹⁴ Second, the article’s argument that ‘coercive’ governance tools are a useful way to spread BHR norms is not intended to suggest that IO conditionalities are inherently benevolent. The International Monetary Fund and World Bank impose strict lending conditionalities, and research shows such ‘structural adjustment’ has significantly worsened human rights conditions, including in CEE.¹⁵ Scholars have also argued that accession conditionalities privilege small groups of central government officials over other actors and the wider society, exacerbating the democratic deficit in global governance.¹⁶

¹¹ Council of the European Union, ‘EU Strategic Framework and Action Plan on Human Rights and Democracy’, 11855/12 (25 June 2012); UN Secretary-General, ‘Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises’, A/69/263 (5 August 2014); Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, A/HRC/17/31 (21 March 2011).

¹² OECD, *OECD Guidelines on Multinational Enterprises 2011 Edition* (Paris: OECD Publishing, 2011).

¹³ I include Georgia and Ukraine in this figure, which both have a BHR chapter in a national human rights action plan. The Danish Institute for Human Rights counts Georgia’s plan as a NAP but states Ukraine may be developing a stand-alone plan; National Action Plans on Business and Human Rights, ‘Ukraine’, <https://globalnaps.org/country/ukraine> (accessed 15 November 2022).

¹⁴ European Union External Action Service, ‘Eastern Europe’, https://www.eeas.europa.eu/eeas/eastern-europe_en#12223 (accessed 25 April 2022).

¹⁵ M Rodwan Abouharb and David Cingranelli, *Human Rights and Structural Adjustment* (Cambridge: Cambridge University Press, 2009).

¹⁶ Heather Grabbe, ‘How Does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity’ (2001) 8:6 *Journal of European Public Policy* 1013.

Others contend that conditionality is patriarchal or (neo)colonialist, reproducing or reinforcing a hegemonic *status quo*. The point is well taken, but this article speaks to more positivist literatures and does not engage with post-colonial critique.

II. IO Accession Conditionalities

It may not be obvious why IOs gatekeep, nor that conditionalities have substantial long-term effects on state behaviour. It is also puzzling that governments adopt costly reforms to join IOs, especially if membership offers no automatic reward. At a time when multilateral institutions are described as braindead or gridlocked, why would governments implement policies they dislike to accede? Substantially all literature on accession conditionalities focuses on the EU; it thus holds important lessons for promoting BHR norms in CEE specifically. In this section, I review the literature to develop theoretical insights on the potential utility of accession conditionalities in this area.

Governments pursue IO membership for many reasons, but the primary attraction is usually short-term material gain: 'the transformative power of the membership process on domestic institutions hinges on relatively immediate and almost certain material benefits'.¹⁷ Such benefits are clearest when membership confers automatic and sizeable economic pay-off. EU membership, for example, provides tariff-free access to the world's second-largest economy, freedom of movement between member states, and substantial inflows of regional development funds. Such explanations correspond to functionalist/rationalist accounts of why states create or join IOs: their need to cooperate to resolve problems and realize mutual gains.¹⁸

Governments are also willing to adopt reforms imposed by IOs where membership provides few assured or automatic benefits. There is a dearth of scholarship on accession conditionalities in IOs other than the EU, but some research on the OECD challenges functionalist explanations. The OECD functions in many ways like a think-tank. It does not confer automatic trade or investment access and offers its standards and peer review services to non-members. OECD membership, however, confers status. Davis argues that governments will even adopt policies that make little economic sense in order to burnish their status through association with highly regarded states. Augmented status may indirectly beget material rewards – for example, investors tend to have higher confidence in OECD states.¹⁹ In one recent example, the Colombian government was so keen to join the OECD that it adopted a NAP on BHR before most governments had one, partially to fulfil accession conditionalities.²⁰

Not all IOs can induce policy change effectively. Many are inherently incapable because they already have near-universal membership. Other IOs lack resources to impose or enforce conditionalities.²¹ Accession conditionalities, however, can be very effective. While the EU long treated accession conditionalities similarly to conditionalities on foreign aid, it has since acted with recognition that it has far more leverage during accession because of the incentive of membership.²² There is broad consensus that

¹⁷ Bauhr and Nasiritousi, *note 6*, 558.

¹⁸ See, e.g., Robert O Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984).

¹⁹ Davis, *note 5*.

²⁰ Ian Higham, *Explaining Early Adoption: National Action Plans on Business and Human Rights* (Stockholm: Department of Political Science, Stockholm University, 2021) 145–148.

²¹ Bauhr and Nasiritousi, *note 6*, 558.

²² Tanja A Börzel and Thomas Risse, 'One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law', paper presented at the workshop on 'Democracy Promotion', organized by the Center for Development, Democracy, and the Rule of Law at Stanford University on 4–5 October 2004.

accession conditionality best explains the EU's record of successful external policy transfer.²³ It may be the most effective means at an IO's disposal for inducing behaviour change.²⁴

Several factors enhance the effectiveness of accession conditionalities in creating lasting policy change. In most accounts, credibility is crucial. One study found only credible promises of EU and NATO membership had the potential to induce compliance with liberal democratic norms in illiberal CEE states.²⁵ Credible commitments on membership may be both necessary and sufficient for the success of conditionalities.²⁶ An IO's threat that a reward will be withheld if a government fails to comply also depends on effective enforcement, which tends to happen towards the end of the accession process.²⁷ Pressure for pre-accession states to adopt EU rules may therefore be less compelling.²⁸ Thus, the timing of conditionalities in the process is important.

While imposing conditionalities too early could reduce effectiveness, IOs risk losing leverage in prolonged negotiations. Scholars find that at the beginning of the accession process, there is a substantive increase in candidate compliance, but conditionality is less influential shortly before accession treaties are signed when an IO is unlikely to withdraw. High accession probability thus diminishes prospects for policy transfer.²⁹ It is also difficult to determine when compliance subsides: IOs' initial high-intensity engagement leads to formal legislative change, creating perceptions of behavioural change that may obscure decreasing compliance.³⁰ If accession faces extraordinary or indefinite prolongation, candidates may be empowered to negotiate policy in less asymmetric arenas.³¹

Accession negotiations between an IO and a candidate are essentially bilateral but can also be multilateral and involve other prospective members as a complement to bilateral negotiations. The EU engages in both approaches but tends to prioritize bilateral exchange.³² Bilateral conditionalities worked well in the EU's 2004 enlargement into CEE,³³ but combining bilateral and multilateral approaches may be even more effective in achieving compliance.³⁴ Conditionalities imposed both bilaterally and in multilateral

²³ Frank Schimmelfennig and Ulrich Sedelmeier, 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe' (2004) 11:4 *Journal of European Public Policy* 661; Frank Schimmelfennig, 'European Regional Organizations, Political Conditionality, and Democratic Transformation in Eastern Europe' (2007) 21:1 *East European Politics and Societies* 126.

²⁴ Judith Kelley, 'International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions' (2004) 58:3 *International Organization* 425.

²⁵ Schimmelfennig, note 23.

²⁶ Firat Cengiz and Lars Hoffmann, 'Rethinking Conditionality: Turkey's European Union Accession and the Kurdish Question' (2013) 51:3 *Journal of Common Market Studies* 416.

²⁷ Grabbe, note 16; Frank Schimmelfennig, 'Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe' (2005) 59:4 *International Organization* 827.

²⁸ Stephen Padgett, 'Multilateral Institutions, Accession Conditionality and Rule Transfer in the European Union: The Energy Community in South East Europe' (2012) 32:3 *Journal of Public Policy* 261.

²⁹ Tobias Böhmelt and Tina Freyburg, 'The Temporal Dimension of the Credibility of EU Conditionality and Candidate States' Compliance with the *Acquis Communautaire*, 1998–2009' (2012) 14:2 *European Union Politics* 250.

³⁰ Gwendolyn Sasse, 'The Politics of EU Conditionality: The Norm of Minority Protection During and Beyond EU Accession' (2008) 15:6 *Journal of European Public Policy* 842.

³¹ Birce Demiryontar, 'Accession Conditionality and Migration Diplomacy: Turkey's Dual Identity in Migration Policy Negotiations with the EU' (2021) 22:1 *European Politics and Society* 88.

³² Padgett, note 28.

³³ Sandra Lavenex, Dirk Lehmkuhl and Nicole Wichmann, 'Modes of External Governance: A Cross-National and Cross-Sectoral Comparison' (2009) 16:6 *Journal of European Public Policy* 813.

³⁴ Othon Anastasakis and Dimitar Bechev, 'EU Conditionality in South East Europe: Bringing Commitment to the Process', South East European Studies Programme, European Studies Centre, St Antony's College, University of

settings are almost invariably more effective when accompanied by multilateral monitoring and review mechanisms, which create transparency and objectivity.³⁵

Conditionality effectiveness also depends on important domestic factors. Schimmelfennig found that a necessary condition for sustained compliance with liberal norms in EU and NATO candidates in CEE was the existence of a liberal or mixed domestic political party constellation, while conditionalities failed to produce compliance in firmly anti-liberal states.³⁶ External forces are also more effective when forming coalitions with domestic actors. Conditionality may therefore be most effective when IOs combine strategies that strengthen domestic actors committed to their priorities, win over new domestic actors to their cause and prevent unconvinced domestic actors from obstructing reforms.³⁷ Governments are especially likely to adopt BHR policies when promoted by both international and domestic actors; for example, Colombian domestic civil society support combined with OECD accession conditionality to motivate NAP adoption.³⁸

IOs' ability to govern by conditionality dissipates after accession is complete because of loss of leverage over domestic political actors. The EU has leverage over candidates as criticism in annual progress reports empowers domestic opposition parties who can argue the government is not making necessary reforms; the government is then compelled to comply to avoid being ousted by a pro-EU citizenry.³⁹ This, of course, is only effective if the electorate broadly favours membership. Evidence of post-accession compliance is mixed, and accession could end IO leverage altogether. One study found the EU's leverage over Hungary was lost entirely after accession, and anti-corruption reforms did not reduce the level of corruption.⁴⁰ Reforms may, however, be durable if they give rise to new interest groups, diminishing the power of existing elites. Conditionality yields post-accession compliance where it sufficiently alters the composition of interest groups in the acceding state and permanently changes government behaviour.⁴¹

IOs can coordinate with other IOs to reinforce accession conditionalities, making them more effective. The CoE and OSCE, for example, have greater authority than other IOs to 'interpret' human rights norms, which the EU imposes using its direct power over acceding states. The EU may therefore depend on these IOs to legitimate rights-based conditionalities. For example, the EU borrowed tools and policy recommendations on minority rights from the CoE and OSCE to create accession conditionalities for the Baltics, Romania and Slovakia.⁴² EU accession conditionalities in the Western Balkans also amplified the power of the International Criminal Tribunal for the Former Yugoslavia and conveyed other norms that indirectly fostered NATO accession.⁴³

Oxford (April 2003), <https://www.sant.ox.ac.uk/sites/default/files/euconditionality.pdf> (accessed 4 February 2022).

³⁵ Maike Sippel and Karsten Neuhoff, 'A History of Conditionality: Lessons for International Cooperation on Climate Policy' (2009) 9:5 *Climate Policy* 481.

³⁶ Schimmelfennig, note 23.

³⁷ Wade Jacoby, 'Inspiration, Coalition, and Substitution: External Influences on Postcommunist Transformations' (2006) 58:4 *World Politics* 623.

³⁸ Higham, note 20, 193–194.

³⁹ Mert Kartal, 'Accounting for the Bad Apples: The EU's Impact on National Corruption Before and After Accession' (2014) 21:6 *Journal of European Public Policy* 941.

⁴⁰ Agnes Batory, 'Post-Accession Malaise? EU Conditionality, Domestic Politics and Anti-Corruption Policy in Hungary' (2010) 11:2 *Global Crime* 164.

⁴¹ James R Hollyer, 'Conditionality, Compliance, and Domestic Interests: State Capture and EU Accession Policy' (2010) 5:4 *Review of International Organizations* 387.

⁴² Sasse, note 30; Jakob Skovgaard, 'Power Beyond Conditionality: European Organisations and the Hungarian Minorities in Romania and Slovakia' (2011) 14:4 *Journal of International Relations and Development* 440.

⁴³ Florent Marciacq, 'Building European Security in the Western Balkans: The Diffusion of European Norms in the Context of Inter-Organisational Interactions' (2015) 18:3 *Journal of International Relations and Development* 337.

Certain other factors render conditionality less effective. Especially challenging issues include incomplete internalization of norms and low prioritization of issues during negotiations.⁴⁴ First, scholars find IOs struggle to promote norms that existing member states or the IO itself have not fully internalized.⁴⁵ EU institutions have had such widespread corruption challenges that transfer of anti-corruption norms to candidates has been less effective.⁴⁶ Second, low prioritization of issues in accession talks impedes effectiveness. The EU previously made anti-corruption reforms a condition for candidate CEE states but rarely mentioned them in annual reports and prioritized other regulations. In the end, it admitted numerous states with high levels of corruption that had to be dealt with afterwards.⁴⁷

Several additional factors inhibiting effectiveness include high compliance costs for an incumbent government and unclear requirements. Authoritarian regimes prefer maintaining power over joining IOs and may not adopt democratic reforms.⁴⁸ High domestic power costs may limit the effectiveness of even exceptionally credible commitments with sizeable rewards.⁴⁹ Finally, conceptual confusion about the meaning of conditionalities may weaken them or diminish political will for enforcement. Even within IOs, intersubjective definitions shift over time. NATO, for example, imposes strict democracy criteria, but these have been enforced less often as internal discourse shifted and deviations were normalized by the politicization of expansion.⁵⁰

III. Joining the Club: IO Expansion in CEE

Before proceeding with an empirical snapshot of accession negotiations in the EU and OECD, this section provides an overview of the political process of accession to each organization, paying special attention to the provisions and programmes most relevant for CEE states. I then consider how these processes might facilitate BHR policy transfer.

EU

Acceding states to the EU become ‘candidates’ after formally applying and receiving this designation from the European Council based on the Commission’s recommendation. Candidate status does not provide an automatic right to accession, but the Council decides to formally open negotiations.⁵¹ Negotiations take place in Inter-Governmental Conferences between the member states and candidate country government and cover accession conditionalities, focusing on how the candidate must adopt and implement EU law, or the *acquis communautaire*. Candidates must generally meet the ‘Copenhagen criteria’, which are political (stability of institutions guaranteeing democracy, rule of law, human rights and respect for and protection of minorities), economic (a functioning market

⁴⁴ Bauhr and Nasiritousi, note 6, 558.

⁴⁵ Alexandru Grigorescu, ‘European Institutions and Unsuccessful Norm Transmission: The Case of Transparency’ (2002) 39:4 *International Politics* 467.

⁴⁶ Bauhr and Nasiritousi, note 6, 558–559.

⁴⁷ Wayne Sandholtz and Mark M Gray, ‘International Integration and National Corruption’ (2003) 57:4 *International Organization* 761.

⁴⁸ Schimmelfennig, note 23.

⁴⁹ Schimmelfennig and Sedelmeier, note 23.

⁵⁰ Eyal Rubinson, ‘Flexible Democratic Conditionality? The Role of Democracy and Human Rights Adherence in NATO Enlargement Decisions’ (2021) 24:3 *Journal of International Relations and Development* 696.

⁵¹ European Commission, ‘Candidate Countries’, https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/candidate-countries_en (accessed 10 April 2022).

economy and capacity for coping with competitive market forces) and administrative and institutional (capacity to effectively implement the *acquis*). The results of negotiations are then incorporated into an accession treaty.⁵²

The designation of ‘potential candidate’ applies to states in the EU’s Stabilisation and Association Process, which sets out common political and economic goals for prospective members.⁵³ Certain conditions must usually be met before an upgrade to ‘candidate’ status and an opening of negotiations. Thus, the EU can impose conditionalities both during formal negotiations and as a pre-requisite to initiating them.

The EU also designates ‘Eastern Partnership’ states with which it seeks to deepen cooperation but that do not yet amount to potential candidates. All CEE states that are not members, candidates, or potential candidates are Eastern Partnership countries except for Belarus, which suspended participation in June 2021, and Russia, which opted for a ‘strategic partnership’ arrangement that was at the time of writing under review.⁵⁴

OECD

The OECD Council decides whether to open accession discussions with a state and lays out the terms, conditions and processes in ‘Accession Roadmaps’, which are individualized and specific to each prospective member. OECD accession conditionalities have historically been more fluid than in other IOs and depend on candidates’ diplomatic relations with extant members. Democracy has not always been formally required but has been long regarded as a *de facto* conditionality, along with foreign policy alignment with the US.⁵⁵ Conditionalities were somewhat standardized with the 2017 Framework for the Consideration of Prospective Members. The Framework states that the accession process can be opened on the OECD Council’s initiative or upon receipt of a written request by the prospective member. The Council may decide whether to open negotiations based on information it receives from the Secretary-General or may engage with the prospective member directly.⁵⁶

For the latest accession round, the initiation of negotiations and presentation of a Roadmap requires the applicant’s confirmation of adherence to the OECD’s 60th Anniversary Vision Statement and Ministerial Council Statement adopted in 2021. The process of developing the Roadmap involves evaluations of a candidate’s alignment with OECD standards, policies and practices by more than 20 committees. Based on these evaluations, the OECD Council decides on conditionalities, which it describes as ‘serving as a powerful catalyst for reform’.⁵⁷

⁵² European Commission, ‘Accession Criteria’, https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/accession-criteria_sv (accessed 10 April 2022); European Commission, ‘Accession Negotiations’, https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/accession-negotiations_en (accessed 10 April 2022).

⁵³ European Commission, ‘Potential Candidate Countries’, https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/potential-candidate-countries_sv (accessed 10 April 2022); European Commission, ‘Stabilisation and Association Process’, https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/stabilisation-and-association-process_en (accessed 10 April 2022).

⁵⁴ Council of the EU, ‘Eastern Partnership’, <https://www.consilium.europa.eu/en/policies/eastern-partnership/> (accessed 10 November 2022).

⁵⁵ Davis, note 5.

⁵⁶ OECD Council, *Report of the Chair of the Working Group on the Future Size and Membership of the Organisation to Council: Framework for the Consideration of Prospective Members* (Paris: OECD, 7–8 June 2017).

⁵⁷ OECD, note 9.

IV. UNGPs Through Conditionality

Previous research and policy rhetoric show it is possible for IOs to promote BHR norms among member states and influence governments to adopt NAPs and other policy and legislative instruments. The UN Human Rights Council (UNHRC) established a Working Group on Business and Human Rights in 2011 to promote uptake and implementation of the UNGPs, which it has largely done by encouraging governments to adopt NAPs.⁵⁸ The EU has also encouraged member states to adopt NAPs on BHR and aims for internal policy coordination.⁵⁹ Other IOs promoting member implementation of the UNGPs include the African Union, Association of Southeast Asian Nations and Organization of American States.⁶⁰ Accession conditionality could go further as a tool to disseminate BHR norms even to non-members.

Both the EU and OECD necessarily include human rights conditionalities in accession. Both IOs require adherence to rules or ratification of treaties that include provisions on the state duty to protect human rights. Within the EU *acquis* is the Charter of Fundamental Rights, which codifies many internationally recognized human rights.⁶¹ The *acquis* also includes legislation more specifically relevant to BHR, such as the General Data Protection Regulation, which requires businesses to respect certain rights related to privacy, and the Non-Financial Reporting Directive (NFRD), which requires large companies to report on their efforts to respect human rights. Recent and forthcoming legislation under the European Green Deal and Fit for 55 packages focused on climate change are also highly relevant for BHR.⁶² At the time of writing, negotiations were ongoing to finalize a Corporate Sustainability Due Diligence Directive that would add mandatory human rights and environmental due diligence legislation to the *acquis*.⁶³

OECD members are required to adhere to the Declaration on International Investment and Multinational Enterprises, although some non-members also opt to adhere. Adherence entails a legally binding obligation to establish a National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises and to promote voluntary corporate compliance with the Guidelines.⁶⁴ The Guidelines incorporate the UNGPs and emphasize due diligence.⁶⁵

⁵⁸ Human Rights Council, 'Human Rights and Transnational Corporations and Other Business Enterprises', A/HRC/RES/17/4 (6 July 2011).

⁵⁹ Daniel Augenstein, Mark Dawson and Pierre Thielbörger 'The UNGPs in the European Union: The Open Coordination of Business and Human Rights?' (2018) 3 *Business and Human Rights Journal* 1; Daniel Augenstein, 'Negotiating the Hard/Soft Law Divide in Business and Human Rights: The Implementation of the UNGPs in the European Union' (2018) 9:2 *Global Policy* 254.

⁶⁰ Olorade Bamidele, 'AU Set on Making African Businesses More Responsive to Human Rights', *Premium Times* (24 March 2017), <https://www.premiumtimesng.com/business/business-news/227098-au-set-making-african-businesses-responsive-human-rights.html> (accessed 20 August 2021); Association of Southeast Asian Nations, 'ASEAN Promotes Rights-Abiding Business Practices', *Association of Southeast Asian Nations* (12 June 2018), <https://asean.org/asean-promotes-human-rights-abiding-business-practices/> (accessed 20 August 2021); Inter-American Commission on Human Rights, 'Business and Human Rights: Inter-American Standards', OEA/Ser.L/V/II, CIDH/REDESCA/INF.1/19 (1 November 2019).

⁶¹ Charter of Fundamental Rights of the European Union, 55 Official Journal of the European Union C326/02 (adopted on 7 December 2000, entered into force on 1 December 2009).

⁶² Council of the EU, 'Fit for 55', <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/> (accessed 10 November 2022).

⁶³ Business & Human Rights Resource Centre, 'EU: Lead MEP for Due Diligence File Publishes Draft Report on Commission's Proposed Directive', *Business & Human Rights Resource Centre* (8 November 2022), <https://www.business-humanrights.org/en/latest-news/eu-draft-due-diligence-law-allegedly-faces-calls-from-several-member-states-to-exclude-finance/> (accessed 11 November 2022).

⁶⁴ Declaration on International Investment and Multinational Enterprises, OECD/LEGAL/0144, OECD Legal Instruments Series (adopted on 21 June 1976, amended on 25 May 2011).

⁶⁵ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct* (Paris: OECD, 2018).

Thus, all candidates must be prepared to implement at least this basic BHR policy in order to accede. The OECD Council could in principle include more specific reforms in a Roadmap. NCPs and the Guidelines may bolster corporate accountability for human rights, but governments face significant implementation challenges, and NCPs' ability to offer effective remedy may be severely limited.⁶⁶

The OECD has used conditionality to promote wider BHR policies in some cases. Numerous stakeholders in the Colombian NAP process stated that OECD accession was the top driver of the government's decision to adopt a NAP in 2015. Colombia's Roadmap stated it must produce evidence of a commitment to the 'instruments named in the OECD Guidelines'. In negotiations, extant member states insisted Colombia show a credible effort to prevent the killings of trade unionists, and the President assured the OECD Council he was working on reforms. The government saw potential for the NAP to repair Colombia's reputation for corporate human rights abuses, increasing its favour with the IO.⁶⁷ A similar motivation may explain one NAP in CEE. The same text in Colombia's Roadmap appears for Lithuania, which adopted a NAP shortly before OECD accession.⁶⁸ The NAP states that one of Lithuania's aims 'is to intensify and expand Lithuania's participation in the activities and institutions of the [OECD] and, through the implementation of the organization's measures, to exercise active lobbying for the membership in the [OECD]'.⁶⁹ These Roadmaps did not explicitly require NAPs, but these governments understood it as a requirement, and status-seeking was a powerful motivation.

V. State-of-Play in CEE: BHR and IO Membership

There are already 11 CEE states in the EU and eight in the OECD (see [Table 1](#)). The EU began applying accession conditionalities and seeking new members more seriously and systematically after the transition to capitalism in CEE for numerous reasons, but strategic geopolitical considerations have been the primary motivation since the 1998 conflict in Kosovo.⁷⁰ Today, seven states are EU candidates, while another three are potential candidates; nine of the ten are in CEE.⁷¹ OECD expansion is less well explained. Members have mostly sought to guard the IO's exclusive brand, but they champion accession for 'friends' and sometimes lobby for accession for ideological counterparts, explaining in part why the IO includes many small states despite the semi-formalized criterion of being a major player internationally.⁷² The OECD therefore has less of a geographically delimited expansion mission. It currently has six candidates, of which three are CEE states.

Nearly half of CEE states have joined the EU or OECD, but implementation of the UNGPs is lacking. As [Table 1](#) shows, only Ukraine and Georgia among all acceding states to the EU have a NAP, and both are chapters on BHR in broader national human rights action plans. The only other states in CEE that have NAPs are the Czech Republic, Lithuania, Poland and

⁶⁶ John G Ruggie and Tamaryn Nelson, 'Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges' (2015) 22:1 *Brown Journal of World Affairs* 99; Kinnari Bhatt and Gamze Erdem Türkelli, 'OECD National Contact Points as Sites of Effective Remedy: New Expressions of the Role and Rule of Law within Market Globalization' (2021) 6 *Business and Human Rights Journal* 423.

⁶⁷ Higham, [note 20](#), 145–148.

⁶⁸ *Ibid.*, 349.

⁶⁹ Government of the Republic of Lithuania, *Lithuania's Action Plan on the Implementation of the United Nations Guiding Principles on Business and Human Rights* (Vilnius: Government of the Republic of Lithuania, 9 February 2015), para E.1.

⁷⁰ Börzel and Risse, [note 22](#).

⁷¹ Turkey is also a candidate.

⁷² Davis, [note 5](#).

Table 1. Central and Eastern Europe states in the EU and OECD

State	EU relationship	OECD relationship	NAP on BHR	HRDD law
Albania	Candidate	Non-member	No	No
Armenia	Non-member	Non-member	No	No
Azerbaijan	Non-member	Non-member	No	No
Belarus	Non-member	Non-member	No	No
Bosnia & Herzegovina	Potential candidate	Non-member	No	No
Bulgaria	Member	Candidate	No	No
Croatia	Member	Candidate	No	No
Czech Republic	Member	Member	Yes	No
Estonia	Member	Member	No	No
Georgia	Potential candidate	Non-member	Yes*	No
Hungary	Member	Member	No	No
Kosovo	Potential candidate	Non-member	No	No
Latvia	Member	Member	No	No
Lithuania	Member	Member	Yes	No
Moldova	Candidate	Non-member	No	No
Montenegro	Candidate	Non-member	No	No
North Macedonia	Candidate	Non-member	No	No
Poland	Member	Member	Yes	No
Romania	Member	Candidate	No	No
Russia	Non-member	<i>Candidacy terminated</i>	No	No
Serbia	Candidate	Non-member	No	No
Slovakia	Member	Member	No	No
Slovenia	Member	Member	Yes	No
Ukraine	Candidate	Non-member	Yes*	No

* Ukraine and Georgia have a NAP that appears as a chapter in a broader national human rights action plan.

Slovenia. All three acceding states to the OECD are already adherents to the Declaration on International Investment and Multinational Enterprises. Among other non-members in CEE, however, only Ukraine adheres to the Declaration. No CEE state has passed mandatory human rights due diligence (HRDD) legislation. There is thus considerable scope for greater promotion of the UNGPs in CEE. In the following sub-sections, I provide an empirical snapshot of accession negotiations in both the EU and OECD to assess whether and how BHR conditionalities are applied.

EU Enlargement

All current EU accession processes involve CEE states. EU legislation covers a wide range of policy ‘chapters’ that are negotiated individually. This sub-section provides an overview of ongoing EU accession processes and highlights conditionalities that are explicitly relevant for BHR. The material comes from the Commission’s 2021 progress reports – the most recent available when the research was conducted. As is evident from this snapshot, the EU requires (potential) candidates to adopt not only legislation, but also supportive policies and institutions. Policies and institutions specifically designed for implementing the UNGPs, however, were not included.

Albania

The EU identified Albania as a potential candidate in 2003, and Albania formally applied in 2009. Before the Commission recommended candidate status in 2012, it called for improvements on human rights protections, including developing national action plans on anti-corruption, property rights and anti-discrimination.⁷³ The Council granted Albania candidate status in 2014 and opened negotiations in 2019, although the Commission determined only in 2021 that Albania had met remaining conditions for holding an Inter-Governmental Conference.⁷⁴ The Commission’s most recent report does not mention BHR-specific conditionalities. The report reviews Albania’s human rights performance against international standards, mostly concerning treaty ratification and state duties. Other outstanding human rights conditionalities are not explicitly framed in a business context. The report, however, commends progress towards aligning corporate law with NFRD requirements.⁷⁵

Bosnia and Herzegovina

Bosnia and Herzegovina (BiH) was designated a potential candidate in 2003 and applied for EU membership in 2016. In 2019, the Commission identified 14 priorities BiH needed to fulfil to open negotiations. The Commission criticized BiH for lacking national strategies on human rights and anti-discrimination and required the government to demonstrate improvements to freedom of association and the protection and inclusion of vulnerable groups, including persons with disabilities, ethnic minorities and LGBTI persons.⁷⁶ These conditions have clear relevance for BHR. The Council reaffirmed its willingness to grant candidate status in June 2022 and welcomed the Commission’s announcement that BiH met all criteria, leading it to endorse candidacy in October, subject to additional reforms.⁷⁷ The Commission’s last report before these developments noted outstanding reforms on fundamental rights, including developing a comprehensive national policy on promoting and enforcing human rights with particular attention to non-discrimination, which had seen no progress. The Commission also noted BiH had not aligned its legal framework with

⁷³ European Commission, ‘Opinion on Albania’s Application for Membership of the European Union’, COM(2010) 680 final (9 November 2010).

⁷⁴ European Commission, ‘European Neighbourhood Policy and Enlargement Negotiations: Albania’, https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/negotiations-status/albania_sv (accessed 10 April 2022).

⁷⁵ European Commission, ‘Albania 2021 Report’, SWD(2021) 289 final (19 October 2021).

⁷⁶ European Commission, ‘Opinion on Bosnia and Herzegovina’s Application for Membership of the European Union’, COM(2019) 261 final (29 May 2019).

⁷⁷ Jorge Liboreiro and Aleksandar Brezar, ‘Brussels Recommends Granting Bosnia the Status of EU Candidate, But With Conditions’, *Euronews* (13 October 2022), <https://www.euronews.com/my-europe/2022/10/12/brussels-recommends-granting-bosnia-the-status-of-eu-candidate-but-with-conditions> (accessed 19 October 2022).

NFRD requirements.⁷⁸ The report did not reference policies specifically related to implementing international BHR instruments.

Georgia

Georgia submitted a membership application in March 2022 and was designated a potential candidate in June 2022 based on the Commission's opinion and unanimous agreement among member states. The Commission noted Georgia has adopted an unprecedented amount of the *acquis* but decided that candidate status should be granted only after certain additional reforms, including addressing political polarization, guaranteeing the full functioning of state institutions, reforming the judiciary, fighting corruption, strengthening human rights protections for vulnerable groups, ensuring freedom of the press and implementing 'de-oligarchization'.⁷⁹ These provisions are clearly relevant for BHR but do not include explicit reference to international BHR instruments.

Kosovo

The EU supported a 'European future' for Kosovo, a potential candidate, even before its 2008 independence. A Stabilisation and Association Agreement entered into force in 2016.⁸⁰ Kosovo faces unique accession challenges: Serbia, from which it declared independence and which is further ahead in accession, does not recognize Kosovar sovereignty – nor do six current EU member states.⁸¹ The government pushed for expedited accession in 2022, arguing that the war in Ukraine justifies extraordinary measures for EU expansion in the Western Balkans, bypassing conditionalities.⁸² The Commission's most recent progress report emphasizes normalizing relations with Serbia. The report states that Kosovo remains in the early stages of meeting conditions for opening negotiations, including improving human rights and minority protections, which rank low on Kosovo's political agenda, and improving effectiveness in coordinating and implementing human rights policies. Kosovo must also adopt the national human rights strategy it has long been drafting. The report specifies two conditionalities more specifically related to BHR: combating retaliation against private sector unions and combating gender discrimination in the workplace.⁸³

Moldova

Moldova was never designated a potential candidate for EU membership but received candidate status in June 2022 after applying in March of that year. The designation follows a period of deepening relations between the EU and Moldova, including free trade agreements and development cooperation.⁸⁴ The Commission's opinion favouring candidate

⁷⁸ European Commission, 'Bosnia and Herzegovina 2021 Report', SWD(2021) 291 final (19 October 2021).

⁷⁹ European Commission, 'Opinion on Georgia's Application for Membership of the European Union', COM(2022) 405 final (17 June 2022).

⁸⁰ European Commission, 'European Neighbourhood Policy and Enlargement Negotiations: Kosovo', https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/negotiations-status/kosovo_sv (accessed 10 April 2022).

⁸¹ 'Greece Reassures Serbia its Position on Kosovo has Not Changed', *Euractiv* (8 September 2021), <https://www.euractiv.com/section/enlargement/news/greece-reassures-serbia-its-position-on-kosovo-has-not-changed/> (accessed 11 April 2022).

⁸² 'Make Membership Easier, Kosovo PM tells NATO, EU', *France 24* (8 March 2022), <https://www.france24.com/en/live-news/20220308-make-membership-easier-kosovo-pm-tells-nato-eu> (accessed 11 April 2022).

⁸³ European Commission, 'Kosovo 2021 Report', SWD(2021) 292 final/2 (19 October 2021).

⁸⁴ European Council, 'Eastern Partnership: EU Relations with the Republic of Moldova', <https://www.consilium.europa.eu/en/policies/eastern-partnership/moldova/> (accessed 29 June 2022).

status was conditioned on the assumption that Moldova implements certain reforms, including comprehensive reforms of the justice system, fighting corruption, ‘de-oligarchization’ and combating money laundering. The only condition with more specific relevance for BHR is to strengthen human rights protection generally, particularly for vulnerable groups, and enhancing gender equality.⁸⁵

Montenegro

Montenegro applied for EU membership in 2008. The Commission’s 2010 opinion on candidacy was favourable, and the Council opened negotiations in 2012. All chapters in negotiations have been opened, of which three are provisionally closed.⁸⁶ The government prioritizes meeting conditionalities and expects to complete all reforms by 2025, focusing on improving media freedom, combating organized crime and reforming the judiciary.⁸⁷ The Commission finds Montenegro has made progress in most areas but highlighted increasing stagnation and limited progress on human rights and rule of law. Montenegro has mostly put in place necessary legislation on fundamental rights, but challenges remain for effective implementation, especially on employment discrimination against women and ethnic minorities – issues with clear relevance for BHR. The EU assigned conditionalities on implementing human rights recommendations from the UN and CoE, including protecting minority rights, improving access to remedy for victims and aligning legislation on data protection. The Commission also asked the government to resubmit a draft law on non-financial reporting requirements to parliament.⁸⁸

North Macedonia

The EU identified North Macedonia as a potential candidate in 2003, and it applied for membership in 2004. The Council granted North Macedonia candidate status in 2005. The Commission recommended opening negotiations in 2009 but changed its opinion during a political crisis, delaying negotiations until 2020.⁸⁹ North Macedonia then faced a Bulgarian veto until June 2022. The Commission reports that North Macedonia has progressed with necessary reforms, and its legal framework on protecting fundamental rights is largely in line with EU standards. The government, however, must expedite implementation of recommendations from international human rights bodies. The Commission’s report includes numerous conditions more specifically related to BHR. It criticizes North Macedonia for not having implemented NFRD requirements. It states that, while labour legislation is generally good, capacity to implement it remains insufficient, and the government must improve the State Labour Inspectorate’s capacities to address issues related to workplace safety and implement a system to monitor work-related injuries and fatalities. The Commission also states that North Macedonia must reinforce dialogue

⁸⁵ European Commission, ‘Opinion on the Republic of Moldova’s Application for Membership of the European Union’, COM(2022) 406 final (17 June 2022).

⁸⁶ European Commission, ‘European Neighbourhood Policy and Enlargement Negotiations: Montenegro’, https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/negotiations-status/montenegro_en (accessed 15 April 2022).

⁸⁷ Zeljko Trkanjec, ‘Montenegro Likely to Complete All Reforms for EU Accession by 2025’, *Euractiv* (10 January 2022), https://www.euractiv.com/section/politics/short_news/montenegro-likely-to-complete-all-reforms-for-eu-accession-by-2025/ (accessed 15 April 2022).

⁸⁸ European Commission, ‘Montenegro 2021 Report’, SWD(2021) 293 final/2 (19 October 2021).

⁸⁹ European Commission, ‘European Neighbourhood Policy and Enlargement Negotiations: North Macedonia’, https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/negotiations-status/north-macedonia_sv (accessed 11 April 2022).

between workers and employers and enhance inclusion of vulnerable groups in the workforce.⁹⁰

Serbia

Serbia became a potential candidate for EU membership in 2003, formally applied in 2009, and received candidate status in 2012. The Council opened negotiations in 2013 and held its first Inter-Governmental Conference in 2014.⁹¹ While progress towards accession is relatively far along – 22 of 35 chapters have been opened – Serbia faces significant hurdles. Accession is conditioned on normalizing relations with Kosovo, but tensions between these states continue to run high. Serbia also retains close ties with Moscow and Beijing,⁹² a point that speaks to the wider question of alignment with EU common foreign policy. Moreover, the EU is deeply unpopular among Serbs.⁹³ The Commission's report notes limited progress on reforms and outlines some conditions relevant for BHR. It asks the Ministry for Human and Minority Rights and Social Dialogue to improve cooperation with civil society. The report states that necessary human rights legislation is broadly in place, but the government must strengthen human rights institutions, guarantee their independence and adopt and implement a national anti-discrimination strategy. The report criticizes repression of human rights defenders, especially those protesting money laundering and environmental degradation, and it notes a lack of progress on tackling challenges faced by women and vulnerable groups in the labour market.⁹⁴

Ukraine

Ukraine's long-term vision of EU membership led to an Association Agreement in 2014 outlining necessary reforms and making Ukraine a 'priority partner', receiving support for democratization and development.⁹⁵ Ukraine applied for membership immediately after the Russian invasion in 2022, and the European Parliament and CEE member states called for granting candidate status and expediting the accession process.⁹⁶ While Ukraine could not bypass all conditionalities, it received candidate status in June 2022.⁹⁷ This status came with an expectation of implementing certain initial reforms, mostly concerning the integrity of the justice system, corruption, money laundering and 'de-oligarchization'. The Commission stated that more progress is needed on a range of human rights issues, primarily aligning

⁹⁰ European Commission, 'North Macedonia 2021 Report', SWD(2021) 294 final (19 October 2021).

⁹¹ European Commission, 'European Neighbourhood Policy and Enlargement Negotiations: Serbia', https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/negotiations-status/serbia_sv (accessed 11 April 2022).

⁹² AP News, 'Serbia Takes Big Step Forward in EU Membership Talks', *AP News* (14 December 2021), <https://apnews.com/article/europe-environment-serbia-kosovo-ana-brnabic-b36e2411cddc09e80f37ff5dd22a02bb> (accessed 11 April 2021).

⁹³ 'Only 20% of Serbs View EU Positively Says Polling Expert', *Euractiv* (11 April 2022), https://www.euractiv.com/section/politics/short_news/only-20-per-cent-of-serbs-view-eu-positively-says-polling-expert/ (accessed 11 April 2022).

⁹⁴ European Commission, 'Serbia 2021 Report', SWD(2021) 288 final (19 October 2021).

⁹⁵ EU External Action Service, 'The European Union and Ukraine', *EU External Action Service* (6 August 2021), https://www.eeas.europa.eu/ukraine/european-union-and-ukraine_en (accessed 11 April 2022).

⁹⁶ Aleksandra Krzysztozek, 'Polish Parliament Adopts Resolution Backing Ukraine's EU Candidacy', *Euractiv* (4 March 2022), https://www.euractiv.com/section/politics/short_news/polish-parliament-adopts-resolution-backing-ukraines-eu-candidacy/ (accessed 15 April 2022).

⁹⁷ European Council, 'Eastern Partnership: EU Relations with Ukraine', <https://www.consilium.europa.eu/en/policies/eastern-partnership/ukraine/> (accessed 29 June 2022).

anti-discrimination legislation with the *acquis* and improving the legal framework for minority rights.⁹⁸

OECD Enlargement

The OECD is not a regional organization, but three of the six states currently engaged in accession negotiations are in CEE. This sub-section provides an overview of the ongoing accession processes of these states – Bulgaria, Croatia and Romania – and highlights conditionalities related to BHR in Roadmaps that the OECD published for each acceding state in June 2022. This material shows the OECD requires candidates to adopt policies for implementing instruments that incorporate the UNGPs and generally promote BHR norms. The language used is thus more explicitly relevant to international BHR instruments and standards and includes stronger conditionalities than previous Roadmaps, but it does not clarify exactly which types of policies are needed or what they should contain substantively, although this could be elaborated in policy reviews.

Bulgaria

The OECD Council opened negotiations with Bulgaria in January 2022 and adopted a Roadmap in June. Bulgaria had repeatedly expressed interest in accession since the government made it a priority in its 2014–2020 policy programme. Bulgaria is a leader among non-members in adopting OECD standards and participates in numerous forums and initiatives. In early 2022, the government declared that it was establishing an NCP as part of its accession efforts, and it became an adherent to the Declaration on International Investment and Multinational Enterprises in June 2022.⁹⁹ Bulgaria's Roadmap calls for:

Evidence of a commitment and effective measures to promote Responsible Business Conduct [RBC] in relation to disclosure; business respect for human rights, including those of indigenous peoples; employment and industrial relations; environment; anti-corruption; consumer interests; science and technology; competition; and taxation; including the implementation of the OECD Guidelines for Multinational Enterprises and the use of the OECD Due Diligence Guidelines by business, as well as an adequate legal and regulatory framework in the areas covered by the Guidelines...¹⁰⁰

The Roadmap states that Bulgaria must have a well-functioning and adequately resourced NCP.¹⁰¹ BHR policies are thus an unambiguous conditionality, and the UNGPs are covered by reference to the Guidelines. The Roadmap does not, however, elaborate what constitutes evidence of commitments or an adequate regulatory framework for RBC. The Roadmap also includes conditionalities that are of general relevance without referencing specific BHR instruments: ensuring market practices and policies for sustainable finance, including environmental, social and governance (ESG) issues; putting in place policies for equal opportunities and inclusive economic growth; and adopting and enforcing a range of labour rights policies covering inclusion, gender equality, disabilities, discrimination and immigration.¹⁰²

⁹⁸ European Commission, 'Opinion on Ukraine's Application for Membership of the European Union', COM(2022) 407 final (17 June 2022).

⁹⁹ Ministry of Economy and Industry of the Republic of Bulgaria, 'National Contact Point in Bulgaria – OECD', <https://www.mi.government.bg/en/pages/nsp-mision-334.html> (accessed 20 April 2022).

¹⁰⁰ OECD Council, *Roadmap for the OECD Accession Process of Bulgaria* (Paris: OECD, 2022) 13–14.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

Bulgaria was the only candidate to have completed an Investment Policy Review, which covers RBC, since the accession round began. The review specifies only ‘recommendations’, but it indicates specific policies the candidate might be expected to adopt to fulfil broad accession conditionalities. The report states Bulgaria has taken important steps on RBC, but it criticizes the absence of ‘due diligence’ in public discourse and policy. It recommends building a common understanding of RBC by leveraging and actively disseminating international standards and tools to help businesses manage human rights and environmental risks. The OECD recommends that Bulgaria implement reforms to its justice system and protection of fundamental rights to create an ‘enabling environment’ for RBC. It also recommends other measures, including establishing an effectively functioning NCP; ensuring policy coherence on RBC issues; setting clear expectations on due diligence; actively promoting the OECD Guidelines and sectoral due diligence guidance among Bulgarian companies; engaging stakeholders to design and implement RBC regulations; and ensuring full compliance with EU legislation related to RBC, including the NFRD.¹⁰³

Croatia

The OECD Council opened negotiations with Croatia in January 2022 and adopted a Roadmap in June. Croatia first conveyed membership aspirations in 1994 and formally applied in 2017. It participates in numerous OECD bodies and instruments and has pending requests to join more. Additionally, it has adhered to the Declaration on International Investment and Multinational Enterprises since 2019.¹⁰⁴ The Roadmap for Croatia includes the same provisions on BHR and RBC that are in Bulgaria’s Roadmap, although Croatia was already obligated to promote the OECD Guidelines and had established an NCP. The Roadmap also states Croatia should adopt the same measures on sustainable finance and ESG issues, inclusive growth and labour protections as in the Bulgarian Roadmap.¹⁰⁵

Romania

Romania entered accession talks in January 2022 and received a Roadmap in June, but it first expressed interest in membership in 1991. The OECD offered Romania a country-specific programme upon capitalist transition, and it has participated in policy reviews since the early 2000s and joined as many bodies and instruments as possible, becoming an associate or member of more than any other non-member state. In 2016, the Prime Minister addressed the OECD Council and formally requested membership.¹⁰⁶ Romania has adhered to the Declaration on International Investment and Multinational Enterprises since 2005.¹⁰⁷ Romania’s Roadmap includes conditionalities identical to those in the Bulgarian and Croatian Roadmaps relating to RBC and BHR, although it has long had an established NCP and obligation to promote the OECD Guidelines. The Roadmap includes the same conditions on sustainable finance and ESG issues, inclusive growth and labour protections as in the two Roadmaps above.¹⁰⁸

¹⁰³ OECD, *OECD Investment Policy Review: Bulgaria* (OECD: Paris, 2022).

¹⁰⁴ OECD/LEGAL/0144, note 64.

¹⁰⁵ OECD Council, *Roadmap for the OECD Accession Process of Croatia* (Paris: OECD, 10 June 2022).

¹⁰⁶ OECD, ‘The OECD and South East Europe: Romania’, <https://www.oecd.org/south-east-europe/economies/see-romania.htm> (accessed 20 April 2022).

¹⁰⁷ OECD/LEGAL/0144, note 64.

¹⁰⁸ OECD Council, *Roadmap for the OECD Accession Process of Romania* (Paris: OECD, 10 June 2022).

VI. Discussion and Analysis

This empirical snapshot of negotiations shows both the EU and OECD already issue some BHR conditionalities. The OECD focuses more explicitly and specifically on implementing international BHR instruments and concepts, including the UNGPs and due diligence, than does the EU, but its Roadmaps lack detail on the specific types of policies and reforms candidates should implement. The EU has more detailed requirements for candidates, but they do not comprehensively address BHR. There is considerable scope for advancing BHR and promoting broader approaches to implementing the UNGPs through conditionality in both IOs. This section discusses the empirical findings above and relates them to political and policy strategies grounded in theory.

Previous research elucidated strategies that could maximize the effectiveness of conditionality for BHR. To recap, credibility is especially critical to the success of conditionality, but it depends on timing, and IOs must be sure not to impose conditionality too early when accession seems remote, or too late when accession is imminent and withdrawal would seem too high-cost. IOs risk losing their leverage in excessively prolonged and stagnated negotiations, which diminish credibility. IOs must therefore have a clear strategy for all stages of the accession process to get the timing right on BHR conditionality. Previous research also showed that combining bilateral and multilateral accession negotiations can increase conditionality effectiveness and enhance candidate compliance. Sustained compliance may require the cultivation of a plural domestic political party constellation and forging coalitions between domestic actors and the IO. IOs can also coordinate with other IOs to improve the effectiveness of conditionality by legitimating norms already promoted in other institutions of which the candidate may be a member. IOs should ensure that BHR is not a low priority in negotiations, and they should ensure that existing member states and the institution itself have internalized BHR norms while offering clear requirements for candidates. Based on these insights, it is possible to assess the status and prospects of EU and OECD accession conditionalities for BHR.

Most ongoing EU accession negotiations involve some BHR conditionalities, but they are narrow in scope and do not address the full spectrum of human rights, do not reference international BHR standards and do not engage the full suite of possible regulatory instruments. Theoretical expectations from previous research suggest that requirements should be made clearer. The empirical section showed numerous (potential) candidates must address labour rights and discrimination, but these conditionalities have only a narrow focus on employees; BHR concerns all internationally recognized human rights and considers external stakeholders.¹⁰⁹ The previous section showed that the EU presses candidates to adopt policies for and align legislation with the NFRD, but this recurring conditionality appears to be the only one in EU progress reports requiring acceding governments to directly regulate companies on wider human rights issues. The EU could more explicitly invoke specific BHR instruments and norms promoted by other IOs in its conditionalities in line with the effectiveness criteria derived from the aforementioned literature, and the UNGPs and OECD Guidelines are prominent options.

In general, the EU goes beyond conditionalities that focus only on legislation. Candidates must often adopt supporting and enabling policies and institutions – for example, national strategies on specific human rights issues stipulated for Kosovo and Serbia. Such policies are compatible with established accession procedures, and these ‘softer’ measures could be useful in the BHR domain by getting CEE governments to change not only laws, but also to build and strengthen human rights institutions, foster policy coherence and buttress

¹⁰⁹ Nadia Bernaz, *Business and Human Rights: History, Law and Policy – Bridging the Accountability Gap* (Abingdon and New York: Routledge, 2017) 57.

regulation. The UNGPs call for a ‘smart mix’ of policies, which should combine mandatory legislation with supportive measures.¹¹⁰ Such measures could include providing information and training, communicating information on human rights risks and linking human rights to procurement policy, export credits and development finance – all of which could be developed in a NAP. The EU could even stipulate that where a CEE candidate must adopt a national human rights strategy, there should be a chapter on business. These soft policies should help to ensure CEE governments swiftly implement and comply with future EU directives on BHR after accession. EU members without ‘fitting’ policies in place tend to lag in compliance with novel directives, meaning that policy lagging now could preclude swift implementation of BHR legislation in the future.¹¹¹ The forthcoming EU Corporate Sustainability Due Diligence Directive thus strengthens the case for broader BHR conditionalities: even if HRDD legislation enters the *acquis*, the EU could leverage accession to spread policies and institutions that prepare for or enable its effective adoption and implementation in CEE. Doing so is particularly important since lessons from previous research show that failure to ensure sustained compliance in acceding states leads to lagging and backsliding post-accession, at which time leverage is lost.

Regarding the OECD, the language in the Bulgarian, Croatian and Romanian Roadmaps is even clearer than in Roadmaps for Colombia and Lithuania, which led to their governments adopting NAPs on BHR during accession. Those Roadmaps called only for providing evidence of a commitment to international instruments in the OECD Guidelines – implicitly, the UNGPs.¹¹² OECD membership is overall highly correlated with, and possibly related to, NAP adoptions, even more so than EU membership,¹¹³ and all extant HRDD legislation comes from OECD member states.¹¹⁴ If greater norm internalization improves conditionality effectiveness, then the OECD could prove particularly impactful as it becomes bolder in imposing BHR conditionalities. The stronger and clearer language in the latest CEE Roadmaps seems likely to be a sign that the OECD is evolving on BHR and including increasingly clear conditionalities, which previous research suggests is critical for conditionality effectiveness. Conditionalities remain somewhat vague, but specificity on policy content and style could be further elaborated in policy reviews. Finally, Croatia’s and Romania’s Roadmaps require them to adopt policies on RBC despite existing obligations, which could fortify adherence to norms these states have already nominally adopted.

It might be unrealistic or legally problematic to add fresh conditionalities in ongoing accession negotiations (e.g., where a relevant EU chapter has already closed), and previous research shows how significantly timing affects credibility and thus conditionality effectiveness. Previous research showed withholding membership is more credible towards the end of negotiations, while pre-accession pressure is less compelling. Accordingly, the EU should have the greatest leverage over Montenegro and possibly Serbia. Both states, however, show stagnation in reforms, and Serbia especially faces ongoing political challenges that could impede the process or limit conditionality effectiveness – not least its population’s significant Euroscepticism, which reduces the

¹¹⁰ Human Rights Council, note 58, para 5.

¹¹¹ Tanja A Börzel, ‘Why There is No “Southern Problem”’. On Environmental Leaders and Laggards in the European Union’ (2000) 7:1 *Journal of European Public Policy* 141.

¹¹² Notably, however, the same conditionality that pushed Colombia and Lithuania to adopt NAPs appeared in Costa Rica’s Roadmap, but it has never adopted a NAP. See OECD Council, ‘Roadmap for the Accession of Costa Rica to the OECD Convention’, C(2015)93/FINAL (15 July 2015).

¹¹³ Higham, note 20, 114.

¹¹⁴ Business & Human Rights Resource Centre, ‘National & Regional Movements for Mandatory Human Rights & Environmental Due Diligence in Europe’, *Business & Human Rights Resource Centre* (22 April 2022), <https://www.business-humanrights.org/en/latest-news/national-regional-movements-for-mandatory-human-rights-environmental-due-diligence-in-europe/> (accessed 30 April 2022).

ability of the domestic opposition to hold the government accountable for meeting accession conditionalities. As discussed, however, competing accounts argue that IOs' leverage decreases when accession is nigh. Taken together, the window for maximum leverage is narrow and difficult to pinpoint, but it seems probable that the EU's leverage for imposing BHR conditionalities on at least Montenegro may be fading. The EU may also have less leverage over pre-candidates in very early stages of reform, especially Georgia, Kosovo and BiH, where accession may seem especially distant – especially for Kosovo, which is not recognized by numerous EU members, and BiH, which first acquired pre-candidate status two decades ago.

The EU and OECD could both better leverage the increase in compliance commonly found in the early stages of negotiations. The OECD may have a prime window at the time of writing for ensuring BHR conditionalities in its Roadmaps for Bulgaria, Croatia and Romania are elaborated and implemented. The EU could also leverage the early phase of negotiations by ensuring BHR is mainstreamed into any policy chapters that open. It may have better odds of doing this with Albania, Moldova and Ukraine, where negotiations are genuinely fresh, although the geopolitical situation could reduce the credibility of imminent accession for the latter two and lead to a loss of leverage if negotiations drag on. Most other EU negotiations with CEE candidates have proceeded at an even pace, but negotiations with some states could be seen as excessively prolonged and increasingly less credible. North Macedonia has been a candidate since 2005, but negotiations only began in 2020. Serbia may find itself in accession limbo if its diplomatic strategies do not change. Its Balkan neighbours, Kosovo and BiH, have also been potential candidates for two decades and face challenges such as diplomatic tensions and domestic political instability that could lead to prolonged accession. EU leverage over these states may be dwindling as negotiations are prolonged, which previous research confirms is a hindrance to credibility. As such, it should potentially move to implement BHR conditionalities swiftly and rejuvenate accession prospects with a diplomatic push.

The EU and OECD both engage in bilateral and multilateral accession programmes, which previous research shows could combine to improve effective implementation of conditionalities, but neither IO appears to have specific programmes on BHR. Multilateral approaches could be useful for improving diplomatic relations between CEE states and for addressing regional and cross-border BHR challenges. It is also worth considering how to incorporate acceding states into other multilateral processes, such as the EU's open coordination system. As EU firms expand into CEE with lowered trade barriers, these IOs could work with governments in the region to promote BHR norms collectively and foster greater uptake. These IOs could also coordinate better to legitimate BHR norms, as previous research shows that overlapping support for norms from IOs in which a candidate is already a member state enhances accession conditionality when the norms are imposed by another IO. Both the EU and OECD currently endorse uptake of the UNGPs, as do other IOs in the region such as the CoE and OSCE. The OECD's recommendation that Bulgaria comply fully with EU legislation on RBC is a good example of how these IOs can reinforce BHR policy norms during accession processes, as is the EU's conditionality on implementing UN and CoE recommendations in Montenegro and human rights treaty body recommendations in North Macedonia. Both the EU and OECD could engage more with the CoE and OSCE to coordinate norm promotion in this area, as these IOs have significant legitimacy and authority in the field of human rights. Combined with the OECD's reputation for RBC standards and the EU's focus on market regulation, they could complement each other well through mutual legitimation.

This approach could be particularly effective for OECD candidates in CEE, which are already EU member states. Previous research leads us to expect that the EU will have lost much leverage over these governments post-accession, but it may have introduced or could

in future legitimate key norms for national audiences. OECD accession presents a second chance to promote uptake of the UNGPs through conditionality. The OECD also includes members from other regions that have NAPs on BHR, such as the US and Japan, which could increase perceptions of norm internalization and provide a wider array of experiences from which to learn. It could also lead to more harmonized approaches, and scholars have suggested IOs should coordinate national BHR policies to avert increasingly fragmented approaches.¹¹⁵

A potential impediment to conditionality effectiveness could nonetheless be the degree of internalization of BHR norms. Previous research suggests that where IOs and/or its member states have not fully internalized a norm, accession conditionality may yield lower compliance. The EU has its own BHR policies, including not only aforementioned directives, but also policies such as sector guidelines adopted by the Commission.¹¹⁶ The OECD has the Guidelines for Multinational Enterprises and other RBC instruments, suggesting both IOs have to some extent internalized BHR norms institutionally. Most member states of both IOs have a NAP, but these are often soft instruments that arguably do not indicate deep norm internalization. Only very few EU/OECD members have mandatory HRDD legislation, none of which are in CEE. Lack of internalization can lead to low prioritization of issues in negotiations, further limiting conditionality effectiveness. Minimal and indirect conditionality on BHR in EU negotiations could indicate low prioritization, although it is not obvious that BHR is an especially low priority relative to the myriad issues covered. The OECD includes more and clearer references to BHR norms and instruments in its latest CEE Roadmaps, explicitly promoting the UNGPs, which suggests BHR is a higher priority, but the OECD may put even more weight on issues like market liberalization.

If, as previous research showed, mixed political constellations and liberal democratic systems enhance conditionality effectiveness, then BHR conditionalities are likely to be least effective in CEE states with greater democratic challenges – an important point given that more democratic governments are increasingly likely to adopt BHR policies, even compared with other democracies.¹¹⁷ It is unsurprising that the EU requires acceding governments with significant democracy challenges, such as recent histories of conflict or political instability, to prioritize conditionalities on corruption and rule of law ahead of more specific regulatory and human rights conditionalities, while states further along in the accession process or with more consolidated democratic systems have clearer BHR criteria. For the OECD, democracy is usually a precondition for candidacy. It is unlikely that the most autocratic states in CEE – Azerbaijan, Belarus and Russia – would apply for membership in either IO before a regime change or major geopolitical shift, but the question was relevant when Russia remained an OECD candidate.

This analysis is informed by theoretical expectations derived from previous research on accession conditionality, but it also yields several important lessons for that literature. First, this discussion introduces an IR debate to the BHR field and connects important empirical developments in BHR policy to the IR literature. Scholars in IR have been generally under-represented in the heavily legal BHR field, and this analysis shows how the literatures can benefit each other. More specifically, the analysis shows that the OECD is indeed forging ahead with more explicit and sometimes more extensive conditionalities in certain issue areas – here, BHR – than organizations like the EU. If compliance is successful and sustained in candidates, more research is certainly warranted on the importance of status for inducing candidate acquiescence to IO accession conditionality. The discussion also shows how the IO

¹¹⁵ Augenstein, Dawson and Thielbörger, note 59.

¹¹⁶ Shift, 'European Commission Human Rights Sector Guides', <https://shiftproject.org/resource/european-commission-human-rights-sector-guides/> (accessed 16 November 2022).

¹¹⁷ Higham 2021, note 20, 119.

literature on accession conditionality can be applied to a specific case to generate strategic political and policy recommendations for fostering greater uptake of a core international human rights regulatory instrument. Much of the extant literature has been purely academic, but here a policy studies approach shows that it is directly applicable to BHR challenges within the CEE region and potentially beyond. In doing so, the discussion shows the relevance of BHR particularly for CEE, where IO accession politics are a pressing issue.

VII. Conclusions

This article considered IO accession conditionalities' prospects for promoting and expanding uptake of the UNGPs in CEE. Conditionality is a sometimes highly effective governance tool that induces governments to adopt policies, probably because they are motivated by rewards. The EU and OECD are IOs with much at stake in CEE expansion and already impose some BHR-related accession conditionalities. This article has shown that there is significantly greater scope to include wider, more substantive BHR conditionalities that explicitly promote the UNGPs. It has argued that even where existing conditionalities relate to the adoption of 'softer' measures, a clearer BHR perspective could facilitate the smoother and swifter adoption and enforcement of subsequent legislation to mandate HRDD. Previous research highlights various political strategies that these IOs could use to promote BHR policies at different stages of negotiations, and the discussion drew on these theoretical insights to show potential options for CEE expansion.

The OECD is arguably more advanced than the EU in adopting BHR conditionalities. Policies to encourage business respect for human rights generally and for promoting corporate compliance with the UNGPs are now a key feature of all CEE Accession Roadmaps issued by the OECD Council. The EU includes many conditionalities with BHR relevance, especially on human rights reporting regulations and labour rights, but they may not cover wider human rights issues in a business context. One can therefore conclude that the OECD has a particularly important role in the global governance of BHR. While the EU may eventually require member states to implement mandatory HRDD legislation in line with a novel directive, both IOs will continue to be relevant for disseminating BHR norms in the CEE region and beyond, not least if they collaborate and coordinate (with each other and with other IOs) to legitimate and reinforce BHR policy demands.

These conclusions point to several avenues for future research and policy work. First, while I have argued that inter-IO coordination could enhance the effectiveness of conditionality and augment the normative legitimacy of BHR policies, the IR literature has not fully answered questions of which IOs can work together in which contexts and under what circumstances. Research on this type of coordination regarding conditionality is particularly sparse. Furthermore, there is a dearth of research on how institutional complexes in different policy sectors coordinate and clash; yet, scholarship and jurisprudence increasingly recognize the interconnections of human rights, climate change, and the global political economy. As IOs, governments, and non-state actors increasingly converge around the UNGPs, these questions are especially pertinent for BHR, and BHR could provide a fruitful case study.

Second, conditionality effectiveness for IOs other than the EU remains largely unassessed. Findings from EU studies can be generalized, but the extent of generalizability is not obvious. The OECD only meaningfully offers status to aspiring members; it does not grant access to a common market – although status may augment international trade and investment. Future research could more systematically study conditionality in other IOs, and the BHR policy domain would serve as an especially useful empirical area given its relative novelty and the recent history of governments

adopting NAPs on BHR to meet OECD conditionalities. This research would be useful for thinking about conditionality in CEE states as they increasingly join additional IOs.

Third, we need a better understanding in general of what it means to have ‘internalized’ BHR and what it means for a BHR policy to be ‘effective’. The inter-disciplinary BHR literature often asserts that NAPs have few or limited effects, but their effectiveness has not been established through rigorous comparative analysis tracing potential behaviour change and real-world impacts. I argue that NAPs could be included in accession negotiations as part of a ‘smart mix’ of conditionalities, but more research is needed on how IOs can ensure that they are not only empty texts. Scholars should elucidate more concretely the benefits and shortcomings of the BHR policies governments actually adopt.

Finally, there is limited research on how to design or promote BHR policies that are appropriate to specific national contexts. For example, Bulgaria, an EU and NATO member state acceding to the OECD, has a very different economic and political reality than Ukraine, whose sovereignty was violated in a war of aggression, and which could spend decades rebuilding from the conflict. Legal and policy scholars should determine how IOs can adapt BHR conditionalities to the realities facing each CEE state, avoiding prescriptive approaches that treat the region as monolithic – an apparent risk considering the identical text on BHR in all three CEE Roadmaps from the OECD.

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