
EU CONDITIONALITY IN SERBIA

Serbian Patterns of Compliance and the Domestic Impact of EU Enlargement Policy

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“If someone thinks the law and the reforms can be stopped by eliminating me, then that is a huge delusion.” – Zoran Đindić

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Abstract

This thesis examines the domestic impact of conditionality in Serbia, focusing particularly on the Serbian political spectrum and how such impact influences the patterns of compliance of Serbia's political elites with EU conditions. The EU's influence in domestic politics has developed significantly since the inception of enlargement law to its full transformation into an enlargement *policy*. The development of the Serbian political spectrum since the fall of Milošević in 2000 accurately portrays the extent to which EU conditionality impacts domestic factors; however, the existing literature on EU conditionality in Serbia underplays the importance of such impact in determining why the EU's enlargement policy continuously fails to bring about EU rule transfer. This thesis argues that the domestic impact of conditionality in Serbia produces weak patterns of compliance which undermine the effectiveness of conditionality as a means to promote EU rule transfer.

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Abbreviations

Serbian Political Parties:

DEPOS – Democratic Movement in Serbia
DOS – Democratic Opposition of Serbia
DS – Democratic Party
DSS – Democratic Party of Serbia
G17+ – G17 Plus
LDP – Liberal Democratic Party
NS – New Serbia
SPO – Serbian Renewal Movement
SPS – Socialist Party of Serbia
SRS – Serbian Radical Party
ZES – For a European Serbia

AA – Association Agreement
AP – Accession Partnership
CEE – Central and Eastern Europe(-an)
CoE – Council of Europe
EA – Europe Agreement
EC – European Communities
ECES – European Coal and Steel Community
EEC – European Economic Community
EP – European Partnership
EPA – European Parliamentary Assembly
EU – European Union
EULEX – EU Rule of Law Mission in Kosovo
Euratom – The European Atomic Energy Community
ICJ – International Court of Justice
ICTY – International Criminal Tribunal for the Former Yugoslavia
IMF – International Monetary Fund
LGBT – Lesbian, Gay, Bisexual, and Transgender
NATO – North Atlantic Treaty Organization
OSCE – Organization for Security and Cooperation in Europe
SAA – Stabilization and Association Agreement
SAP – Stabilization and Association Process
SEA – Single European Act
SRJ – Federal Republic of Yugoslavia
UN – United Nations
UNMIK – UN Mission in Kosovo
UNSC – UN Security Council

CHAPTER 1

Introduction

1.1 *Thesis Statement*

Croatia, Macedonia, and Montenegro have each achieved EU candidate status and, among the remaining countries of the Western Balkans, Serbia is the next likely to follow in suit; however, the sluggish, inept nature of Serbia's EU bid—as demonstrated by its continuously ‘frozen’ status and failure to promote EU rule transfer—threatens the success of Serbian accession. Who is to blame for this lack of progress?

In recent years, support for EU membership in the Serbian political spectrum (i.e., Serbian politics, political parties, and political elites) has dramatically increased as seen by three key events. First, as a result of the 2008 Serbian presidential and parliamentary elections, Serbia’s pro-EU forces swept the country. President Boris Tadić—leader of the Democratic Party (DS)—won reelection and a DS-led coalition formed a stable government. Such developments have ensured the continued support for EU membership and have marked an increase in cooperation with EU accession conditions. Second, the repositioning of the previously anti-EU, Milošević-led Socialist Party of Serbia (SPS) as a leading proponent of Serbia’s EU accession further strengthens the country’s EU prospects. Additionally, such shift seems stable given the party’s continued participation in the current DS-led government. Third, the late-2008 emergence and popularity boom of the pro-EU Serbian Progressive Party (SNS)—a splinter of the EU-skeptical Serbian Radical Party (SRS)—suggests the universality of EU membership as a goal across the entire Serbian political spectrum. Nevertheless,

despite this drastic boost in support for EU accession among Serbian political parties and elites, the country's EU bid remains blocked.

When taking into consideration this high degree of support for EU accession within the Serbian political spectrum, one would expect a parallel increase in compliance with the accession conditions of the EU enlargement process. As seen in the status quo, however, this assumption is not the case. Such trends construct a perplexing phenomenon which inevitably raises many questions concerning, specifically, the link between EU conditionality and the Serbian political spectrum. Why do conditions remain unmet despite bolstering support for and cooperation with the EU in Serbia? This thesis claims that the explanation for this '*status quo phenomenon*' is rooted in the ineffective nature of EU conditionality in Serbia; however, this thesis also claims that such inefficacy is primarily a result of the impact of conditionality on the Serbian political spectrum.

Given the issue-specific nature of conditionality in Serbia's EU accession process, this thesis limits its analysis to only *three critical issues* regarding the link between EU conditionality and the Serbian political spectrum: (1) unrelenting EU demands for 'full cooperation' with the International Criminal Tribunal for the former Yugoslavia (ICTY), (2) emerging links between regional cooperation and the resolution of Kosovo's final status (also referred to as 'the Kosovo issue' or 'the Kosovo question'), and (3) the diffusion of 'European' identity, values, and norms in Serbian society utilizing a top-down, hierarchical approach (a concept termed by this thesis as 'the EU's normative agenda'). The Serbian government's insufficient cooperation with the ICTY, the unresolved nature of the Kosovo question, and the continued failure of the EU's normative agenda to take hold suggest that conditionality—as generally argued—is largely ineffective in promoting the transfer of EU rules in Serbia.

The conclusions of this thesis do not focus on conditionality as a direct explanation for the ineffectiveness of EU rule transfer in Serbia; conditionality is merely an indirect component and provides the analytical foundation of this thesis' analysis. Instead, emphasis is placed on how the domestic impact of EU conditionality influences Serbian patterns of compliance thus establishing the Serbian political spectrum as the chief obstacle to Serbia's EU accession. As previously stated, in order to explain the status quo phenomenon, this thesis focuses on how *the domestic impact of conditionality in Serbia undermines EU rule transfer in Serbia*. While the EU plays a vital role, it cannot, short of a unilateral intervention, determine the success of EU rule transfer in Serbia; the ultimate decision rests on—regardless of public opinion—Serbian political elites.

By focusing on the influence of EU conditionality on the nature of Serbian politics, the balance of Serbian political parties, and the behavior, rhetoric, and tactics of Serbian political elites, this thesis identifies a three-fold impact: (1) the incarceration of Serbian politics, (2) the marginalization of Serbia's pro-EU political parties, and (3) the manipulation of EU conditionality by Serbian political elites. An analysis of this impact in the context of the three critical Serbian issues shows how EU conditionality is *counterproductive to the very goals of EU enlargement*. In a broader context, the scope of this thesis goes beyond questions on the effectiveness of EU conditionality in Serbia and its impact on the Serbian political spectrum, and illuminates the overarching implications of the EU accession process in regard to Serbia's post-communist, democratic transition.

1.2 Thesis Structure

This thesis asks: What is the nature and extent of conditionality in the current EU accession process in the Western Balkans? How has such policy developed since the

previous EU enlargement rounds? What are the goals of the EU's enlargement policy? How has the EU influenced the development of Serbian politics, political parties, and political elites since the fall of Milošević? What are the key issues of concern in Serbia and to what degree are they linked with EU conditions? What is the domestic impact of conditionality in Serbia and how does it influence Serbian patterns of compliance and the success of EU rule transfer? And, what are the implications of the EU accession process on Serbia's post-communist, democratic transition? This thesis is concerned primarily with the domestic impact of EU conditionality on the Serbian political spectrum and its implications for *Serbia*. It aims to evaluate the effectiveness of conditionality in the promotion of EU rule transfer in the context of Serbia's EU accession process and democratic transition. This is not an analysis of inner-EU impacts and implications; but, this thesis does discuss the development of EU enlargement policy (albeit from the perspective of the candidate country). The following seven chapters seek to set the stage for and present the principle conclusions of my research.

Chapter 2 builds a theoretical basis on which to introduce the main explanatory concepts and to tie the conclusions of this thesis into the existing literature on EU external governance. Chapter 3 provides the fundamental framework of EU conditionality by examining the transformation of EU enlargement law and the accession process in order to understand how, why, and in what context such policy emerged. The following overview of the most current EU accession process in the Western Balkans—the Stabilization and Association Process—builds upon the developed character of EU conditionality from the previous enlargements; then, this chapter uses the case of Croatia's EU bid as an example to clarify current EU enlargement policy. Furthermore, this analysis of both previous and current enlargements and the application of conditionality illuminate the central goals of the EU's enlargement policy to establish a basis on which to determine the successfulness of EU

rule transfer. Chapter 4 introduces the extent to which EU conditionality permeates the Serbian political spectrum by focusing on three key periods in the course of Serbia's post-Milošević democratic transition.

The research substance and principle conclusions are presented in the remaining chapters. Chapter 5 defines and evaluates the degree of EU conditionality in the three critical issues of Serbia's EU bid: (1) ICTY cooperation, (2) the Kosovo question, and (3) the EU's normative agenda. This chapter also provides a critical assessment of the existing works on EU conditionality in Serbia which present similar conclusions in order to determine the uniqueness of the claims advanced by this thesis. Chapters 6 and 7 discuss the impact and implications of EU conditionality in Serbia. This analysis of the role of EU conditionality in the three critical Serbian issues show how deep an impact has formed within the nature of Serbian politics, political parties, and political elites. Such impact has profound, overarching implications for Serbia's democratic transition.

Finally, chapter 8 constructs the links between the claims and conclusions of each of the previous discussions and provides closing remarks.

CHAPTER 2

A Theoretical Basis

The study of the external influence of the EU (also called ‘Europeanization’¹) is a relatively new research area. The bulk of such literature did not emerge until after the fall of communism in 1989 and the subsequent initiation of the Union’s campaign to integrate the countries of Central and Eastern Europe (CEE). Since then, this subject has developed into a thriving academic field with a firm theoretical basis. The study of EU external governance, in particular, represents a subfield of the EU’s external influence; such literature details the different types of leverage, varying modes of external governance, and the EU’s domestic impact. This chapter provides a theoretical basis for this thesis’ hypothesis by analyzing the concepts of conditionality and domestic patterns of compliance within the context of EU external governance theory.

2.1 *External Governance and the EU’s Enlargement Policy*

The transformation of the EU from a regional economic community into a fully-functioning, constitutional, supra-governmental organization has been characterized by the Union’s parallel transformation into a global superpower. Consequently, EU institutions and

¹ See, e.g., Tanja A. Börzel, “Europeanization: How the European Union Interacts with its Member States,” in *The Member States of the European Union*, ed. Simon Bulmer and Lequesne Christian (Oxford and New York: Oxford University Press, 2005), 45-76; Tanja A. Börzel and Thomas Risse, “Conceptualizing the Domestic Impact of Europe,” in *The Politics of Europeanization*, ed. Kevin Featherstone and Claudio M. Radaelli (Oxford and New York: Oxford University Press, 2003), 57-80; Maria Green Cowles, James A. Caporaso, and Thomas Risse, *Transforming Europe: Europeanization and Domestic Change* (Ithaca: Cornell University Press, 2001); Kevin Featherstone and Claudio M. Radaelli, eds., *The Politics of Europeanization* (Oxford and New York: Oxford University Press, 2003).

international clout strengthened and EU norms became politicized. The enlargement of the EU represents the epitome of the Union's influence in the affairs of and relations with its neighbors. Therefore, the concept of EU external governance is best illustrated by the *EU's enlargement policy*.

Two types of leverage—passive and active—characterize EU external governance.² While passive leverage refers merely to the attraction of EU membership, active leverage entails deliberate EU involvement. Within this context, there are three modes of external governance: (1) *hierarchical*, (2) *network*, and (3) *market* governance.³ Hierarchical governance is essentially a vertical, top-down relationship of domination and subordination (i.e. conditionality). This mode—characterized by non-negotiable, legally binding, and enforceable rules—represents the chief tool of the EU's enlargement policy. Network constellations create a horizontal power relationship of legally equal actors which emphasize bilateral interactions to produce dialogue and mutually accepted solutions. Finally, the market mode of EU external governance is based on the indirect transfer of EU norms and policies via ‘competition’. Essentially, domestic forces decide to adopt EU rules in favor of existing domestic rules because they believe such rules to be more effective in resolving domestic issues.

In utilizing such modes of external governance, the EU aims to extend its “internal rules and policies beyond formal membership”.⁴ This process—EU rule transfer—measures the effectiveness of EU external governance. Two dimensions comprise the nature of EU rule transfer: *formal rule transfer* and *rule diffusion*;⁵ and, in order to constitute effective (and

² Vachudová, *Europe Undivided*.

³ Sandra Lavenex and Frank Schimmelfennig, “EU Rules Beyond EU Borders: Theorizing External Governance in European Politics,” in *EU External Governance: Projecting EU Rules Beyond Membership*, ed. Sandra Lavenex and Frank Schimmelfennig, Journal of European Public Policy Series (London and New York: Routledge, 2010), 1-22.

⁴ Ibid.

⁵ See, e.g., Gerda Falkner and Oliver Treib, “Three Worlds of Compliance or Four? The EU-15 Compared to New Member States,” *Journal of Common Market Studies* 46, no. 2 (2008): 293-313; Frank Schimmelfennig

substantial) EU rule transfer, both dimensions must be sufficiently met. Formal EU rule transfer—defined as a three-pronged process of selecting, adopting, and applying rules⁶—gauges the effectiveness EU rule transfer, albeit solely at the governmental level. Rule diffusion, on the other hand, measures the public and elite acceptance of EU rules. The process of formal rule transfer does not guarantee rule diffusion (and vice versa); while domestic elites ought to take into account the demands of the electorate, their actions often risk, especially in the context of EU enlargement, contradicting popular perceptions. In utilizing the hierarchical mode of external governance as the chief instrument of the EU's enlargement policy, the Union must take into account both dimensions of EU rule transfer when measuring the policy's effectiveness.

Each form of external governance—passive (market mode) and active (hierarchical governance and network constellations modes)—varyingly influences the effectiveness of EU rule transfer. While EU external governance utilizes all three modes of rule transfer, the hierarchical mode of governance has come to specifically characterize the EU's enlargement policy (see chapter 3.2). Generally, hierarchical governance is regarded as the most effective mode of transferring EU rules and typically characterizes cases which necessitate the EU to play a more active role.⁷ Nevertheless, the effectiveness of hierarchical external governance in achieving EU rule transfer depends on its manner of application and its impact on domestic politics. In other words, the *implementation of conditionality* and its influence on *domestic patterns of compliance* determine effective EU rule transfer.

and Ulrich Sedelmeier, eds., *The Europeanization of Central and Eastern Europe*, Cornell Studies in Political Economy (Ithaca and London: Cornell University Press, 2005).

⁶ Lavenex and Schimmelfennig, “EU Rules Beyond EU Borders”.

⁷ See, e.g., Richard Youngs, “EU Rules Beyond EU Borders: Theorizing External Governance in European Politics,” in *EU External Governance: Projecting EU Rules Beyond Membership*, ed. Sandra Lavenex and Frank Schimmelfennig, Journal of European Public Policy Series (London and New York: Routledge, 2010), 105-125.

2.2 EU Conditionality and Patterns of Compliance

The inherent nature of conditionality sculpts it as a primarily incentive-based policy.⁸

It entails offering external incentives (also called ‘rewards’ or ‘carrots’) to ensure the domestic government’s compliance with set EU conditions; however, non-compliance prompts the EU to withhold such rewards and even threaten punishments (also called ‘sticks’). As such, given that domestic elites determine patterns of compliance, the effectiveness of EU rule transfer depends upon the ability of conditionality to influence—directly or indirectly—political action.

Models of Domestic Compliance with EU Conditionality

A dual behavioral orientation characterizes political action of domestic elites—*interest-oriented* and *norm-oriented* compliance. While interest-oriented action follows the ‘*logic of consequentialism*’ and utilizes a cost-benefit analytical approach to compliance; norm-oriented action, on the other hand, follows the ‘*logic of appropriateness*’ largely conceptualized by a process of socialization.⁹ Such actions determine domestic patterns of compliance. Two models, pulled from the existing literature on EU external governance, seek to provide an explanation for the influence of conditionality on varying patterns of compliance among domestic elites: (1) the external incentives model and (2) the social learning model.

⁸ See, e.g., Michael W. Bauer, Christoph Knill, and Diana Pitschel, “Differential Europeanization in Eastern Europe: The Impact of Diverse EU Regulatory Governance Patterns,” *European Integration* 29, no. 4 (September 2007): 405–423; Heather Grabbe, *The EU’s Transformative Power: Europeanization Through Conditionality in Central and Eastern Europe*, Palgrave Studies in European Union Politics (New York: Palgrave Macmillan, 2006); James Hughes, Gwendolyn Sasse, and Claire Gordon, *Europeanization and Regionalization in the EU’s Enlargement to Central and Eastern Europe: The Myth of Conditionality* (New York: Palgrave Macmillan, 2004); Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe*.

⁹ James G. March and Johan P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: Free Press, 1989): 160.

In adopting the interest-oriented approach to domestic compliance, the external incentives model claims that “[...] a state adopts EU rules if the benefits of EU rewards exceed the domestic adoption costs.”¹⁰ This model assumes that political elites strategically strive for utility-maximization in order to promote their own power, interests, and survival. As such, the EU’s enlargement policy—within the framework of this model—utilizes the instrument of conditionality through direct intergovernmental bargaining and indirect elite empowerment as means to provide the incentives for compliance. However, conditionality only guarantees compliance when the incentives provided by the EU outweigh the expected costs to the domestic elites.¹¹

Conversely, the norm-oriented social learning model claims that a state adopts EU rules if it perceives them as appropriate and the EU rule transfer policy as legitimate.¹² In short, this model claims that internalized identities, values, and norms motivate political action of domestic elites more than their desire for utility-maximization. In this context, the EU’s enlargement policy hinges on a process of socialization intended to promote the domestic internalization of EU norms and, in turn, enhance their perceived appropriateness. Conditionality strategically exerts normative pressure to either directly persuade domestic elites or to indirectly encourage socialization. Compliance is guaranteed only after the process of socialization eliminates or delegitimizes conflicting domestic rules, legitimizes the EU rule transfer policy, or ensures the compatibility of clashing norms.

¹⁰ Frank Schimmelfennig and Ulrich Sedelmeier, “Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe,” *Journal of European Public Policy* 11, no. 4 (August 2004): 672.

¹¹ Hughes et. al., *Europeanization and Regionalization*; Wade Jacoby, *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe* (Cambridge and New York: Cambridge University Press, 2004); Paul J. Kubicek, *The European Union and Democratization* (London and New York: Routledge, 2003); Frank Schimmelfennig, Stefan Engert, and Heiko Knobel, “The Impact of EU Political Conditionality,” in *The Europeanization of Central and Eastern Europe*, ed. Frank Schimmelfennig and Ulrich Sedelmeier, Cornell Studies in Political Economy (Ithaca and London: Cornell University Press, 2005), 29-50; Vachudová, *Europe Undivided*.

¹² Judith G. Kelley, *Ethnic Politics in Europe: The Power of Norms and Incentives* (Princeton: Princeton University Press, 2004); Jeffrey T. Checkel, “Why Comply? Social Learning and European Identity Change,” *International Organization* 55, no. 3 (2001): 553-588; Schimmelfennig and Sedelmeier, “Governance by Conditionality”.

While EU conditionality—as portrayed by these two models—seeks to deeply influence political action of domestic elites, its effectiveness in doing so depends upon factors in the status quo. Accordingly, in order to predict domestic patterns of compliance and to determine the role of conditionality in effectively influencing such patterns, these models rely upon numerous factors which influence the cost-benefit analysis and socialization processes of domestic elites.

Determining the Effectiveness of EU Conditionality

Each of these such factors (both pre-existing and developing) classify either a *rationalist* or a *constructivist* perspective and act complimentarily—effectively traversing the dual orientation of compliance—to determine political action of domestic elites.¹³

The rationalist perspective represents *material* incentives (e.g. EU rewards, political power gains and survival, and low adoption costs) while the constructivist perspective represents *intrinsic* incentives (e.g. stronger identification with the EU, ‘cognitive convergence’, and norm socialization). Likewise, rationalist factors serve primarily to measure the cost-benefit balance of interest-oriented political action, and constructivist factors chiefly influence the socialization of norm-oriented political action. Additionally, within these two camps, there are both EU and domestic categories; EU factors concern, for example, the clarity of EU demands, legitimacy of both EU demands and processes, credibility of the threats and promises of conditionality, and the Union’s capacity to monitor and bargain effectively. On the other hand, domestic factors emphasize primarily adoption

¹³ See, e.g., Bauer *et. al.*, “Differential Europeanization in Eastern Europe”; Kelley, *Ethnic Politics in Europe*; Paul J. Kubicek, “International Norms, the European Union, and Democratization: Tentative Theory and Evidence,” in *The European Union and Democratization*, ed. Paul J. Kubicek (London: Routledge, 2003), 1-29; March and Olsen, *Rediscovering Institutions*; Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe*.

costs (e.g. effects on compliance on political power, interests, and survival), the density and capacity of veto players, identity convergence/divergence, and normative resonance.

Table 2.1 – Weak Patterns of Compliance Model

		Logic of Appropriateness	
		CORRESPOND	CONTRADICT
Logic of Consequentialism	FAVORABLE	Full Compliance	Fake Compliance
	UNFAVORABLE	Inconsistent Compliance	Non-Compliance or Imposed Compliance

These factors, within the framework of the two presented models of EU external governance, aim to explain the compliance patterns of domestic elites and determine the effectiveness of conditionality in influencing their political action. The external incentives model relies on the rationalist cost-benefit analysis of domestic elites to determine the effectiveness of conditionality and, conversely, the social learning model utilizes the constructivist perspective of domestic elites to determine the appropriateness of EU-demanded political action. However, these two models are not mutually exclusive and the rationalist and constructivist perceptions tend to overlap.

This thesis' developed model presented above (see table 2.1), depicts the overlapping tendency of the rationalist and constructivist perceptions in determining domestic patterns of compliance. If a condition is deemed appropriate and has low adoption costs and/or high rewards, then political action will constitute *full compliance*. If a condition is deemed inappropriate but has low adoption costs and/or high rewards, then domestic elites will comply in order to avoid the higher costs of non-compliance, but will also not accept the appropriateness of the condition (i.e. formal rule transfer with no rule diffusion)—such action

demonstrates *fake compliance*. If a condition is deemed inappropriate and has high adoption costs and/or low rewards, then political action will result in *non-compliance*; however, the strict implementation of conditionality in this instance can coerce *imposed compliance* which guarantees neither dimension of EU rule transfer. Finally, if a condition is deemed appropriate but has high adoption costs and/or low rewards, then political action depends on the orientation—interest-oriented or norm-oriented—of the decision-making domestic elites and will thus result in *inconsistent compliance* which also risks producing contradictory political action. As an instrument to provide incentives and threaten punishments, conditionality has the possibility to heavily influence patterns of compliance; but, when conditionality fails to garner full compliance, it produces *weak patterns of compliance* (i.e. inconsistent, fake, imposed, and non-compliance) which undermine the effectiveness of conditionality in promoting EU rule transfer.

Conceptualizing the ‘Domestic Impact’ of EU Conditionality

While the vast majority of existing studies on EU external governance focus on EU and domestic factors (both rationalist and constructivist) as direct influences on domestic patterns of compliance and the effectiveness of conditionality, they do not take into account the full role of the *domestic impact of EU conditionality*. Within the literature, the term ‘domestic impact’ often refers to the ability of conditionality to *influence* political action (e.g. domestic implementation and enforcement of reforms), but this thesis interprets this term as meaning the *effects* of conditionality on domestic factors (e.g. mold identity, transform politics and political parties, and alter the behavior of veto players). The domestic influence of EU conditionality more accurately defines the former usage of ‘domestic impact’.

Studies which analyze the domestic impact of EU conditionality have only recently surfaced. They claim, for instance, that conditionality changes the perceived compatibility of national identity and EU identity,¹⁴ the way political parties and elites view EU legitimacy and credibility,¹⁵ and how domestic elites interpret and respond to EU demands.¹⁶ Such domestic impact can potentially form constructivist factors which, in turn, play into the social learning model of EU external governance by furthering the process of socialization; but, on the other hand, the domestic impact of conditionality can also create factors (rationalist or constructivist) which promote weak patterns of compliance (see table 2.1) with EU demands. Analyses of this negative domestic impact of EU conditionality are rare; but, nevertheless, broadly explain how such impacted factors influence political action of domestic elites. Such existing studies, however, do not provide in-depth analyses of the domestic impact of EU conditionality and also do not analyze the *implications* of such weak patterns of compliance on the effectiveness of EU rule transfer (both formal rule transfer and rule diffusion) and, more broadly, on the target state's overlying democratic transition.

This thesis agrees that the negative domestic impact of EU conditionality sufficiently explains weak patterns of compliance; but, it diverges from existing literature by going further and examining the domestic impact of EU conditionality on political elite behavior as an explanation for how such weak patterns of compliance promote ineffective EU rule transfer and jeopardize the democratic transition of the target state.

¹⁴ Tina Freyburg and Solveig Richter, “National Identity Matters: the Limited Impact of EU Political Conditionality in the Western Balkans,” *Journal of European Public Policy* 17, no. 2 (March 2010): 263-282; Jelena Subotić, *Hijacked Justice: Dealing with the Past in the Balkans* (Ithaca: Cornell University Press, 2009); Jelena Subotić, “Europe is a State of Mind: Identity and Europeanization in the Balkans,” *International Studies Quarterly* 55, no. 1 (March 2011): 1-22.

¹⁵ Gergana Noutcheva, “Fake, Partial, and Imposed Compliance: the Limits of the EU’s Normative Power in the Western Balkans,” *Journal of European Public Policy* 22, no. 1 (2009): 1065-1084; Milada Vachudová, “Corruption and Compliance in the EU’s Post-Communist Members and Candidates,” *Journal of Common Market Studies* 47 (2009): 43-62.

¹⁶ Freyburg and Richter, “National Identity Matters”; Noutcheva, “Fake, Partial, and Imposed Compliance”; Subotić, *Hijacked Justice*; Subotić, “Europe is a State of Mind”.

2.3 The Role of Nationalism

Discussions on patterns of compliance with EU demands necessitate an assessment of the influence of nationalism in political action of domestic elites. According to the modernist (as opposed to the primordialist) camp of nationalism scholars, national identities are social constructions resulting from discursive processes of interpretation by political actors; this makes them, therefore, continually subject to contestation and exploitation.¹⁷ In the countries of the Western Balkans—characterized by recent histories of turbulent ethnic violence and the heavy politicization of nationhood—national identity plays an extremely influential role in domestic politics and thus also in their respective EU membership bids. Especially in the accession processes of these particular states, EU conditionality often touches upon “[...] sensitive questions of statehood and national identity.”¹⁸ Therefore, it is important to emphasize nationalism as a key factor in explaining the compliance patterns of domestic elites and determining the effectiveness of conditionality in influencing political action.

In terms of EU external governance theory, Tina Freyburg and Solveig Richter present national identity as a constructivist factor which acts as a “[...] filter for the subjective perception of problems and potential (re-)actions”.¹⁹ In short, national identity measures the appropriateness of political action and, ultimately, determines the effectiveness of EU conditionality. This filter process (as depicted in the ‘identity model’ developed by Freyburg and Richter reproduced below, see table 2.2) works as an “identity test” for EU demands.²⁰

¹⁷ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso, 1991); Rogers Brubaker, *Nationalism Reframed: Nationhood and the National Question in Europe* (Cambridge: Cambridge University Press, 1996).

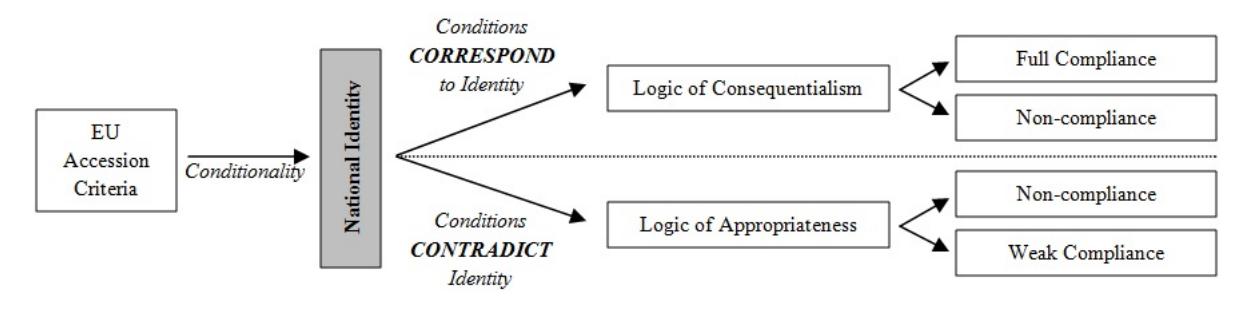
¹⁸ Ulrich Sedelmeier, “Europeanization in New Member and Candidate States,” 31.

¹⁹ Freyburg and Richter, “National Identity Matters,” 266.

²⁰ Ibid.

If EU conditions correspond to national identity, then political action adheres to rationalist cost-benefit analyses; but, if EU conditions contradict national identity (however slightly), political action then depends upon the logic of appropriateness. Non-compliance results from conditions interpreted as contradictory to national identity; but, conditions which ambivalently contradict national identity provide room for domestic elites to maneuver and ultimately result in weak compliance. In the latter case, compliance results when elites interpret such conditions as ‘identity-friendly’ and successfully frame them as corresponding with national identity;²¹ however, this process hinges on the rationalist or constructivist orientation of the decision-making domestic elites and, therefore, risks inconsistent and even contradictory political action.

Table 2.2 – Freyburg and Richter ‘Identity Model’



From a rationalist perspective, political action which contradicts the electorate’s notion of national identity (norm-violation) incurs domestic political costs and threatens the political survival (by means of electoral punishment, disintegration of a coalition government, or popular revolt) of the decision-making domestic elites.²² Nevertheless, given the fluidity and reinterpretability of national identity, domestic elites can construct redefinitions which promote their utility-maximization. However, different interpretations of national identity—especially in regard to multiple national identities (i.e. national identity

²¹ Ibid, 267; Antje Wiener, *The Invisible Constitution of Politics: Contested Norms and International Encounters* (Cambridge: Cambridge University Press, 2008): 10.

²² Freyburg and Richter, “National Identity Matters,” 268-269; Frank Schimmelfennig, “European Regional Organizations, Political Conditionality, and Democratic Transformation in Eastern Europe,” *East European Politics and Societies* 21, no. 1 (2007): 133-134.

and EU identity)—run the risk of clashing (moments of “identity conflict”) and thus potentially undermining the effectiveness of EU conditionality.²³

Conclusions

In terms of theory, the primary hypothesis of this thesis states that *utilization of the hierarchical mode of external governance as the chief instrument of the EU's enlargement policy impacts domestic politics by producing weak patterns of compliance which promote the ineffectiveness of EU rule transfer and, subsequently, jeopardize the target state's overlying democratic transition.* Given that (1) hierarchical governance constitutes the primary mode of rule transfer for the EU's enlargement policy, (2) effective EU rule transfer depends on the implementation of conditionality and its influence on domestic patterns of compliance, (3) numerous factors—both rationalist and constructivist—determine the compliance patterns of domestic elites and the effectiveness of conditionality in influencing political action, and (4) the domestic impact of EU conditionality creates factors which promote weak patterns of compliance, the central hypothesis of this thesis enjoys a firm, theoretical justification.

²³ Barnett, “Culture, Strategy, and Foreign Policy Change: Israel’s Road to Oslo,” *European Journal of International Relations* 5, no. 1 (1999): 10; Lowell Dittmer and Samuel Kim, “In Search of a Theory of National Identity,” in *China’s Quest for National Identity*, ed. Lowell Dittmer and Samuel Kim (Ithaca: Cornell University Press, 1993), 6–7; Freyburg and Richter, “National Identity Matters,” 267.

CHAPTER 3

Transformation of EU Enlargement Policy

A full understanding of the EU's enlargement policy necessitates a deep look into its transformation from a mere legal procedure to a flexible mechanism of foreign policy and external governance.

The European Union plays an extremely influential role in promoting democracy in the European region. The 27-member union has undergone several rounds of enlargement since its original formation as a 6-member organization. During this time, the EU developed and adopted a vast compilation of laws, principles, and norms which have come to dictate both its internal and external policies. As previously mentioned, the EU utilizes a principle of conditionality to govern its enlargement process in order to promote the spread of this doctrine (see chapter 2.1). Since its conception, EU enlargement law has transformed significantly from a *procedure* of inclusion and collaboration to a structured *policy* of legal alignment.²⁴ In other words, the EU went from uniting existing 'European' states to creating new 'European' states. This transformation began with the accession of Greece (second enlargement) in 1981 and gradually evolved over the span of the four subsequent enlargements in 1986, 1995, 2004, and 2007. Current EU enlargement efforts in the Western Balkans (seventh enlargement) clearly portray the full development of EU enlargement law into such a 'member state-creation' policy. Hence, the Stabilization and Association Process (SAP)—the official EU policy for the Western Balkans—represents a structured framework

²⁴ Grabbe, *The EU's Transformative Power*; Christophe Hillion, *The Creeping Nationalisation of the EU Enlargement Policy* (Stockholm: Swedish Institute for European Policy Studies, November 2010); Schimmelfennig *et.al.*, "The Impact of EU Political Conditionality," 29-50; Schimmelfennig and Sedelmeier, "Governance by Conditionality," 669-687.

for the EU accession of the successor states of the former Yugoslavia. This chapter outlines the history of EU enlargement in the context of the origin and development of EU conditionality and also provides an overview and critical assessment of the SAP.

3.1 *The Six Stages of EU Enlargement Law Development*

In general, EU enlargement law regulates three issues: defining potential applicants, setting accession conditions, and administering the process of accession.²⁵ Each of these issues emerged and developed in the form of provisions within the Treaties of the EU and its predecessors; the Treaties regulate enlargement law and also serve as clear markers of its development. Dmitry Kochenov's explanation of this transformation categorizes the development of EU enlargement law into five stages:

- (1) Treaty of Paris (1951) – Article 98 ECSC alone;
- (2) Treaties of Rome (1957) – Articles 98 ECSC, 237 EEC and 205 Euratom;
- (3) Single European Act (1986) – Articles 237 EEC and 205 Euratom as amended by the SEA and Article 98 ECSC;
- (4) Treaty of Maastricht (1992) – Article O EU (Arts. 98 ECSC, 237 EEC, and 205 Euratom abrogated);
- (5) Treaty of Amsterdam (1997) – Article 49 EU (O renumbered) with a reference to Article 6(1) EU.²⁶

This thesis updates this explanation with the addition of a sixth stage of development which takes into consideration the changes of the most recent EU Treaty—the Lisbon Treaty—and the employment of the SAP (the sixth stage applies mainly to the countries of Southeastern Europe²⁷):

- (6) Treaty of Lisbon (2007) – Article 49 EU.

²⁵ Dmitry Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law* (Alphen aan den Rijn: Kluwer Law International, 2008), 21.

²⁶ Dmitry Kochenov, “EU Enlargement Law: History and Recent Developments: Treaty - Custom Concubinage?,” *European Integration online Papers (EIoP)* 9, no. 6 (April 14, 2005), 4-7; Kochenov, *EU Enlargement and the Failure of Conditionality*, 16-21.

²⁷ While Iceland and Turkey are also current EU candidate countries, they are not participant states of the SAP.

Kochanov notes that these development stages do *not* numerically correspond with the rounds of enlargement (see table 3.1); although these two processes often develop simultaneously, they are not synchronized. While these six stages outline the development of EU enlargement law in the Treaties, the rounds of enlargement, on the other hand, reflect the widening of the Treaties' geographic scope.²⁸

*Table 3.1 – Stages of EU Enlargement Law Development
Corresponding to the Rounds of Enlargement*

Stages of EU Enlargement Law Development	Stage 1	Stage 2	Stage 3	Stage 4	Stage 5	Stage 6
Enlargement Rounds	-	1, 2, 3	-	4	5, 6	7

The following account of the transformation of the EU accession process is structured along the lines of the six stages of EU enlargement law development described above. It addresses the six previous rounds of enlargement and the current seventh round ongoing in the Western Balkans. Additionally, particular attention is devoted to the origin and development of conditionality as an instrument of the EU's enlargement policy. Such an account sets the framework for this thesis' central discussion concerning the domestic impact of EU conditionality in Serbia.

3.2 EU Enlargement and the Evolution of EU Conditionality

Stage One: Conception

The founding document of the European Coal and Steel Community (ECSC)—the Treaty of Paris—was signed on 18 April 1951 and entered into force on 23 July 1953.²⁹ In

²⁸ Kochanov, *EU Enlargement and the Failure of Conditionality*, 16.

²⁹ Treaty Establishing the European Coal and Steel Community, 18 April 1951, 261 U.N.T.S. 140 (ECSC Treaty or Treaty of Paris). Expired 23 July 2002.

the midst of the Cold War, the ECSC united Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany (the EU-6) into an economic union aimed at creating a common market among its member states. The vision of the ECSC, as declared by French Foreign Minister Robert Schuman on 9 May 1950, was to build a pan-European supranational organization that would ensure peace by uniting both East and West Europe.³⁰ Enlargement was, therefore, inherent in the concept of the ECSC. Membership criteria, as established by Article 98 ECSC,³¹ only specified that a state had to be “European” in order for its application to be considered.³² Article 98 ECSC allocated authority on all stages of enlargement exclusively to the Council effectively depriving the member states of any direct role in the process.³³ Despite the fact that Article 98 ECSC was never applied in practice alone, it influenced the conduct of enlargements in all succeeding Treaties.

Stage Two: Institutionalization of Democracy

The Treaties of Rome,³⁴ both signed on 25 March 1957 and entered into force on 1 January 1958, established the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). The ECSC continued to exist, and the EU-6 were the sole member states of each of these three Communities. As with Article 98 ECSC, Articles 237 EEC and 205 Euratom proclaimed enlargement as a central aspect of their organizations’

³⁰ Robert Schuman, “The Schuman Declaration (Paris, 9 May 1950),” in *Selection of texts concerning institutional matters of the Community from 1950 to 1982* (Luxembourg: European Parliament - Committee on Institutional Affairs, 1982), 47-48, http://www.ena.lu/schuman_declaration_paris_1950-2-613.

³¹ The ECSC Treaty was only drafted in French (Article 100 ECSC). The original text of Article 98 ECSC reads as follows: ‘*Tout État européen peut demander à adhérer au présent traité. Il adresse sa demande au Conseil, lequel, après avoir pris l’avis de la Haute Autorité, statue à l’unanimité et fixe, également à l’unanimité, les conditions de l’adhésion. Celle-ci prend effet du jour où l’instrument d’adhésion est reçu par le gouvernement dépositaire du traité.*

³² Ulrich Sedelmeier, “The EU and Democratization in Central and Southeastern Europe since 1989,” in *Central and Southeast European Politics Since 1989*, ed. Sabrina Ramet (Cambridge and New York: Cambridge University Press, 2010), 521; Kochenov, *EU Enlargement and the Failure of Conditionality*, 17.

³³ Kochenov, *EU Enlargement and the Failure of Conditionality*, 17.

³⁴ Treaty Establishing the European Economic Community, 25 March 1957, 298 U.N.T.S. 3, 4 Eur. Y.B. 412 (EEC Treaty or Treaty of Rome); Treaty Establishing the European Atomic Energy Community, 25 March 1957, 298 U.N.T.S. 259, 5 Eur. Y.B. 454 (Euratom Treaty).

mandates; however, EEC and Euratom enlargement law were *de jure* constructed on the basis of an entirely different set of principles. On one hand, Article 98 ECSC devolved all authority to the supranational ECSC Council; and, on the other hand, Articles 237 EEC and 205 Euratom promoted the principle of intergovernmentalism by allocating the lead role in the enlargement process to the member states.³⁵ The Treaties of Rome declared that all Accession Treaties required the ratification of every member state; thus, conditions of membership became subject to relations between member states and candidate countries.

This intergovernmental approach was soon exercised by French President Charles de Gaulle in 1963 when he vetoed the very first applications for membership by Denmark, Ireland, Norway, and the United Kingdom citing his fear that the UK was merely a “Trojan horse” for U.S. influence.³⁶ Progress of the first enlargement round did not budge until after de Gaulle left office in 1969.

After the Merger Treaty³⁷ (signed on 8 April 1965 and effective on 29 July 1967) consolidated the ECSC, the EEC, and Euratom to create the European Communities (EC), it became impossible to accede to one of the three Communities without also acceding to the other two. The unification of the three Communities officially combined the *two* differing enlargement principles—supranational (ECSC) and intergovernmental (EEC and Euratom)—into *one* enlargement law. This dual approach of the EC to enlargement characterizes all subsequent enlargement law.³⁸

In May 1967, Denmark, Ireland, Norway, and the United Kingdom reapplied for EC membership and accession negotiations officially began in June 1970. The first Accession

³⁵ Kochenov, *EU Enlargement and the Failure of Conditionality*, 18-19.

³⁶ William Horsley, “Fifty Years of Fraternal Rivalry,” *BBC NEWS* (London, March 19, 2007), <http://news.bbc.co.uk/2/hi/europe/6453889.stm>.

³⁷ Treaty Establishing a Single Council and a Single Commission of the European Communities, 8 April 1965, 1967 JO 152/1 (Merger Treaty in French).

³⁸ Kochenov, *EU Enlargement and the Failure of Conditionality*, 19.

Treaty³⁹ was signed on 22 January 1972 and was ratified by each applicant except Norway. Ratification procedure of Denmark, Ireland, and Norway (but not the UK) required a majority vote via referendum. The Norwegian people voted against EC membership in the 25 September 1972 referendum leading Norway to withdraw its membership application. On 1 January 1973, Denmark, Ireland, and the UK constituted the first successful enlargement of the EC.⁴⁰

The second and third enlargement rounds mark the beginning of the ‘member state-creation’ process and open the discussion on the origin of conditionality in the EU accession process. Greece, Portugal, and Spain all have recent histories of dictatorships, and it is this fact which led to serious obstacles in early Greek and Spanish membership ambitions. While the Treaty of Paris and the Treaties of Rome make no reference to democracy or respect for human rights, such values were established as conditions for membership via *de facto* Treaty implementation.⁴¹ Spain began vying for membership in 1958, less than a year after the signing of the Treaties of Rome. Despite proclamations of support from all the member states of the Communities, members of the European Parliamentary Assembly (EPA) feared that Spain’s fascist dictatorship under General Francisco Franco would challenge the constitutionalization of democratic and human rights norms.⁴² In late 1961, the EPA commissioned German EPA member Willi Birkelbach to produce a report on the “the association and adhesion process” under the Treaties of Rome; the completed Birkelbach Report was subsequently presented to the EPA on 23 January 1962. Birkelbach interpreted the Treaties’ references to ‘liberty’ and a vision of an ‘ever closer union’ as a call for “the guaranteed existence of a democratic form of state, in the sense of a free political order, [as] a

³⁹ Accession to the European Communities of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, 22 January 1972, *OJ* (L 73).

⁴⁰ Kochenov, *EU Enlargement and the Failure of Conditionality*, 5.

⁴¹ Sedelmeier, “The EU and Democratization,” 521.

⁴² Daniel C. Thomas, “Constitutionalization through Enlargement: The Contested Origins of the EU’s Democratic Identity,” *Journal of European Public Policy* 13, no. 8 (December 2006): 1195-1197.

condition for membership" (emphasis added).⁴³ This development did not deter Spain from submitting its membership application in February 1962; however, its rejection later that year—citing the “non-democratic” nature of the Spanish dictatorship as “contrary to the principles that the Communities pursue”—effectively put an end to Spain’s membership prospects.⁴⁴

Similarly, the Greek membership bid also reflects the emergence of conditionality in the EU’s current enlargement policy. Greece originally applied for membership in June 1959 and signed an Association Agreement (AA) in 1961, but after the ‘Colonels’ coup’ and the establishment of a right-wing military dictatorship in 1967, the EPA froze Greece’s membership application.⁴⁵ The military junta collapsed in 1974 and given “[...] Greece’s return to a democratic form of government,”⁴⁶ the Communities resumed its application and signed the Accession Treaty⁴⁷ on 28 May 1979. Greece acceded to the EC and the second enlargement was completed on 1 January 1981.

The ‘Declaration on Democracy’ produced at the 1978 Copenhagen Summit of the European Council marked the first explicit statement of the EC that “respect for and maintenance of representative democracy and human rights in each member state are essential elements of membership”.⁴⁸ By this time, the EU’s accession process had officially begun its transformation from a procedure of inclusion to a policy of norm promotion.

⁴³ Willi Birkelbach, *Rapport fait au nom de la commission politique sur les aspects politiques et institutionnels de l’adhésion ou de l’association à la Communauté Assemblée Parlementaire Européenne*, Document 122, Documents de Séance 1961-1962, January 15, 1962, in Thomas, “Constitutionalization through Enlargement,” 1197-1199.

⁴⁴ Thomas, “Constitutionalization through Enlargement,” 1200-1205.

⁴⁵ Sedelmeier, “The EU and Democratization,” 521; Kochenov, *EU Enlargement and the Failure of Conditionality*, 5; Geoffrey Pridham, *Designing Democracy: EU Enlargement and Regime Change in Post-communist Europe* (New York: Palgrave Macmillan, 2005): 31-32.

⁴⁶ European Commission, *Opinion on Greek Application for Membership (of 29 January 1976)*, COM (76) 30 Final, *E.C. Bull.*, supp. 2/1976, (February 1976).

⁴⁷ Accession to the European Communities of the Hellenic Republic, 28 May 1979, *OJ* (L 291).

⁴⁸ Sedelmeier, “The EU and Democratization,” 521; William Wallace, *Opening the Door: The Enlargement of NATO and the European Union* (London: Centre for European Reform, 1996): 16.

After the Carnation Revolution of 1974 in Portugal and the death of General Franco in 1975, both Portugal and Spain (re-)applied for membership in 1977; an Accession Treaty⁴⁹ was signed on 12 June 1985 and the third enlargement round completed on 1 January 1986. While the EC had set conditions for membership, a *policy* of conditionality used to influence domestic affairs had not yet emerged. The collapse of authoritarian regimes in Greece, Portugal, and Spain, although resulting in democracy, were not prompted by EC membership aspirations. Conversely, such developments in the following enlargements result from the pressures of EU conditionality.

Stage Three: The Foundation of Conditionality

The Single European Act (SEA),⁵⁰ was signed on 17-28 February 1986 (entered into force on 1 July 1987), marked the first amendment to the 1957 Treaties of Rome, and drove the third stage of EU enlargement law development. The amended Articles 237 EEC and 205 Euratom—plus Article 98 ECSC—revised the role played by the European Parliament (EP)⁵¹ by requiring its consent, in addition to member state ratifications, to the accession of candidate states.⁵² This period was characterized by the destabilizing factors of the October 1987 stock market collapse which sent Europe into an economic depression until the early 1990s, the 1989 revolutions in Eastern Europe provoking the imminent end of the Cold War, and the drastic shift in Soviet foreign policy under the Gorbachev administration as the EU sphere of influence neared the Soviet Union.⁵³

⁴⁹ Accession to the European Economic Communities of the Kingdom of Spain and the Portuguese Republic, 12 June 1985, *OJ* (L 302).

⁵⁰ Single European Act, 17 February 1986, 1987 *OJ* (L 169); 25 *I.L.M.* 506.

⁵¹ The European Parliamentary Assembly (EPA) was renamed the European Parliament (EP) in 1962 as the three Communities prepared for their merger in 1967. The EP retained this name throughout the successive EU Treaties.

⁵² Kochenov, *EU Enlargement and the Failure of Conditionality*, 19.

⁵³ *Ibid.* 6.

Between July 1987 and November 1993, nine countries applied for EC membership—Morocco and Turkey (1987), Austria (1989), Cyprus and Malta (1990), Sweden (1991), and Finland, Norway, and Switzerland (1992)—but only three were included in the fourth enlargement round. Morocco’s application was swiftly rejected by the Council given that it was not considered to be a ‘European’ state.⁵⁴ Deliberation on the Turkish bid was postponed in December 1989 by the Commission regarding concerns over Turkey’s poor political and economic situation and regional conflict with Cyprus and Greece.⁵⁵ The Cypriot application was deferred by the Commission in June 1993 as Cyprus was engaged in serious internal conflicts. In Malta, fiery domestic debates between the two leading political parities successfully pushed back the consideration of its application until the 2003 Maltese referendum on EU membership. Finally, the Swiss and Norwegian referendums in 1992 and 1994 led Norway and Switzerland to indefinitely suspend their EU bids. Only Austria, Finland, and Sweden endured the obstacles of the accession process during this time.

While no rounds of enlargement occurred during this third stage of EU enlargement law development, this period demonstrates a significant legitimization of EU conditionality. The ‘Copenhagen criteria,’ adopted by the Council in 1993, laid the foundation for the EU’s conditionality *policy* and marked the first official EU declaration of the political conditions for membership.⁵⁶ Such conditions include:

- (1) “[...] stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities
- (2) the existence of a functioning market economy as well as
- (3) the capacity to cope with competitive pressure and market forces within the Union”.⁵⁷

⁵⁴ Ibid, 28-29.

⁵⁵ European Commission, Opinion on Turkey’s Request for Accession to the Community, SEC (89) 2290 Final (20 December 1989).

⁵⁶ Sedelmeier, “The EU and Democratization,” 522.

⁵⁷ Copenhagen European Council (21-22 June 1993), Conclusions of the Presidency, *E.U. Bull.*, supp. 6/1993 (June 1993).

This declaration is by no means innovative;⁵⁸ in actuality, as seen by the 1962 Birkelbach Report and the 1978 Declaration on Democracy, the Copenhagen criteria merely codified the principles that emerged from the three previous enlargements. The states of the fourth enlargement experienced only the beginning of EU conditionality intensification. As such, the brunt of this process was primarily felt by the states of the fifth and sixth enlargements. Today, regarding the current seventh enlargement round in the Western Balkans, EU conditionality is the most extensive.⁵⁹

As with international order, the EC was also in a period of flux during this stage. Throughout the 1980s, numerous proposals aimed at reforming the EC were struck down, but in December 1991, a new treaty was finally settled upon.

Stage Four: Accession as a Structured Process

On 1 November 1993 the Treaty of Maastricht⁶⁰ (signed on 7 February 1992) officially established the European Union. Article O EU (Articles 98 ECSC, 237 EEC, and 205 Euratom abrogated) introduced numerous changes to enlargement law aimed at establishing a single article in order to “[...] bridge the gaps between the various elements of the Union”.⁶¹ Despite this significant cosmetic change, the prior dual supranational and intergovernmental approaches retained their weight; therefore, these changes only trivially influenced existing enlargement practice.⁶²

⁵⁸ Christophe Hillion, “The Copenhagen Criteria and Their Progeny,” in *EU Enlargement: A Legal Approach*, ed. Christophe Hillion (Oxford: Hart Publishing, 2004), 3.

⁵⁹ Sedelmeier, “The EU and Democratization,” 522.

⁶⁰ Treaty on European Union, 7 February 1992, *OJ* (C 191), 31 I.L.M. 253 (the Union Treaty or the Maastricht Treaty).

⁶¹ Paul J. G. Kapteyn and Pieter VerLoren van Themaat, *Introduction to the Law of the European Communities: From Maastricht to Amsterdam*, ed. Laurence Gormley, 3rd ed. (London and Boston: Kluwer Law International, 1998), 52, in Kochenov, *EU Enlargement and the Failure of Conditionality*, 20.

⁶² Kochenov, *EU Enlargement and the Failure of Conditionality*, 20.

The fourth enlargement on 1 January 1995—regulated by Article O EU—was essentially the same as the previous three enlargements. The most notable difference was the initial application of the Copenhagen criteria in the accession processes of Finland and Sweden. After the signing of the Accession Treaty⁶³ on 24 June 1994, the EU, in August 1994, established ‘protection of the traditions, cultures, and languages of the Sami people and the Swedish-speaking population of the Åland Islands’ as conditions for the accession of Finland and Sweden.⁶⁴ Such conditions were quickly met and the accession proceeded as planned; nevertheless, the significance of this act is that the EU was capable of utilizing conditionality to directly impact the reform process in candidate countries to ensure compliance with the Copenhagen criteria. This presented compliance “[...] not as a simple fact, but rather as a dynamic *process*” (emphasis added).⁶⁵ The emergence of a structured EU accession process based on the principle of conditionality is, no doubt, a legacy of the fourth stage of EU enlargement law development.

By consolidating the enlargement provisions of the EC, the amended Treaty of Maastricht constructed a rough chronology of the accession process that factored in both supranational and intergovernmental approaches. The table reproduced (and expanded) below represents the structure of the EU accession process *as it stands today* (see table 3.2).⁶⁶ It can be divided into three phases of accession: (1) initiation, (2) negotiations, and (3) consummation.

⁶³ Accession to the European Union of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, 24 June 1994, *OJ* (C 241).

⁶⁴ Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, Protocols No 2 and 3, 29 August 1994, *OJ* (C 241/352).

⁶⁵ Kochenov, *EU Enlargement and the Failure of Conditionality*, 34.

⁶⁶ Dierk Booß and John Forman, “Enlargement: Legal and Procedural Issues,” *Common Market Law Review* 32, no. 1 (1995), 104; Frank Hoffmeister, “Changing Requirements for Membership,” in *Handbook on European Enlargement: A Commentary on the Enlargement Process*, ed. Andrea Ott and Kirstyn Inglis (The Hague: T.M.C. Asser Press, 2002), 101; Jean-Pierre Puissocet, *The Enlargement of the European Communities. A Commentary on the Treaty and the Acts Concerning the Accession of Denmark, Ireland, and the United Kingdom* (Leyden: A.W. Sijthoff, 1975); Panayotis Soldatos and Georges Vandersanden, *L'admission dan la CEE - Essai d'interprétation juridique* (CDE, 1968); Kochenov, *EU Enlargement and the Failure of Conditionality*, 60-61.

Table 3.2 – Chronology and Phases of the EU Accession Process

Initiation	<ol style="list-style-type: none"> 1. Countries declare EU membership aspirations by signing an Association Agreement 2. The EU recognizes such declaration and launches assistance programs 3. The Council rules on enlargement and points to the Copenhagen criteria or establishes additional criteria 4. Submission of membership application to the Council and initiation of reforms aimed at satisfying the Copenhagen criteria and the conditions set by the Council 5. The Council accepts (unanimously) or rejects the application and requests the Commission to issue an Opinion on the membership request 6. As part of the ‘screening’ process, the Commission requests the candidate country to complete an in-depth questionnaire on domestic conditions 7. The candidate country submits the completed questionnaire to the Commission 8. The Commission issues an Opinion on the application and a summary report ('screening report') then recommends the beginning of the negotiations phase <ol style="list-style-type: none"> i. The Commission can also set certain conditions ('opening benchmarks') to be met prior to the beginning of the negotiations phase
Negotiations	<ol style="list-style-type: none"> 9. The Council reacts to the Commission’s assessment and requests yearly progress reports, strategy papers, and clarifications on conditions for future progress 10. The Council regularly issues Accession Partnerships drafted by the Commission; candidate countries are expected to alter their reforms accordingly 11. The candidate country draws up an Action Plan and creates a National Programme for the Adoption of the Acquis based on the priorities of the Accession Partnerships 12. Negotiations commence; the Commission proposes and the Council adopts (unanimously) the common negotiation positions to be taken by the EU for all 35 chapters of the <i>acquis</i> <ol style="list-style-type: none"> i. Closure (provisionally) of chapters requires the approval of every member state ii. The negotiations phase can be suspended if a country ceases to satisfy the Copenhagen criteria or the conditions set by the Council or member states 13. Negotiations conclude only after every chapter is closed
Consummation	<ol style="list-style-type: none"> 14. The European Parliament declares its consent 15. The Commission issues a final Opinion 16. The Council passes a Unanimous Act 17. The member states sign the Accession Treaty with the candidate country 18. Accession Treaty is ratified by the candidate country and the member states <ol style="list-style-type: none"> i. During this process, the candidate country acquires ‘Acceding State’ status entitling it to interim privileges (speak but not vote) until its official accession makes it a member state. 19. Accession Treaty enters into force 20. Accession completes after all transitional periods end

The fifth and sixth enlargements represent a drastic deviation from earlier enlargement procedure. Previously, the EU only utilized one method to promote democratization—Union membership. This mechanism was used initially in the second and third enlargement rounds to prevent the return of authoritarian regimes in Greece, Portugal,

and Spain while simultaneously ensuring the longevity of democratic norms.⁶⁷ This represents a *post-accession* tactic but still applies in the cases of CEE. The second and third means utilized by the EU to promote democratization encompasses assistance programs and conditionality. These mechanisms were developed chiefly to regulate the democratic transformations of the former communist bloc.⁶⁸ Assistance programs were designed to encourage post-communist economic transitions and conditionality was used to boost democracy and promote human rights.⁶⁹ The latter two mechanisms characterize the emerging contemporary EU accession process outlined above (see table 3.2). Such mechanisms were adopted in order to quell mounting fears of premature CEE membership by guaranteeing the successful democratic and economic reformation of the former communist bloc.⁷⁰

The structured EU accession process—a unique development of the fourth stage of EU enlargement law evolution—entails the efforts of candidate countries to fulfill the set conditions necessary for proceeding to the negotiations phase. The EU uses its mechanism of conditionality, in this respect, to regulate Association Agreements, visa liberalization, trade or cooperation initiatives, and aid programs as well as to control progress within the framework of the accession process. As previously mentioned, the instrument of conditionality in the EU’s enlargement *policy* emerged as an answer to the question of how the Union would ensure the successful transition of CEE.⁷¹ In these cases, the accession process began immediately after the 1989 revolutions.

EU relations with Central and Eastern Europe gradually stabilized in the late 1980s as many communist regimes liberalized. Between 1988 and 1990, the EU concluded trade and

⁶⁷ Sedelmeier, “The EU and Democratization,” 520.

⁶⁸ Kochenov, *EU Enlargement and the Failure of Conditionality*, 50-51.

⁶⁹ Ibid; Grabbe, *The EU’s Transformative Power*, 7.

⁷⁰ Kochenov, *EU Enlargement and the Failure of Conditionality*, 51.

⁷¹ While designed as a mechanism to deal with the former communist bloc, the emergence of conditionality at this time was universal as demonstrated by its presence in the final phase of the accessions of Finland and Sweden in regard to principles of minority protection.

cooperation agreements with most CEE states and the Soviet Union. These primarily symbolic measures contributed to the breakdown of historic divides.⁷² After the 1989 revolutions, the EU established numerous aid programs which allocated direct grants to fund various technical assistance projects. This mechanism initially promoted general economic reforms but quickly focused all resources to funding only accession-related ventures. The PHARE⁷³ aid program, for example, started in 1989 and by 1992 had a separate ‘democracy program’ budget line; in 1997, PHARE was reformed into an exclusive accession financing tool.⁷⁴ The EU’s tie with CEE was solidified by the signing of Europe Agreements⁷⁵ (EAs) which formalized candidate countries’ EU ambitions and initiated the accession process.⁷⁶ The EU ‘pre-accession strategy’,⁷⁷—adopted in 1994—constructed, for the first time, EU accession as a structured process in which legislation and policies were harmonized, political and economic cooperation was enhanced, and a free trade area (free movement of goods, services, capital, and labor) was created.⁷⁸

⁷² Grabbe, *The EU’s Transformative Power*, 8.

⁷³ PHARE is an acronym for ‘Poland and Hungary Assistance for the Reconstruction of the Economy’. Despite being based on its titular countries, PHARE was eventually extended to other countries of CEE.

⁷⁴ Grabbe, *The EU’s Transformative Power*, 7-8.

⁷⁵ Europe Agreements are a type of ‘Association Agreement’ (AA) unique to CEE—a broad term which refers to several types of agreements signed with the EU by non-member states. Before the adoption of EAs, such agreements included generic AAs, Free Trade Agreements (FTAs), European Economic Area (EEA) agreements, and EU Customs Union (CU) agreements. In recent years, the Stabilization and Association Process (SAP)—a program devised specially for the seventh enlargement round in the Western Balkans—was adopted and participation requires the signing of a Stabilization and Association Agreement (SAA). AAs also regulate participation in the European Neighborhood Policy (ENP)—a foreign policy instrument of the EU aimed at bettering the Union’s relationship with its surrounding regions. After the fourth enlargement, the signing of AAs became a necessary step in the EU accession process; EAs were signed by all the states of the fifth and sixth enlargements and SAs have been ratified and/or signed by every Western Balkan state except for Kosovo. Additionally, the EU has signed AAs with many other countries worldwide intending to forge bonds of cooperation.

⁷⁶ The addition of EA suspension clauses in May 1992, although never employed, further strengthened EU conditionality by attaching five conditions—maintenance of the rule of law, human rights protection, a multi-party system, free and fair elections, and a market economy—to the framework of cooperation and association with the Union.

⁷⁷ The EU ‘pre-accession strategy’ for the fifth and sixth enlargements was launched at the Essen European Council in December 1994. It set the framework for each candidate country’s accession process by outlining the specific reforms required by the EU via Commission Opinions, Strategy/Composite Papers, Regular Reports, and White Papers. Its many instruments include accession assistance programs, the Europe Agreements, Accession Partnerships, and inclusion in EU programs and agencies.

⁷⁸ Grabbe, *The EU’s Transformative Power*, 9.

Excluding Cyprus and Malta, the remaining ten states of the fifth and sixth enlargements (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia) signed Europe Agreements during the mid 1990s and submitted membership applications between March 1994 and June 1996.

In July 1997, the Commission issued Opinions⁷⁹ on the adherence of applicant states to the EU pre-accession strategy as well as the Copenhagen criteria and stated that none of the applicants had fully met the set economic criteria; nevertheless, the Commission recommended that negotiations commence with only the Czech Republic, Cyprus, Estonia, Hungary, Poland, and Slovenia. The 1997 Luxembourg European Council followed through with the Commission's recommendations thus leaving the five other CEE states behind. The Luxembourg European Council⁸⁰ justified the exclusion of Bulgaria, Romania, Latvia, and Lithuania on economic grounds, but in the case of Slovakia—which had a favorably assessed economy—exclusion was based on the unwillingness of the Slovak government under Prime Minister Vladimír Mečiar to accept the Copenhagen criteria. Only after Mečiar's removal, as a result of the 1998 parliamentary elections, did the 1999 Helsinki European Council⁸¹ allow the remaining five states, plus Malta, to proceed with negotiations.

The 1997 Commission Opinions and Council conclusions are significant for the development of EU conditionality for three reasons: (1) most importantly, they marked the first *active application* of conditionality in the accession process;⁸² (2) secondly, the Opinions interpreted the Copenhagen criteria as a cornerstone of the EU pre-accession strategy;⁸³ and, (3) while all the Copenhagen criteria are conditions for EU membership, the

⁷⁹ European Commission, Agenda 2000: for a Stronger and Wider Union, COM (1997) 2000 Final (17 June 1997).

⁸⁰ Luxembourg European Council (12-13 December 1997), Conclusions of the Presidency, *E.U. Bull.*, no. 12, at 8, (1997).

⁸¹ Helsinki European Council (10-11 December 1999), Conclusions of the Presidency, *E.U. Bull.*, no. 12 (1999).

⁸² *Ibid.*

⁸³ *Ibid.*; Tim Haughton, "When Does the EU Make a Difference? Conditionality and the Accession Process in Central and Eastern Europe," *Political Studies Review* 5 (2007): 240-242.

Council established compliance with its political components as a prerequisite for opening accession negotiations.⁸⁴ These developments validated the ability and willingness of the EU not only to set conditions, but to apply and act on them at *any point* in the accession process.

Among the states of the fifth and sixth enlargement rounds, accession negotiations with the first half were opened in March 1998 and with the remainders in February 2000. The following phases of accession would be characterized by the further development of EU enlargement law and a continued intensification of conditionality.

Stage Five: Emergence of an EU Conditionality Policy

During the period leading up to the completion of the fifth enlargement round in 2004, EU enlargement law further positioned the Copenhagen criteria as outright, legally binding conditions of accession by referencing Article 6(1) EU in Article 49 EU (O renumbered) of the 1997 amendment to the Treaty of Maastricht. Such reference—presented in the Treaty of Amsterdam (signed on 1 October 1997 and effective as of 1 May 1999)—instituted ‘the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law’ as conditions for membership.⁸⁵ By not also including ‘respect for and protection of minorities,’ the EU evaded the full codification of the Copenhagen criteria and, therefore, did not extend EU enlargement law beyond what had already been established.⁸⁶ In short, the Treaty of Amsterdam only incorporated previously-instituted practices into EU enlargement law.

⁸⁴ Kochenov, *EU Enlargement and the Failure of Conditionality*, 55-56; Haughton, “Conditionality and the Accession Process,” 240-242.

⁸⁵ Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 2 October 1997, *OJ* (C 340); 37 I.L.M. 56 (Treaty of Amsterdam).

⁸⁶ Kochenov, *EU Enlargement and the Failure of Conditionality*, 33.

The purpose of the subsequent Treaty of Nice⁸⁷ (signed on 26 February 2001 and effective as of 1 February 2003), in regard to enlargement law, was to fulfill the requirements and to solve the shortcomings of the Treaty of Amsterdam. Such changes were minor and had no noteworthy impact on the accession process. Together, these two Treaties were designed to prepare the Union for the fifth and sixth enlargement negotiations and the addition of twelve new member states.⁸⁸

By early 2000, the EU was juggling accession negotiations with twelve states which staggered the spectrum of democratization. The Czech Republic, Hungary, and Poland were at the front of the pack while Bulgaria, Romania, and Slovakia pulled up the rear. To alleviate these gaps, the EU adopted Accession Partnerships (APs) as an instrument that would quickly and effectively promote reforms. This was a crucial aspect of the fifth and sixth enlargement rounds and has retained its importance in the subsequent seventh enlargement. As intended, APs detailed specific EU conditions, reallocated aid to accession requirements and away from general development goals, and set priorities and timeframes via the ‘National Programs for Adoption of the Acquis’ (NPAA). The overriding weakness of this instrument, however, is that it lacked a legal base in the Treaty of Maastricht and was therefore *not* legally binding.⁸⁹ Despite this limitation, APs greatly impacted EU candidate countries given that they (1) established the EU as the key external driver of domestic reform effectively superseding and undercutting other external actors, (2) limited the scope of negotiations by setting certain issues as conditions thus rendering them unnegotiable, (3) significantly boosted EU influence on domestic politics and promoted a high degree of direct involvement in domestic policy-making, and (4) extended to issues beyond the jurisdiction of

⁸⁷ Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 26 February 2001, *OJ* (C 80) (Treaty of Nice).

⁸⁸ Aristidis Bitzenis, *The Balkans: Foreign Direct Investment and EU Accession* (Farnham and Burlington: Ashgate, 2009), 159.

⁸⁹ Grabbe, *The EU's Transformative Power*, 15.

the *acquis*.⁹⁰ The influence and weight of APs depended on the EU's principle of conditionality. Throughout the fifth and sixth enlargements, the EU continued to push the limits of its conditionality policy to great avail.

On 16 April 2003, an Accession Treaty⁹¹ was signed with ten of the twelve negotiating candidate countries. The accessions of Bulgaria and Romania were inevitably pushed back after the two Balkan states were unable to complete their negotiations alongside the other ten applicants at the December 2002 Copenhagen European Council;⁹² they were, therefore, left out of the fifth enlargement round which successfully concluded on 1 May 2004. Bulgaria and Romania later wrapped up negotiations at the December 2004 Brussels European Council,⁹³ signed an Accession Treaty on 25 April 2005,⁹⁴ and acceded to the Union on 1 January 2007 marking the completion of the sixth, and most recent, enlargement round.

During this period, the EU's voracious enlargement momentum also included the successor states of the former Yugoslavia. In 2000, the Western Balkans emerged from a decade of turmoil to find itself on the path to stability and European integration; however, the footprint of the previous decade remained clearly defined as seen by numerous regional crises (e.g. mass refugee flows, steep economic troubles, and a demolished infrastructure). In the late 1990s, ethnic violence broke out (again) in the Western Balkans and external actors feared that such instability risked future potential humanitarian disasters, the collapse of established peace settlements, and general European instability; thus, the international community unanimously agreed upon collaborative action. In the eyes of EU policy-makers,

⁹⁰ Ibid, 14-15, 22-23, 35-37.

⁹¹ Accession to the European Union of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, 16 April 2003, *OJ* (L 236).

⁹² Copenhagen European Council (12-13 December 2002), Conclusions of the Presidency, *E.U. Bull.*, no. 12 (2002).

⁹³ Brussels European Council (16-17 December 2004), Conclusions of the Presidency, 16238/1/04 REV (2004).

⁹⁴ Accession to the European Union of the Republic of Bulgaria and Romania, 21 June 2005, *OJ* (L 157).

this situation necessitated a policy revamp given the failure of existing strategies to promote regional stability and prosperity in the Western Balkans. The turning point in 2000 directly resulted from a united international ambition to strengthen and coordinate comprehensive action and to promote EU influence.

At the Sarajevo Summit in July 1999, the EU, under the German presidency, launched the Stability Pact for South Eastern Europe as a conflict prevention strategy aimed at promoting ‘peace, democracy, respect for human rights, and economic prosperity’. Although the Stability Pact was championed by the EU, it was a multilateral undertaking of all the countries of Southeastern Europe and numerous other states and organizations including the UN, the OSCE, the Council of Europe (CoE), NATO, the United Nations High Commissioner for Refugees (UNHCR), the Organization for Economic Cooperation and Development (OECD), the IMF, the World Bank, the European Investment Bank (EIB), and the European Bank for Reconstruction and Development (EBRD). The Stability Pact, with such a broad mandate, divvied out specific responsibilities to each of these major organizations. Democratization and human rights promotion were tasked to the CoE; the UNHCR handled the refugee crisis; NATO monitored regional security; the international financial institutions managed a joint assistance strategy; and the OSCE oversaw the Pact’s implementation. Most importantly, the overarching purpose of the Stability Pact was to secure the full integration of the Western Balkans into the European Union; this fact justified the EU’s lead role in this profound venture and, likewise, encouraged the inclusion of the region into the EU’s enterprising enlargement drive.

To facilitate the accession of the Western Balkans, the EU constructed a unique enlargement framework—the Stabilization and Association Process—modeled on the Treaty of Amsterdam and the Copenhagen criteria. As stipulated by its name, the SAP endorsed a dual agenda: (1) regional cooperation and stability and (2) EU accession. As an EU

initiative, the SAP borrowed from the strategies of the EU's preceding 'Regional Approach' from the late 1990s and the seemingly limitless efficacy of conditionality as used in the course of the fifth and sixth enlargements.

The SAP received a grand optimistic reception along with an endless stream of declarations of EU support. The March 2000 Lisbon European Council confirmed that the SAP would be "[...] the centerpiece of [EU] policy in the Balkans".⁹⁵ The EU further committed itself to the 'potential' accession of the Western Balkans and reiterated the primary objective of the SAP as "[...] the fullest possible integration of the countries of the region into the political and economic mainstream of Europe".⁹⁶ Finally, at the 2000 Zagreb Summit, the EU formally endorsed the SAP, declared it as the official EU policy for the Western Balkans, and reiterated the European Council's previous declarations of commitment. Furthermore, in the 'Declaration of the Zagreb Summit,' the EU proclaimed that the region's accession hinged on "[...] the basis of the [enlargement] provision of the Treaty on the European Union, respect for the criteria defined at the Copenhagen European Council in June 1993, and the progress made in implementing the Stabilization and Association Agreements, in particular on *regional cooperation*" (emphasis added).⁹⁷

At the 2003 EU-Western Balkans Summit in Thessaloniki, the EU "enriched" the SAP with the addition of "elements from the enlargement process" in order to strengthen the policy and ensure its success. The 'Thessaloniki Agenda' also declared that the SAP would "[...] constitute the overall framework for the European course of the Western Balkan countries, all the way to their future accession".⁹⁸ This move solidified the SAP as *de facto*

⁹⁵ Lisbon European Council (23-24 March 2000), Conclusions of the Presidency, *E.U. Bull.*, no. 3 (2000).

⁹⁶ Santa Maria da Feira European Council (19-20 June 2000), Conclusions of the Presidency, *E.U. Bull.*, no. 6 (2000).

⁹⁷ European Commission, Final Declaration of the Zagreb Summit (24 November 2000), *E.U. Bull.*, no. 11 (2000).

⁹⁸ Declaration of the EU-Western Balkan Thessaloniki Summit (21 June 2003), 10229/03 (Presse 163).

enlargement law and marked the beginnings of the sixth stage of EU accession process development.

Stage Six: The Limits of Conditionality

After the fifth enlargement round in 2004, EU politics were characterized by an overwhelming need to reform the Union's constitutional framework in order to cope with the large upcoming influx of new member states. Anticipating this frenzy, the 2001 Laeken European Council commissioned the development of a European constitution which would improve transparency and efficiency while further codifying democratic norms.⁹⁹ After a two year-long process, a constitution was finally agreed upon and later signed on 29 October 2004 in Rome,¹⁰⁰ however, the initiative quickly collapsed. France and the Netherlands, as a result of their 2005 referendums, rejected the ratification of the proposed constitution and effectively smothering any hopes of the text's implementation. This propelled the unreformed Union into a state of flux. Such dominating preoccupation essentially ruled out any further progress in the ongoing enlargement campaign in the Western Balkans until after the conception and adoption of vast institutional reforms.

Constitution debates revived two years later—after the accession of Bulgaria and Romania—when the German EU Presidency launched an initiative to draft another Treaty to amend the Treaty of Maastricht. Within six months, in June 2007, the framework of the ‘Reform Treaty’ had been agreed upon and a final draft was signed on 13 December 2007 in Lisbon. After a grueling ratification process, the Treaty of Lisbon was finally approved by every EU member state on 13 November 2009 and subsequently entered into force on 1 December.

⁹⁹ Laeken European Council (14-15 December 2001), Conclusions of the Presidency, SN 300/1/01 (2001).

¹⁰⁰ Treaty establishing a Constitution for Europe (29 October 2004), 16 December 2004, *OJ* (C 310).

In comparison with enlargement law of the previous Treaties, the Lisbon Treaty more specifically defines membership conditions by referencing the promotion of EU “values” as well as adherence to conditions laid out by the Council in Article 49 EU (see table 3.3).¹⁰¹

These two additions were included as responses to calls for the tightening of EU conditionality to ensure the readiness of candidate states. As a lesson from the sixth enlargement round, it has been acknowledged numerous times by EU officials that the Union will never repeat the mistake of prematurely approving accession.¹⁰² Furthermore, while adherence to the accession conditions of the Council represents no new development (i.e. the 1962 Birkelbach Report; the 1978 Declaration on Democracy; the 1993 Copenhagen criteria; and the 1997 Luxembourg European Council conclusions) its codification enhances the clout of EU conditionality. Such stricter conditionality is embodied in the modified enlargement law of the Lisbon Treaty and marks *the* distinctive characteristic of the sixth stage of EU enlargement law development.

Enlargement procedure was also modified to enhance the role of the EP and the member states by requiring that they now also be informed of applications for Union membership.¹⁰³ As with previous changes, this addition merely legalized existing practice. By widening accession debates to officially involve national parliament, this provision boosts the legitimacy of enlargement law and encourages transparency; however, it also has the potential to significantly ‘nationalize’ the accession process by developing into a provision which requires member state consent for enlargement decisions.¹⁰⁴

In actuality, these additions represent no major change in the practice of EU enlargement law, and the Lisbon Treaty is a simple continuation of the process of codifying

¹⁰¹ Hillion, *The Creeping Nationalisation of the EU Enlargement Policy*, 8.

¹⁰² Sonia Piedrafita, *The Treaty of Lisbon: New Signals for Future Enlargements?*, EIPAScope (Maastricht: European Institute of Public Administration (EIPA), 2008): 36,

http://www.eipa.eu/files/repository/eipascope/20080509184645_SCOPE2008-1-6_SoniaPiedrafita.pdf.

¹⁰³ Hillion, *The Creeping Nationalisation of the EU Enlargement Policy*, 8.

¹⁰⁴ Piedrafita, *The Treaty of Lisbon*, 36.

existing practices without limiting future development. In this respect, the SAP is an accurate portrayal of this trend as it is essentially the next progressive step in the development of EU enlargement law.

Table 3.3 – Selected Articles from the Treaty of Lisbon

Article 2 EU	The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.
Article 49 EU	Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements. The conditions of eligibility agreed upon by the European Council shall be taken into account.

3.3 *The Stabilization and Association Process*

As officially defined by the EU, the primary aim of the SAP is to supply the states of the Western Balkans with the “[...] means, based on European practice and standards, to maintain stable democratic institutions, to ensure the rule of law prevails, and to sustain open, prosperous economies”¹⁰⁵ in order to achieve the successful democratic transition of the region. Only after this transition can such states begin the negotiations phase of the EU accession process.

¹⁰⁵ European Commission, The Stabilization and Association Process for South East Europe, First Annual Report, COM (2002) 163 Final (2 April 2002): 6.

As previously explained, the SAP was designed to promote a dual agenda—regional stabilization and EU integration—by means of (1) Stabilization and Association Agreements (SAAs), (2) trade preferences, (3) financial assistance, and (4) European Partnerships. These four instruments form the foundation of the EU’s enlargement policy in the Western Balkans.

Similar to the Europe Agreements of the previous enlargements in CEE, the SAAs are contractual links to the EU accession process. After an SAA is signed, the candidate country begins the process of adopting EU rules to promote harmonization with the chapters of the *acquis communautaire* (see table 3.4). The structure, content, and negotiation procedures of the SAAs outline the formal mechanisms and necessary benchmarks which constitute the EU’s enlargement policy towards each respective country. As a formal, bilateral agreement, the SAA—both its negotiation and implementation—is subject to strict conditions thus making it the most important instrument of the SAP.¹⁰⁶ In addition to its dual agenda, SAAs also contain an extensive list of principles to which the signatory states are bound. In sum, the SAAs are characterized by numerous types of conditions and represent a strict EU regional policy.

The establishment of autonomous trade preferences with the Western Balkans demonstrates one of the very first initiatives of the SAP. As stated by the March 2000 Lisbon European Council, trade liberalization is a key component of the SAP.¹⁰⁷ In late 2000, the EU permitted duty and quota free access to the EU market for roughly 80 percent of Western Balkan exports.¹⁰⁸ This instrument aimed at increasing the level of imports from the Western Balkans in order to boost regional economic growth. Trade liberalization with the EU also

¹⁰⁶ Arolda Elbasani, *The Stabilization and Association Process in the Balkans: Overloaded Agenda and Weak Incentives?*, Working Paper, EUI Working Papers (Florence: European University Institute, 2008): 10-11.

¹⁰⁷ Lisbon European Council (23-24 March 2000), Conclusions of the Presidency, *E.U. Bull.*, no. 3 (2000).

¹⁰⁸ David Phinnemore and Peter Siani-Davies, “Beyond Intervention? The Balkans, the Stability Pact and the European Union,” in *International Intervention in the Balkans since 1995*, ed. Peter Siani-Davies (London and New York: Routledge, 2003), 182.

“[...] serves as a catalyst to the development of a network of free-trade agreements between the countries of the Stabilization and Association Process and beyond”.¹⁰⁹

Table 3.4 – Chapters of the EU Acquis Communautaire

1. Free movement of goods	18. Statistics
2. Freedom of movement for workers	19. Social policy and employment
3. Right of establishment and freedom to provide services	20. Enterprise and industrial policy
4. Free movement of capital	21. Trans-European networks
5. Public procurement	22. Regional policy and coordination of structural instruments
6. Company law	23. Judiciary and fundamental rights
7. Intellectual property law	24. Justice, freedom and security
8. Competition policy	25. Science and research
9. Financial services	26. Education and culture
10. Information society and media	27. Environment
11. Agriculture and rural development	28. Consumer and health protection
12. Food safety, veterinary and phytosanitary policy	29. Customs union
13. Fisheries	30. External relations
14. Transport policy	31. Foreign, security and defense policy
15. Energy	32. Financial control
16. Taxation	33. Financial and budgetary provisions
17. Economic and monetary policy	34. Institutions
	35. Other issues

As the third instrument of the SAP, EU financial assistance seeks to promote post-conflict reconstruction and reconciliation, institutional capacity building, harmonization with the EU *acquis*, and entrenchment of democracy and the rule of law.¹¹⁰ In December 2000, the Council adopted the Community Assistance for Reconstruction Development and Stabilization (CARDS) as the official EU framework to regulate SAP financial assistance.¹¹¹ CARDS assistance was conditioned not only to the Copenhagen criteria, but also to Council requirements of democratic, economic, and institutional reforms essentially creating one of

¹⁰⁹ European Commission, The Stabilisation and Association Process for South East Europe - First Annual Report [SEC(2002) 339] [SEC(2002) 340] [SEC(2002) 341] [SEC(2002) 342] [SEC(2002) 343], COM (2002) 163 Final (4 April 2002): 6.

¹¹⁰ Ibid, 7.

¹¹¹ Council Regulation 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC, 7 December 2000, *OJ* (L306/1).

the EU's 'most comprehensive conditionality clauses'.¹¹² Since 2000, the EU has provided several billion Euros worth of assistance (grants and loans) to SAP participant states.

Finally, the 2003 Thessaloniki Summit introduced the fourth instrument as part of the newly 'enriched' SAP—European Partnerships (EPs). Similar to the Accession Partnerships of previous enlargements, EPs identify the conditions necessary for the alignment of SAP countries with the EU *acquis*, demarches, declarations, and Common Foreign and Security Policy (CDSP) issues.¹¹³ By establishing priorities and detailed plans, EPs focus all efforts on the reform agenda to progress within the accession process.

Since the adoption of the SAP in 2000, much criticism has emerged regarding its impacts on its participating states. While the SAP was engineered “[...] to replicate the successful transition achieved by the countries of Central and Eastern Europe,” major differences are embedded in its key instruments. Moreover, inherent weaknesses within the SAP’s foundational concepts also form the basis of such criticism. The following analysis of Croatia’s experience with the SAP exposes its potential shortcomings and shows how such weaknesses threaten to undermine the transformative power of EU conditionality.

3.4 *The ‘Croatian Model’ of Accession*

At the EU Summit in Zagreb on 24 November 2000, the SAP was formally endorsed by the EU and Croatia officially opened SAA negotiations. Undoubtedly, the SAP successfully laid the foundation for Croatia’s EU bid, aroused dramatically different dynamics to political life, and prepared the country for full European integration;¹¹⁴ but, as

¹¹² Christian Pippan, “The Rocky Road to Europe: The EU Stabilisation and Association Processs for the Western Balkans and the Principles of Conditionality,” *European Foreign Affairs Review* 9, no. 2 (2004): 232.

¹¹³ Conclusions of the General Affairs and External Relations Council (Luxembourg, 16 June 2003), 10369/03 (Presse 166).

¹¹⁴ Višnja Samardžija, *Challenges of Croatia and EU Integration: is the fast track approach possible?* (Zagreb: Institute for International Relations, March 2005).

developed over the course of Croatia's EU accession, three unique weaknesses of the SAP challenged, and continue to threaten, the EU's transformative power in the region. These weaknesses revolve around the dual agenda—stabilization *and* association—of the SAP, and include (1) its overloaded conditionality, (2) its introduction of a regionalist context to the EU accession process, and (3) its vague membership incentives. Such weaknesses also represent the key differences between the current EU accession process and the similar processes of previous enlargements.

Inherently, the SAP constitutes a two-pronged agenda: the general stabilization of the Western Balkans as a whole and the integration of each participant state into the EU. Given the fact that “[...] stabilization requires more of a regional context, while integration, even within the common regional framework, is an essentially bilateral exercise,”¹¹⁵ these two components run the risk of not only clashing, but contradicting each other. Such risks are exemplified below by an analysis of the three weakness of the SAP in the context of Croatia's EU accession process.

First, these two parallel agendas of the SAP enhance the applicability of EU conditionality and double its weight by enabling the EU to directly influence both stabilization and association issues. By attaching regional stabilization components onto the bilateral process of EU association and accession, the states of the Western Balkans became committed to complying with an additional set of conditions. This effectively created (and promoted) *multiple layers of EU conditionality*. For example, in the April 2004 Commission Opinion on Croatia's application for EU membership, the EU sharply criticized Croatia's unilateral declaration of a protected 'Ecological and Fishing Zone' in the Adriatic (which concurrently initiated a border dispute between Croatia, Italy, and Slovenia over maritime borders in Piran Bay) and reiterated its previous condition that Croatia “[...] pursue a

¹¹⁵ Milica Delević, *Regional Cooperation in the Western Balkans*, Chaillot Paper (Paris: European Union Institute for Security Studies (EUISS), July 2007), 98.

constructive dialogue with its neighbors meant to meet the concerns of all the parties involved".¹¹⁶ This regional dispute escalated to the extent where Slovenia blocked Croatia's accession negotiations in 2008. Such stabilization conditions (i.e. resolution of regional disputes) pose the risk of jeopardizing the association process (i.e. Slovenia's blockage of Croatia's accession negotiations) and thus make SAP participant states subject to an additional layer of conditionality which did not exist in previous EU enlargements. As such, this SAP-constructed "jungle of conditionality" negatively impacts the clarity and determinacy of EU enlargement policy.¹¹⁷ The link between Croatia's EU association process and the fulfillment of stabilization conditions shows how the SAP's dual agenda merely adds "[...] an extra load to domestic reforms *with no immediate economic or political returns*" (emphasis added).¹¹⁸ Consequently, the legitimacy and effectiveness of EU conditionality are undermined.

This divisive relationship between the two foundational components of the SAP illuminates another weakness in the EU's current enlargement policy—its regionalist context. The SAP instituted a 'regional cooperation' component—staying true to its dual agenda—in order to "[...] avoid the risks of concentrating solely on a policy of selective bilateralism to the detriment of a truly regional strategy".¹¹⁹ Accordingly, regional cooperation as an instrument of conditionality further contributes to the multi-layered, ambiguous nature of the EU accession process and subordinates the EU association and accession of individual countries to regional issues. In this regard, Croatian concerns that 'unfortunate developments' in the region or tense neighborly relations could negatively influence its EU

¹¹⁶ European Commission, Opinion on Croatia's Application for Membership of the European Union, COM (2004) 257 Final (20 April 2004): 32-37.

¹¹⁷ Elbasani, *The Stabilization and Association Process in the Balkans*, 13.

¹¹⁸ Ibid, 14.

¹¹⁹ European Parliament Resolution on the Communication from the Commission to the Council and the European Parliament on the Stabilisation and Association Process for Countries of South-Eastern Europe (COM(1999) 235 - C5-0124/1999 - 1999/2126(COS)), 7 February 2001, *OJ* (C 40).

accession are completely justified.¹²⁰ For example, even though Croatia adopted and adequately implemented reforms to ease the refugee return process of its Serb minority, the EU continued to demand—given the unyieldingly tense Croatian-Serbian relationship—that Croatia “overcome regional and historical frictions” and subdue “nationalist pressures” to normalize regional relations and promote cooperation.¹²¹ In the April 2002 SAP report, the EU bluntly stated that “integration with the EU is only possible if future members can demonstrate that they are willing and able to interact with their neighbors as EU member states do”.¹²² This instance shows how the SAP successfully orients the EU accession process within a contextually regionalist framework and subjects its signatory states to an additional layer of conditionality; this development represents yet another key difference between the current accession process and that of previous enlargements. Furthermore, the application of conditionality in such non-EU affairs stretches the limits of such policy by broadly interpreting its mandate and linking EU accession with nation-sensitive issues; this, in turn, further challenges the validity and transformative power of EU conditionality.

Similar to the weaknesses of the stabilization agenda of the SAP, the association agenda also characterizes inherent detrimental implications for the effectiveness of EU conditionality. Due to EU preoccupation with the fifth and sixth enlargement rounds, concerns of enlargement fatigue, and skepticism towards the readiness of the Western Balkans, a firm promise of EU membership was excluded from the original 1999 framework of the SAP.¹²³ As such, Croatia’s SAA—signed in October 2001—with the EU also lacked clear membership prospects; instead, the EU extended a number of loose commitments to Croatia (e.g. the development of ‘close political relations’, support for ‘economic and

¹²⁰ Delević, *Regional Cooperation in the Western Balkans*, 103.

¹²¹ European Commission, The Stabilisation and Association Process for South East Europe - First Annual Report [SEC(2002) 339] [SEC(2002) 340] [SEC(2002) 341] [SEC(2002) 342] [SEC(2002) 343], COM (2002) 163 Final (4 April 2002): 11.

¹²² Ibid.

¹²³ Elbasani, *The Stabilization and Association Process in the Balkans*, 14-15.

international cooperation', the status of 'potential candidate', and 'integration' into the 'political and economic mainstream of Europe'¹²⁴) as inducements for undertaking the SAP. These vague incentives led Croatia, on 21 February 2003, to bypass such process and directly apply for EU membership. In effect, this discredited the SAP.¹²⁵ While the 2003 Thessaloniki EU Summit and the EU's decision to grant candidate status to Croatia in 2004 contributed to the clarification of EU intentions, the vague incentives of the SAP continued to prevail. The case of Croatia exposed the insufficient functions of the SAP, and prompted the EU to respond by endorsing the Thessaloniki Agenda in June 2003 which confirmed the SAAs as the *first* and *last* contractual agreements—rejecting the belief that an SAA was merely a stepping stone to other, more formal condition-heavy Association Agreements—up to accession.¹²⁶ Nevertheless, it is clear from Croatia's divergence from SAP structures that the SAP sought to create an internal framework within the existing accession process thus arbitrarily limiting the options of SAP signatory states (compared with, for example, the accession of Iceland) and further undermining its credibility.

As outlined by the 'Croatian Model' of accession, inherent weaknesses of the SAP—(1) its overloaded conditionality, (2) its introduction of a regionalist context to the EU accession process, and (3) its vague membership incentives—created multiple layers of conditionality and ultimately undermined its legitimacy and continue to jeopardize its effectiveness. Support for EU membership in Croatia continues to decline as its accession process continues to be dragged out. As it stands, according to a 2010 survey, only 25 percent of Croatian respondents viewed EU membership as positive (a 10 percent decrease

¹²⁴ Stabilization and Association Agreement Between the European Communities and their Member States of the One Part, and the Republic of Croatia, of the Other Part, 28 January 2005, *OJ* (L 26/3).

¹²⁵ Elbasani, *The Stabilization and Association Process in the Balkans*, 15-16.

¹²⁶ *Ibid.*

from 2006)—the lowest EU support rating, by far, in the region.¹²⁷ The source of this development is, no doubt, rooted in the weaknesses of the SAP.

Similarly, this lack of support in Croatia is likely to become the trend in Serbia as well. In spite of the strong grip of pro-EU political elites on Serbian politics, recent years have been marked by a considerable drop in the positive perception of EU membership as well as a consistent decline in public support for EU accession in Serbia. In 2010, positive Serbian assessments of EU accession dropped from 61 percent in 2006 to 44 percent.¹²⁸ Existing analyses of the situation suggest that this downward trend is likely to continue even with the possibility of added momentum after stronger links are established between EU conditions and Serb nationhood.¹²⁹

Conclusions

As seen from previous EU enlargements and the case of Croatia, many instruments, procedures, and principles are utilized, but not mentioned, in Article 49 EU; this fact reinforces the reality that EU enlargement law is exceedingly more complex and flexible than it appears in the Treaty's text. In this respect, EU conditionality essentially represents an institutionalized means of broadly interpreting enlargement law, exploiting loopholes in the accession process, and inconsistently applying standards in order to promote the strategic goals of the Union or even individual member states. The fifth, sixth, and seventh enlargement rounds are littered with examples of such practices and the impacts of which are just beginning to appear.

¹²⁷ Balkan Monitor, *2010 Summary of Findings, Survey, Insights and Perception: Voices of the Balkans* (Brussels: Gallup and the European Fund for the Balkans, 2010), http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf.

¹²⁸ Ibid.

¹²⁹ Florian Bieber, "Territory, Identity and the Challenge of Serbia's EU Integration," in *Serbia Matters: Domestic Reforms and European Integration*, ed. Goran Svilanović, Christophe Solioz, and Wolfgang Petritsch, Southeast European Integration Perspectives (Baden-Baden: Nomos Verlagsgesellschaft, 2009), 65-71.

The following chapter outlines the degree to which EU conditionality influenced the development of the Serbian political spectrum. It is important to note that the case of Serbia differs from Croatia in the perspective of attitudes towards the EU. In Croatia, the EU was presented as beneficial and congruent (i.e. a source of economic prosperity, EU structural integration, and international legitimacy as an independent state); but, on the other hand, in Serbia, the prevailing attitude towards the EU was as an imposition and threat to the Serb identity. Nevertheless, Serbia's EU bid marks the key challenge of the sixth stage of EU accession process transformation.

CHAPTER 4

Development of the Serbian Political Spectrum in the Context of EU Conditionality

The fall of Slobodan Milošević on 5 October 2000 effectively ended Serbian isolation and allowed Serbia, after a ten-year delay, to join its fellow Central and Eastern European states on the path to EU accession. After thirteen years in power, Milošević’s Socialist Party of Serbia (SPS: Социјалистичка партија Србије/*Socijalistička Partija Srbije*)¹³⁰ was replaced by a newly formed, EU-financed, unified opposition coalition—the Democratic Opposition of Serbia (DOS: Демократска опозиција Србије/*Demokratska opozicija Srbije*).¹³¹ Over the following decade, such reformist and pro-EU political parties engineered the democratic transition of Serbia from an illiberal state to a viable EU candidate. The goal of EU membership developed into a common political objective of all leading Serbian political parties (including the opposition parties) and quickly dominated domestic politics.¹³²

¹³⁰ In July 1990, the League of Communists of Serbia (SKS: *Savez Komunista Srbije*) and the Socialist Alliance united to create the SPS with Milošević as president. The SPS emerged from the December 1990 parliamentary elections victorious with 46.1 percent of the vote thus securing 194 seats in Parliament. The December 1992 parliamentary elections concluded with the SPS securing 28.8 percent of the vote followed by its government partner, the SRS, with 22.6 percent. After a falling out between Milošević and Šešelj, the government was dissolved and elections were held again on December 1993. Without the SRS, the SPS was weak and was only able to form a government by coaxing the support of a minority party—Nova Demokratija (ND). As a result of the December 1997 parliamentary elections, the only way for the dwindling SPS to remain in power was to form a government (again) with the increasingly popular SRS. The Kosovo War (1998-1999) dominated Serbian politics during the following years and Milošević’s popularity plummeted taking the SPS down with him.

¹³¹ The DOS was an 18-party—including two of the three largest opposition parties, the Democratic Party (DS) and the Democratic Party of Serbia (DSS)—opposition coalition. It emerged in 2000 as a unified response to Milošević’s attempts to alter the constitution to ensure the survival of his presidency. The DOS-sponsored presidential candidate, the DSS’s Vojislav Koštunica, defeated Milošević in the September 2000 presidential elections and the DOS, led by the DS’s Zoran Đinđić, later won the December 2000 parliamentary elections.

¹³² Tim Judah, “Serbia: Is the Good News Old News?,” in *Serbia Matters: Domestic Reforms and European Integration*, ed. Goran Svilanović, Christophe Solioz, and Wolfgang Petritsch, Southeast European Integration Perspectives (Baden-Baden: Nomos Verlagsgesellschaft, 2009), 25-31.

Characterized by a high degree of EU involvement, Serbia's democratic transition was influenced by both 'passive' and 'active' leverage¹³³ of the EU.

By outlining the role of the EU in the democratic transition of Serbia, this chapter builds the foundation on which to show the extent to which EU leverage—both passive and active—drastically impacted the development of the Serbian political spectrum since 2000. Three distinct periods (derived from the four most recent parliamentary elections in 2000, 2003, 2007, and 2008) characterize EU-Serbian relations since the fall of Milošević. The following account examines the influence of EU leverage during these three periods of Serbia's political development.

4.1 2000-2003: Early Democratic Reforms and the Legacy of Milošević

Characterized by a high degree of nationalistic elements and authoritarian tendencies, Milošević's rule in the Federal Republic of Yugoslavia (SRJ: Савезна Република Југославија/*Savezna Republika Jugoslavija*) produced a fragmented political opposition and delayed the beginning of the country's post-communist democratic transformation.¹³⁴ With his rise to power, Milošević successfully infused the Serbian political spectrum with the fervor of Serb nationalism. And, it is clear that European involvement in Serbia only contributed to the deepening of the Serb nation's self-portrayed victimhood. Throughout the 1990s, constant EU pressure and demands were met with Milošević's firm resistance; and, eventually, continued sanctions and the 1999 NATO bombings effectively cut across all internal divisions in Serbia and constructed a profound resentment towards the U.S. and the

¹³³ See Vachudová, *Europe Undivided*, 63.

¹³⁴ Florian Bieber, "The Serbian Opposition and Civil Society: Roots of the Delayed Transition in Serbia," *International Journal of Politics, Culture, and Society* 17, no. 1, Studies in the Social History of Destruction: The Case of Yugoslavia (Fall 2003): 73; Daniel Bochsler, "Hawk in Dove's Clothing: Political Trajectories of Political Parties in Serbia, 2003-2008," *Central European Political Studies Review* 10, no. 4 (Autumn 2008): 292-295; Christopher K. Lamont, *International Criminal Justice and the Politics of Compliance* (Farnham and Burlington: Ashgate Publishing Limited, 2010): 61.

EU.¹³⁵ Even on the brink of Milošević’s collapse in 2000, the mounting opposition parties conducted their political affairs within this tight nationalist framework and thus only added to Serbia’s stark clash with Europe.

Early EU Involvement

Initial EU approaches to involvement in the region—the 1996 ‘Regional Approach’—quickly proved to be ‘immature’ and led to an abrupt freezing of EU-SRJ relations.¹³⁶ The Regional Approach focused, as opposed to EU policy toward the CEE states, not on integration or Union membership, but on crisis resolution, security issues, and regional relations.¹³⁷ This strategy proved initially ineffective due to its lack of significant incentives, its inevitable clash with Milošević’s authoritarianism, and the fact that it emerged on the eve of a bitter conflict with the EU in Kosovo.¹³⁸ Then, in April 1997, the EU adopted, for the first time, a coherent strategy of conditionality towards the SRJ which established trade preferences, financial assistance, and contractual relations as incentives for compliance with the political and economic conditions of the Regional Approach.¹³⁹ Milošević-led isolation, however, prevented any EU involvement in the SRJ (particularly concerning the Regional Approach and its successor, the 1999 Stability Pact) and laid the foundation for Serbian-EU “identity divergence”.¹⁴⁰ In this respect, Milošević’s legacy is marked by prevailing perceptions of Serb victimhood, the notion of an anti-Serb EU, the underdevelopment of the

¹³⁵ International Crisis Group, *Serbia: The Milosevic Regime on the Eve of the September Elections*, Balkans Report N°99 (Belgrade/Washington/Brussels, August 17, 2000): 20, <http://www.crisisgroup.org/~media/Files/europe/Serbia%209.ashx>.

¹³⁶ Olivera Djordjevic, *The Limits of Europeanization “from Without”: Is there an EU-Driven Democratization Process in Serbia?*, UNISCI Discussion Papers, no. 18 (Madrid: Universidad Complutense de Madrid España, 2008): 88.

¹³⁷ Ibid.

¹³⁸ Ibid, 88-89.

¹³⁹ Council of the European Union, *Summary of the 2003rd General Affairs and External Relations Council Meeting*, No. 7738/97 (Press 129) (Luxembourg, April 29, 1997),

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/028a0057.htm.

¹⁴⁰ See Subotić, “Europe is a State of Mind,” 1-22.

‘European idea’, negative attitudes toward the ICTY, and the embedment of the Kosovo myth into the Serb national identity.¹⁴¹

Immediately after the overthrow of Milošević in October 2000, the SRJ experienced a mass influx of EU rewards. The Union lifted its long-lasting, economic sanctions and pledged billions in reconstruction aid.¹⁴² Newly-elected President, Vojislav Koštunica, received an invitation to and attended the 15 October EU Biarritz Summit where the Union formally endorsed the new government.¹⁴³ On 16 October, the SRJ was accepted as a participating state of the Stability Pact; and, accordingly, at the EU-Balkans Zagreb Summit on 24 November, the SRJ was included as a participant state of the newly launched Stabilization and Association Process thus gaining the status of ‘potential candidate’ for EU membership as detailed by the June 2000 Feira European Council.¹⁴⁴ However, despite these numerous remunerations, this tremendous EU enthusiasm was not matched by the SRJ, and relations soon soured.

Over the course of the first period of Serbia’s democratic transition, EU-Serbian relations suffered as a result of Milošević’s legacy. The EU’s involvement in the region during the 1990s promoted a negative perception of the EU in Serbia which traversed both the public and the political elites.¹⁴⁵ Koštunica’s first public address as President-elect represented this degree of continuity with the previous regime: “There are those who did us wrong, who bombed us. We cannot forget the damage or the crimes [against us]; Serbs will lose their identity if they forget those crimes.”¹⁴⁶

¹⁴¹ Subotić, “Europe is a State of Mind,” 13-15; Janine Clark, *Serbia in the Shadow of Milošević: the Legacy of Conflict in the Balkans* (London and New York: Tauris Academic Studies and Palgrave Macmillan, 2008): 44-51; Subotić, *Hijacked Justice*, 67-69.

¹⁴² Subotić, *Hijacked Justice*, 41; Subotić, “Europe is a State of Mind,” 15.

¹⁴³ Robin Oakley, “Kostunica Brings Welcome Relief for EU Leaders,” *CNN*, October 14, 2000, http://articles.cnn.com/2000-10-14/world/summit.oakley_1_eu-leaders-vojislav-kostunica-new-leader?_s=PM:WORLD.

¹⁴⁴ Djordjević, *The Limits of Europeanization “from Without”*, 88-89.

¹⁴⁵ Clark, *Serbia in the Shadow of Milošević*, 44-51; Subotić, “Europe is a State of Mind,” 13.

¹⁴⁶ Subotić, “Europe is a State of Mind,” 13.

Additionally, the steep conditions attached to EU accolades—intensified democratization, state structural reforms, and ICTY cooperation¹⁴⁷—further undermined EU-Serbian relations. As encouraged by political elites, the ICTY was popularly rejected and viewed as a Western imposition aimed at deconstructing Serb identity.¹⁴⁸ Nevertheless, the EU firmly established ICTY cooperation as the central condition for EU aid. The SRJ government's early response to such conditionality included attempts to circumvent and marginalize the Tribunal, but cooperation with the ICTY quickly became linked with almost every international award to which Serbia applied.¹⁴⁹

Internal Rifts and DOS Collapse

As a result of the parliamentary elections held on 23 December 2000, the 18-party DOS opposition coalition emerged victorious, winning 176 of the 250 seats in the National Assembly. Within this umbrella coalition, the two front-runner parties were the Democratic Party (DS: Демократска странка/*Demokratska Stranka*)¹⁵⁰ led by Prime Minister Zoran Đindić and Koštunica's Democratic Party of Serbia (DSS: Демократска странка Србије/*Demokratska stranka Srbije*)¹⁵¹.

¹⁴⁷ International Crisis Group, *Belgrade's Lagging Reform: Cause for International Concern*, Balkan Report №126 (Brussels, March 7, 2002): 7, <http://www.crisisgroup.org/~media/Files/europe/Serbia%2019.ashx>.

¹⁴⁸ Subotić, “Europe is a State of Mind,” 15.

¹⁴⁹ Subotić, *Hijacked Justice*, 44.

¹⁵⁰ The DS—generally regarded as the first opposition party in Serbia—emerged from an act signed by 13 dissidents on 11 December 1989. Among these intellectuals were Dragoljub Mićunović, Kosta Čavoški, Vojislav Koštunica, and Zoran Đindić. At the party's founding assembly on 3 February 1990 Mićunović was elected president and the DS was able to secure seven seats in the National Assembly as a result of the 1990 parliamentary elections. Differences grew within the DS leadership and many key figures left the party to form their own opposition parties. At the 1992 and 1993 parliamentary elections, the DS's weakened state was evident given its poor performance in the polls. In January 1994, Mićunović was replaced by his vice president Zoran Đindić. The DS's new leadership successfully turned the party around and established the DS as the leading opposition party in Serbia. Đindić led the opposition's boycott of the 1997 parliamentary elections and served as the president of the DOS coalition in 2000.

¹⁵¹ The DSS was formed in July 1992 after it split from the DS because of serious rifts between its leader, Vojislav Koštunica, and DS leadership. Throughout the 1990s, the DSS entered in and out of opposition coalitions with the DS—Serbian Democratic Movement (DEPOS) and the *Zajedno* coalition. In the 1992 parliamentary elections, as part of DEPOS, the DSS won 18 seats in the National Assembly; however, DS-DSS

After the DOS took power, Milošević-era political fragmentation soon resurfaced and deep rifts emerged within its ranks. While the DS advocated riding the revolutionary wave in order to completely redistribute power in favor of the new government, the DSS pursued a more orderly, legal, and calculated dismantling of the regime.¹⁵² As opposed to Koštunica's nationalistic, EU-skeptic stance, Đindjić positioned the DS as a reformist, pro-EU party which accepted the EU's condition of ICTY cooperation and famously proclaimed that "no price is too high to pay" for European integration.¹⁵³ The severity of DOS fragility and the DS-DSS rift was first exposed during the governmental crisis over how to respond to ICTY demands for Milošević. Believing Milošević's extradition to be Serbia's "entrance ticket to the democratic world", Đindjić overstepped Koštunica's reluctance and arrested Milošević in April 2001; he was later secretly transferred to The Hague on 28 June.¹⁵⁴

Soon after the Milošević extradition crisis, on 17 August 2001, the DSS left the government and Koštunica doubled his efforts to discredit his chief rival.¹⁵⁵ Meanwhile, the DS was left as the dominant player in the DOS and Đindjić continued to press forward with the "[...] numerous economically difficult, unpopular, but necessary reform and transition measures"¹⁵⁶ conditioned by the EU and various other external actors. Hence, throughout 2001 and 2002, EU and SRJ representatives held a series of meetings—the 'Consultative Task Force'—aimed at enhancing progress in the implementation of reforms in line with EU

rifts quickly resurfaced and the DSS left the coalition in mid-1993. The DSS ran independently in the 1993 parliamentary elections to win only seven seats. As with the DS, the DSS boycotted the 1997 parliamentary elections in protest of Milošević's regime. Despite their differences, the DSS joined the DS to form the DOS coalition which successfully overthrew Milošević in 2000.

¹⁵² Sabrina P. Ramet and Vjeran Pavlaković, *Serbia since 1989: Politics and Society Under Milošević and After* (Seattle: University of Washington Press, 2007).

¹⁵³ Subotić, *Hijacked Justice*, 72.

¹⁵⁴ Ibid, 45-47.

¹⁵⁵ International Crisis Group, *Serbia's Transition: Reforms Under Siege*, Balkan Report N°117 (Brussels, September 21, 2001): 3, <http://www.crisisgroup.org/~media/Files/europe/Serbia%2018.ashx>.

¹⁵⁶ Ibid, 10.

standards to ensure successful SAA negotiations.¹⁵⁷ The likelihood of receiving a positive SAA Feasibility Report, however, was undermined by the defunct structural composition of the SRJ in regard to its three entities—Kosovo (under UN control since 1999), Montenegro, and Serbia.¹⁵⁸

Late in January 2002, EU High Representative Javier Solana personally intervened in the lagging negotiations between Montenegro and Serbia in order to broker the conclusive 14 March ‘Belgrade Agreement’ on SRJ structural reintegration.¹⁵⁹ The agreement promptly gained EU approval at the 15-16 March Barcelona European Council meeting.¹⁶⁰ Under heavy engagement and pressure from Solana, the Constitutional Charter replacing the SRJ with the State Union of Serbia and Montenegro—dubbed ‘Solania’¹⁶¹—was drafted by the end of 2002 and enacted on 4 February 2003.¹⁶² Such development (described as ‘beyond conditionality’,¹⁶³) removed a serious obstacle on the path to launching Serbia and Montenegro’s SAA negotiations. The new State Union, however, was littered with dysfunctional problems. Due to the EU’s overwhelming desire to keep the country together, many of its SRJ-inherited defects were concealed or ignored and such problems soon became serious impediments to both Montenegrin-Serbian relations and the country’s EU accession thus making the future dissolution of the State Union an undoubted certainty.¹⁶⁴

¹⁵⁷ International Crisis Group, *Thessaloniki and After (III) The EU, Serbia, Montenegro, and Kosovo*, Europe Briefing (Brussels, June 20, 2003): 3,

<http://www.crisisgroup.org/~media/Files/europe/Serbia%20Thess%2029.ashx>.

¹⁵⁸ Ibid; Djordjevic, *The Limits of Europeanization “from Without”*, 90-92; European Commission, *Federal Republic of Yugoslavia 2002 Stabilization and Association Report*, SEC (2002) 242, COM(2002) 163 (Brussels, April 4, 2002), http://ec.europa.eu/enlargement/archives/pdf/serbia_and_montenegro/com02_343_en.pdf.

¹⁵⁹ International Crisis Group, *Still Buying Time: Montenegro, Serbia, and the European Union*, Balkan Report N°129 (Brussels, May 7, 2002): 8-10, <http://www.crisisgroup.org/~media/Files/europe/Montenegro%209.ashx>.

¹⁶⁰ European Council, *Presidency Conclusions of the Barcelona European Council, 15-16 March 2002*, SN 100/1/02 REV 1, March 15, 2002,

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/71025.pdf.

¹⁶¹ Djordjevic, *The Limits of Europeanization “from Without”*, 91.

¹⁶² International Crisis Group, *Thessaloniki and After*, 1-3.

¹⁶³ Jovan Teokarević, “EU Accession and the Serbian-Montenegrin Constitutional Charter,” *Romanian Journal of Political Science* 3, no. 2 (2003): 45-46.

¹⁶⁴ Djordjevic, *The Limits of Europeanization “from Without”*, 91-92.

Nevertheless, EU-Serbian relations recovered after the successful enactment of the Constitutional Charter; but, the real turning point came a few months later. The June 2003 Thessaloniki European Council confirmed the EU perspective of the SAP states; and, in July, the EU Consultative Task Force was upgraded to ‘Established Permanent Dialogue’.¹⁶⁵ These two rewards marked the clear *focal shift of EU conditionality policy toward Serbia from conflict resolution to cooperation and integration.*¹⁶⁶

Assassination of Prime Minister Đindić

Despite successful DOS-led reforms and an improved EU relationship, Serbia’s democratic transition remained capricious. On 12 March 2003, Prime Minister Đindić was assassinated by members of the notorious paramilitary unit the Red Berets (the mission was called “Stop The Hague”).¹⁶⁷ His murder halted democratic reforms, hampered proponents of ICTY cooperation thus jeopardizing EU-Serbian relations, and created an enormous power vacuum which was instantly filled by Koštunica’s DSS and the nationalist Serbian Radical Party (SRS: *Srpska Radikalna Stranka*)¹⁶⁸ led by Vojislav Šešelj and Tomislav Nikolić.¹⁶⁹ Furthermore, the inevitable collapse of the DOS umbrella coalition on 18 November, in the run-up to the December 2003 parliamentary elections, obliterated any DS hopes of remaining in power.

¹⁶⁵ Ibid, 89.

¹⁶⁶ Ibid.

¹⁶⁷ Subotić, *Hijacked Justice*, 75.

¹⁶⁸ In February 1991, the Serbian Chetnik Movement (SČP) broke away from the SPO and merged with the National Radical Party (NRS) to form the SRS. Leader of the SČP, Vojislav Šešelj, was elected president with NRS leader, Tomislav Nikolić, as his deputy. The SRS entered into a ruling coalition with the SPS twice (1992 and 1997) but did not suffer as greatly as the SPS after the fall of Milošević.

¹⁶⁹ Subotić, *Hijacked Justice*, 76.

The first period of the Serbian political spectrum's development concluded with the dispersion of political parties and the strengthening of elites which initiated the beginning of a political free-for-all in Serbia.

4.2 2003-2008: Party System Stabilization

Both passive and active EU leverage characterized Serbia's post-Milošević political spectrum from the very start. Disagreements among political parties concerning Serbia's desire for EU membership prompted the breakup of the DOS coalition; and, active EU conditionality encouraged political rifts (as seen by the Milošević extradition crisis), slowed the country's democratic transition (as in the case of the Constitutional Charter), and ultimately led to the death of the Union's star player Zoran Đindjić which effectively undermined EU integration efforts. As a result, the 2003 parliamentary elections secured a DSS-led governing coalition (with Koštunica as Prime Minister) and marked a boost in SRS popularity.¹⁷⁰ The DS was weak; in February 2004, Boris Tadić replaced Đindjić as president of the DS and later won the June Serbian presidential elections.¹⁷¹

Emerging Political Party Politics

The second period of Serbia's political transition—from the 2003 to the 2008 parliamentary elections—consisted of (1) DSS dominance and challenges to EU integration, (2) the emergence of the Liberal Democratic Party (LDP: Либерално-демократска партија/*Liberalno-demokratska partija*), and (3) the repositioning of the SPS.

¹⁷⁰ Ramet and Pavlaković, *Serbia since 1989*, 117.

¹⁷¹ Bochsler, "Political Trajectories of Political Parties in Serbia," 301.

The DS, left out of the governing coalition, adopted a pragmatic approach to cooperation with Košunica. Hard-line DS positions on ICTY cooperation and EU integration were softened in order to ensure compromises with the nationalistic, EU-skeptical government.¹⁷² Despite Tadić's popularity, Košunica was the real leader in Serbia given that he was able to substantially influence Tadić's positions on key issues. Under Košunica's sway, the DS approved of strong state ties with the Serbian Orthodox Church, supported Košunica's manipulative ICTY 'voluntary surrender' strategy¹⁷³, and adopted the DSS's radical rhetoric on the Kosovo issue.¹⁷⁴ Most importantly, Košunica secured DS backing for the new 2006 Serbian constitution which was riddled with nationalistic and anti-minority elements aimed at preventing Kosovo's independence and provoking Kosovar Albanian violence in order to strengthen Serbia's position at the bargaining table.¹⁷⁵ The new constitution—adopted on 8 November 2006 and still in effect today—" [...] permits the parliament to restrict all the ostensibly guaranteed rights, opening the door for a dictator to come to power via the parliament; it places the courts—including the Constitutional Court—firmly under government control, while turning the prosecutor's office into little more than a sub-branch of the executive."¹⁷⁶

Still, the DS remained the most credible proponent of a pro-EU reform agenda among Serbia's political parties. The other leading candidates—G17 Plus (Г17+; Г17 Плус/G17

¹⁷² Ibid, 302.

¹⁷³ After the DSS victory in the 2003 parliamentary elections, Košunica, as Prime Minister, began employing a new, nationalistic approach to ICTY cooperation. He encouraged war crime indictees to voluntarily surrender to The Hague in return for state support (i.e. financial assistance for their families and governmental support for them to face their charges while on bail in Serbia instead of The Hague). In the media, such voluntary surrenders were deemed as 'patriotic' acts with no reference to their actual crimes. This strategy encouraged the popular view of the Tribunal's perceived illegitimacy while simultaneous evading ICTY-prompted reconciliation (Lamont 2010, 71-72, 83; Subotić 2009, 48-49).

¹⁷⁴ Bochsler, "Political Trajectories of Political Parties in Serbia," 302.

¹⁷⁵ International Crisis Group, *Serbia's New Constitution: Democracy Going Backwards*, Europe Briefing N°44 (Belgrade/Brussels, November 8, 2006):1-4,

http://www.crisisgroup.org/~media/Files/europe/b44_serbias_new_constitution_democracy_going_backward_s.ashx.

¹⁷⁶ Ibid, 13.

*Plus*¹⁷⁷, the Serbian Renewal Movement (SPO: Српски покрет обнове/*Srpski pokret obnove*)¹⁷⁸, and New Serbia (NS: Нова Србија/*Nova Srbija*)¹⁷⁹—comprised, among others, the ruling coalition with the DSS which thwarted DS attempts to progress towards the EU. In an effort to encourage EU reforms, as threatened by mounting DSS non-compliance, the Union established a European Partnership with Serbia and Montenegro in June 2004.¹⁸⁰ This move marked the next significant step forward since the 2003 Thessaloniki developments.¹⁸¹ Additionally, in October 2005, the EU issued a positive Feasibility Report and SAA negotiations were finally launched.

Nevertheless, such progress was perceived as too little, too slow, and tension surfaced within the DS regarding the party's cooperation with the DSS-led government. At the February 2004 DS party assembly, Serbian Deputy Prime Minister Čedomir Jovanović sharply criticized Tadić's cooperation with Košunica. In the months to follow, Jovanović continued to attack Tadić and attempted to form a Liberal-Democratic faction within the DS; but he was eventually expelled from the party on 3 December 2004. Jovanović capitalized on

¹⁷⁷ G17+ was established as an NGO in 1997 and was eventually converted into a political party on 16 December 2002 by the DS-dissident Miroljub Labus. At the 2003 parliamentary elections, G17+, as leader of a two-party coalition, won 31 seats in the National Assembly and joined with the DSS to form a government. In May 2006, Mlađan Dinkić replaced Labus (due to his resignation) as G17+ president, and Dinkić lead the party's departure from the government in October 2006 citing DSS failure to arrest Ratko Mladić.

¹⁷⁸ The SPO, like the DS, was founded in 1990 with Vuk Drašković as party president. Initially, in the 1990 parliamentary elections, the SPO did well, winning 19 seats in the National Assembly. In 1992, Drašković formed the DEPOS coalition with the SPO as the leading party. DEPOS did well in both the 1992 and the subsequent 1993 parliamentary elections. Unlike the DS and the DSS, the SPO did not boycott the 1997 parliamentary elections (winning 45 seats) and even entered into Milošević's SPS-led government with Drašković as Deputy Prime Minister. In 1999, the SPO pulled out of the government and contributed to (without joining the DOS umbrella coalition or the DOS-led government after the 2000 parliamentary elections) efforts to overthrow Milošević. As a result of the 2003 parliamentary elections the SPO (winning 13 seats as part of a coalition with NS) joined with the DSS to successfully form a government of minority parties.

¹⁷⁹ NS was formed by a number of SPO dissidents, led by Velimir Ilić, in 1997. Unlike the SPO, NS entered into the DOS in 2000 and won 8 National Assembly seats in the 2000 parliamentary elections. In the 2003 parliamentary elections, in a coalition with the SPO, NS won 9 seats and, together with the SPO, joined the DSS-led government.

¹⁸⁰ International Crisis Group, *Serbia's Changing Political Landscape*, Europe Briefing N°32 (Belgrade/Brussels, July 22, 2004): 14,

http://www.crisisgroup.org/~media/Files/europe/040722_serbia_changing_political_landscape.ashx.

¹⁸¹ Djordjević, *The Limits of Europeanization “from Without”*, 89.

the vacuum created by the DS's rightist shift and established the Liberal Democratic Party on 5 November 2005.¹⁸²

Tadić reacted by reaffirming and reestablishing the DS's pro-EU agenda and by rejecting any form of cooperation with the LDP in order to discredit the party as a viable agent of change.¹⁸³ Unfortunately, Serbia and Montenegro's failure to arrest the ICTY's two most-wanted indictees—Radovan Karadžić and Ratko Mladić—led the EU to suspend SAA negotiations (on 3 May 2006) on the eve of the January 2007 parliamentary elections. These elections were particularly significant because they were the first elections after the dissolution of the State Union of Serbia and Montenegro¹⁸⁴ and the adoption of the new 2006 constitution. In its campaign, the DS intensified efforts to prove its pro-EU credentials which resulted in tremendous electoral success; but, nevertheless, the SRS remained the single most popular party. Afterwards, the DS was pressured by Western governments to band together with the DSS in order to form a government and to prevent another round of elections.¹⁸⁵ Despite Serbia's continued failure to arrest Karadžić and Mladić, the EU resumed SAA negotiations on 13 June 2007 after a clear commitment from the new government to cooperate fully with the ICTY.¹⁸⁶

The death of Milošević on 11 March 2006 at The Hague marked yet another significant event during the run-up to the 2007 parliamentary elections. This allowed the SPS finally to delink itself from the Milošević authoritarian, nationalist past and move forward in

¹⁸² See "Osnivanje LDP," *Liberalno Demokratska Partija*, accessed on April 30, 2011, http://www.ldp.rs/o_nama/istorijat.13.html.

¹⁸³ Bochsler, "Political Trajectories of Political Parties in Serbia," 305.

¹⁸⁴ Following a successful referendum on 21 May 2006, Montenegro declared independence from the State Union on 3 June. Then, on 5 June, the Serbian National Assembly officially declared the new Republic of Serbia to be the legal successor to the former State Union.

¹⁸⁵ International Crisis Group, *Serbia's New Government: Turning from Europe*, Europe Briefing N°46 (Belgrade/Brussels, May 31, 2007): 1,

http://www.crisisgroup.org/~media/Files/europe/b46_serbias_new_government_turning_from_europe.ashx.

¹⁸⁶ The Serbian government cooperated in the arrest of Bosnian Serb general Zdravko Tolimir and Serbian former police general Vlastimir Đorđević.

Serbian politics.¹⁸⁷ In the post-2000 political scene, the SRS replaced the SPS as the most popular nationalist party thus crippling SPS electoral support. To overcome this problem, the SPS shifted its party platform—announced at the December 2006 party assembly—to advocate EU integration and a left-wing economic program.¹⁸⁸ The party no longer campaigned on nationalist issues; such shift would eventually establish the SPS as a critical swing party.

A Turning Point

2008 was an incredibly turbulent year for Serbian politics. It started with the 2008 presidential elections in which incumbent Tadić defeated Nikolić after two rounds of voting on 20 January and 3 February. Shortly after, on 17 February, Kosovo unilaterally declared independence causing serious clashes within the DS-DSS ruling coalition. Koštunica soon announced the fall of the government on 8 March and elections were scheduled for 11 May. The DS's break with the DSS was “perfectly executed” over the months to follow.¹⁸⁹ While Koštunica attempted to link EU membership with the recognition of Kosovo given the EU's involvement¹⁹⁰ in the new state's supervised independence, Tadić distanced the DS from the political turmoil and advocated both Serbia's territorial integrity and EU integration. On 29 April, less than two weeks before the parliamentary elections, the EU signed an SAA and an

¹⁸⁷ Bochsler, “Political Trajectories of Political Parties in Serbia,” 307; Clark, *Serbia in the Shadow of Milošević*, 72.

¹⁸⁸ Ibid, 312-313.

¹⁸⁹ Ibid, 306.

¹⁹⁰ The EU took part in the February 2006 Vienna talks on the issue of Kosovo's status and assumed a leading role in the subsequent August 2007 negotiations as part of the ‘Troika’—a team of ambassadors from the EU, the U.S., and Russia. The EU also *de facto* supports the controversial Ahtisaari Plan.

Interim Agreement on Trade with Serbia which provided the necessary boost for the DS-led coalition—‘For a European Serbia’—to sweep the polls.¹⁹¹

4.3 2008-Present: Ensuring EU Accession

During the five years between Đindić’s assassination and the signing of an SAA, the EU-Serbian relationship was tenuous. The Union employed the SAA as a tool both to punish Serbian non-compliance and to boost the credentials of pro-EU parties. Direct EU intervention in Serbian politics led to the formation of the DS-DSS government after the 2007 parliamentary elections and the victory of the DS-led coalition in the 2008 parliamentary elections. The premature resumption of SAA negotiations in June 2007 and the signing of the SAA in April 2008 reflect the EU’s concerns regarding the threat of increasing SRS popularity among the Serbian electorate.¹⁹² Furthermore, the June 2004 European Partnership and the October 2005 positive Feasibility Report also represent EU attempts (albeit earlier) to influence the orientation of tepid Serbian politics. In short, the second period in the evolution of the Serbian political spectrum was characterized by—upon the deteriorating nature of passive EU influence—a strengthening of active EU leverage.

Forming the New Government

With only 102 seats, the ‘For a European Serbia’ coalition lacked a majority in the National Assembly; however, a DS-led government was soon formed after Tadić successfully roped in the SPS and other minority parties on 7 July. Under President Tadić and Prime

¹⁹¹ Milica Delević, “Serbia’s EU Integration: Unfinished Business, but Who Is to Finish It?,” in *Serbia Matters: Domestic Reforms and European Integration*, ed. Goran Svilanović, Christophe Solioz, and Wolfgang Petritsch, Southeast European Integration Perspectives (Baden-Baden: Nomos Verlagsgesellschaft, 2009), 43.

¹⁹² Lamont, *International Criminal Justice and the Politics of Compliance*, 84-85.

Minister Mirko Cvetković, Serbia had its first entirely pro-EU government. At this point, the SPS's post-Milosevic repositioning as a pro-EU party and the break between the DS and the DSS had been complete. Furthermore, as an equally significant junction, this marked the first government of which the DSS was not a member. These changes, as previously explained, are directly attributed to both passive and active EU leverage.

The new government's credibility was quickly confirmed after it successfully orchestrated the arrest of Karadžić on 21 July 2008, employed serious efforts to locate the remaining indictees—Goran Hadžić and Ratko Mladić, pushed many EU-required laws through parliament, and began satisfying conditions for EU visa liberalization.¹⁹³ However, Kosovo's declaration of independence earlier that year dramatically altered EU-Serbian relations. The issue of war crimes became overshadowed by the destabilizing potential of the Kosovo question and the fact that the EU subsequently offered an SAA to Serbia demonstrated the priority of this issue in the eyes of the Union.¹⁹⁴ In sum, “[t]he earlier trade-off—Europe for The Hague—was now replaced by a new one—Europe for Kosovo.”¹⁹⁵

Serbia's Initial Kosovo Policy

Kosovo's independence transformed the Serbian political spectrum in a way which seriously undermined Serbia's pro-EU forces. Serb nationalism and populist rhetoric reentered Serbian politics with great force and Serbian parties—including the DS—swiftly adapted their political agendas to proclaim that Serbia would only join the EU with Kosovo

¹⁹³ Delević, “Serbia’s EU Integration,” 45.

¹⁹⁴ Subotić, *Hijacked Justice*, 81.

¹⁹⁵ Ibid.

as an integral part.¹⁹⁶ This put the EU integration efforts of the ruling DS-led coalition in a particularly strenuous situation.

The Serbian government adopted a two-pronged approach to the Kosovo issue: on one hand, Serbia domestically rejected and internationally promoted the recognition of Kosovo's statehood, refused cooperation with Kosovar authorities and with those who recognize Kosovo, and employed legal efforts to reverse Kosovo's independence; and, on the other hand, Tadić cooperated with the EU and furthered Serbia's EU bid in order to improve Serbia's bargaining position given the EU's role as the key power-player in the region. On 15 August, Serbian Foreign Minister Vuk Jeremić filed a request with the UN for the International Court of Justice (ICJ) to issue an opinion on whether the declaration of independence was in breach of international law. During the two-years of ICJ deliberation, Jeremić launched an extremely proactive campaign which lobbied for international support of Serbia's position. Meanwhile, as a result of intense EU pressure, the Serbian government accepted the transfer of international authority in Kosovo from the UN—the UN Mission in Kosovo (UMIK)—to the EU under the guise of the EU Rule of Law Mission in Kosovo (EULEX) in December 2008.

After the ICJ delivered an unfavorable advisory opinion on 22 July 2010, the government decided to take Serbia's case before the UN General Assembly and a developed one-sided resolution. The EU condemned Serbia's unilateral approach, and after intense negotiations, the EU and Serbia agreed upon a common position. The September 2010 joint EU-Serbian UN Resolution stipulated that Belgrade and Priština cooperate in the bilateral facilitation of 'dialogue between the parties' to 'promote cooperation' and 'make progress on

¹⁹⁶ Stefano Bianchini, "The EU in the Values and Expectations of Serbia," in *Civic and Uncivic Values: Serbia in the Post-Milošević era*, ed. Ola Listhaug, Sabrina P. Ramet, and Dragana Dulić (Budapest and New York: Central European University Press, 2011), 95-96.

the path to the EU'.¹⁹⁷ This compromise reflected Tadić's realization that Kosovo's independence is permanent, and that further Serbian progress in EU accession mandated compliance with EU approaches.¹⁹⁸

Rise of the Serbian Progressive Party

The new government was able to gain popular support by advancing a pro-EU agenda and concurrently appealing to Serb nationalism. Conversely, the SRS dropped in popularity during the 2008 parliamentary elections, despite its strong nationalist overtones, because it advocated an anti-EU political platform. Mounting tension between the party's dual leadership—Šešelj and Nikolić—concerning the SRS's position on EU integration led Nikolić to abruptly resign as vice president on 6 September. He appealed to his more liberal SRS colleagues and they eventually broke away from the SRS to form a new political party—the Serbian Progressive Party (SNS: Српска напредна странка/*Srpska napredna stranka*). The SNS held its founding congress on 21 October 2008 and Nikolić adopted a center-right political agenda which stated that EU accession is essential but that Serbia would only enter into the Union with Kosovo as an integral part. Since then, SNS popularity has skyrocketed, far surpassing the SRS. According to results of a poll published in February 2010, the two most popular parties in Serbia include the ruling DS with 30.6 percent of registered voters' support closely followed by the SNS with 29.9 percent.¹⁹⁹ By September 2010, the DS and

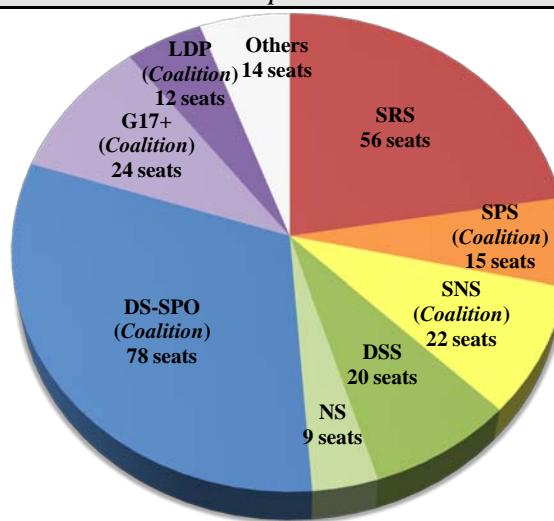
¹⁹⁷ Jovan Teokarević, *Is the EU Capable of Making Serbs and Albanians Finally Reconcile?*, ISS Opinion (Paris: European Union Institute for Security Studies, September 2010): 1-2.

¹⁹⁸ Ibid.

¹⁹⁹ B92, "Poll: DS, SNS Share Top Spot" (Belgrade, February 10, 2010), <http://www.b92.net/eng/news/politics-article.php?mm=2&dd=10&yyyy=2010>.

the SNS both held 29 percent of voters' support.²⁰⁰ Today, support for the SNS among the Serbian electorate continues to climb.

Table 4.1 – Current National Assembly Composition



Serbia's Kosovo Policy after the ICJ Advisory Opinion

Tadić's current strategy towards Kosovo emphasizes collaboration with the EU, as seen in the 2010 joint EU-Serbian UN Resolution. The present ruling coalition²⁰¹ (see Table 4.1) is well on its way to achieving EU membership taking into consideration successful visa liberalization on 19 December 2009 and the recent ratification of Serbia's SAA in January 2011.²⁰² On the other hand, the main opposition party—the SNS—is the only party strong enough to challenge DS dominance. Recent polls and municipal election results suggest the mounting popularity of the SNS; but, the main issue of concern among scholars is the use of

²⁰⁰ B92, "SNS, DS Most Popular Parties" (Belgrade, September 15, 2010), http://www.b92.net/eng/news/comments.php?nav_id=69680.

²⁰¹ Since the formation of the DS-led government after the 2008 parliamentary elections, G17+ broke with the 'For a European Serbia' coalition to form a minority coalition—the 'United Regions of Serbia' coalition—on 16 May 2010. When the SNS split from the SRS, it took 21 SRS National Assembly seats with it. Additionally, the SPS-led coalition fractured (albeit the breakaway party, Party of United Pensioners of Serbia (PUPS), remained in the government) and the DSS-NS coalition broke apart (Košunica decided to run the DSS independently in the upcoming parliamentary elections).

²⁰² B92, "SAA Ratification Positive Stimulus" (Belgrade, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=01&dd=19&nav_id=72217.

nationalist rhetoric by Nikolić. His populist strategies and bolstering support among the electorate invoke fears for Serbia's EU accession.²⁰³ The widespread appeal of the SNS inherently attaches the Serbian electorate more strongly, in comparison to the DS, to the idea of Kosovo and it is this trait that raises a serious question regarding Serbia's future.

Nikolić's SNS uses Kosovo to its advantage. The SNS strongly prioritizes Kosovo over EU accession and argues, similarly to the DS (albeit more convincingly), for "Serbia in Europe only with Kosovo as its integral part".²⁰⁴ Nikolić's populist discourse and rhetoric regarding the Kosovo issue is "very consciously designed" and attempts "[...] to reach increasingly broad sections of the electorate on highly sensitive points and constantly stoke political excitement in order to be able to employ it in the power interests of the party."²⁰⁵ This tactic has successfully resulted in a sudden massive increase in SNS popularity propelling the SNS into a neck-and-neck race for electoral support with the ruling DS-led coalition.

The SAP clearly defines regional cooperation as a condition for EU accession; and, as portrayed by the dispute between Slovenia and Croatia over Piran Bay, border disputes are a critical component of good neighborly relations. No direct link has yet to be established between Serbia's EU accession and the status of Kosovo, but it has been made evident that the EU will never accept "another Cyprus". In short, the success of Serbia's EU bid depends on the resolution of the Kosovo issue and while it has yet to be set as a formal EU condition, the government has recognized this fact and has begun complying with the EU in order to strengthen their credibility and maximize their leverage for when negotiations on Kosovo's

²⁰³ Dragana Dulić, "Serbia after Milošević: The Rebirth of a Nation," in *Civic and Uncivic Values: Serbia in the Post-Milošević era*, ed. Ola Listhaug, Sabrina P. Ramet, and Dragana Dulić (Budapest and New York: Central European University Press, 2011), 39.

²⁰⁴ B92, "SNS to support 'state-building decisions'" (Belgrade, October 19, 2008), http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=10&dd=19&nav_id=54350.

²⁰⁵ Dulić, "Serbia after Milošević," 37.

status are opened.²⁰⁶ Nevertheless, it is becoming understood that Serbia's recognition of Kosovo as an independent state *is* a condition for Serbia's EU accession. Furthermore, the possibility of Serbian non-compliance, in this respect, risks disastrous consequences for both Serbia's EU bid and EU enlargement policy. In the case of Serbia, the ultimate test of EU conditionality is the normalization of the brittle Serbian-Kosovar relationship.

Implementing EU Reforms

Over the last two years, Serbia has made outstanding progress towards achieving EU candidate status. First, in March 2009, the Law on Prohibition of Discrimination was adopted; this law established widespread governmental protection for human rights and created the position of an independent commissioner for the protection of equality. Still, however, popular discrimination (e.g. intolerance, hate speech, violence, etc.) against three key minority groups remains strong—the Roma, persons with disabilities, and the lesbian, gay, bisexual, and transgender (LGBT) population. The EU continues to call for an increased level of support and commitment—mainly from the government, police, prosecution service, and judiciary—for such victims of discrimination and enforcement of the new anti-discrimination law.²⁰⁷ In October 2010, the government and the police provided a commendable degree of support and protection—as opposed to the previous year—for the participants of the 2010 Belgrade Pride parade. As a result of the mass, anti-LGBT riots, 80 of the 100 persons injured were members of the police force on duty upholding the government-declared security.²⁰⁸ The popular reaction to the 2010 pride parade suggests a

²⁰⁶ Bieber, "Territory, Identity and the Challenge of Serbia's EU Integration," 65-71.

²⁰⁷ European Commission, *Serbia 2009 Progress Report*, SEC (2009) 1339 (Brussels, October 14, 2009), http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf.

²⁰⁸ Helsinki Committee for Human Rights in Serbia, *The Pride Parade: "Violence Culture" and the Offensive from the Right*, Helsinki Bulletin, no. 72 (Belgrade, November 2010), <http://www.helsinki.org.rs/doc/HB-No72.pdf>.

level of disconnect between the government and the electorate, but, regardless, such displays of governmental commitment to non-discrimination are significant progress in Serbia's EU bid.

Within the last months of 2009, three significant events launched Serbia forward on its path to the EU. On 30 November, the EU decided to abolish visa requirements for Serbian citizens (excluding residents of Kosovo) as of 19 December. Visa liberalization was a critical step and was characterized by intense conditionality. On December 22, 2009, Serbia applied for EU candidacy status and by the end of 2009, the EU unfroze Serbia's SAA (signed in April 2008) thus opening the ratification process. However, Serbia's SAA remains only partially ratified due to the reluctance of certain EU member states which cite Serbia's lack of cooperation with the ICTY.

On 26 May 2011, Ratko Mladić was arrested by Serbian police forces. The EU and the UN Security Council welcomed this development, but strong anti-government protests quickly broke out on the streets of Belgrade. As of 31 May 2010, Mladić had not been extradited to The Hague, but further progress in Serbia's EU bid necessitates such move.

Conclusions

Clearly, EU conditionality has influenced the development of the Serbian political spectrum since the fall of Milošević in 2000. The fully, pro-EU government is making critical steps forward in Serbia's EU bid, but the most vital issues—ICTY cooperation, the Kosovo issue, and diffusion of the EU's normative agenda—represent serious obstacles to further progress. Ratification of Serbia's SAA remains blocked and the government is increasingly threatened by the mounting popularity of EU-skeptical parties such as Nikolić's SNS. In lieu of Serbia's significant progress but lack of EU returns, Serbia's pro-EU political

elite are in desperate need of EU recognition for their positive efforts in order to satisfy the country's population—which is at risk of turning against them—and to encourage further efforts.²⁰⁹ On the other hand, for the EU, Serbia's membership bid represents a problematic predicament—how to reward Serbian ‘partial’ compliance while maintaining the legitimacy and efficacy of EU conditionality.

The following chapter addresses the three key obstacles to continued progress in Serbia's EU bid and sets the stage for this thesis' explanation for why progress remains absent despite clear governmental support for Serbia's EU accession.

²⁰⁹ Hannes Swoboda, “Serbia and European Integration,” in *Serbia Matters: Domestic Reforms and European Integration*, ed. Goran Svilanović, Christophe Solioz, and Wolfgang Petritsch, Southeast European Integration Perspectives (Baden-Baden: Nomos Verlagsgesellschaft, 2009), 37.

CHAPTER 5

EU Conditionality in Critical Serbian Issues: Missing Links and Unanswered Questions

As drawn from the previous discussions, conditionality continues to fail in bringing about Serbian full compliance with EU demands in regard to the three critical issues—ICTY cooperation, the Kosovo question, and the EU’s normative agenda—which make up this thesis’ framework. The introductory phenomenon asks a key question regarding why such conditions remain unmet despite the high degree of support for and cooperation with the EU in the Serbian political spectrum. This conundrum is even more perplexing given the fact that, in neighboring cases, EU conditionality proved outstandingly successful (see chapter 3.4). Why, then, did such phenomenon occur so explicitly in Serbia? Numerous explanations can be formulated based on the framework of EU external governance theory and the relationship between conditionality and domestic patterns of compliance (see chapter 2); likewise, as demonstrated by the case of Serbia (see chapter 4), the effectiveness of EU conditionality depends on the influence of *domestic factors* regarding *each specific issue* on the political action of domestic elites.

This chapter examines these three critical issues in-depth in order to identify their strong links with EU conditionality. Additionally, this analysis presents and assesses prevalent conclusions from the existing literature on EU conditionality in Serbia in order to set the foundation for determining the uniqueness of this thesis’ claims.

5.1 A Gamut of Explanations

The failure of the Serbian government to arrest and transfer Goran Hadžić and Ratko Mladić to The Hague, the continued unresolved nature of the Kosovo question despite the intensifying links between EU conditions and Kosovo's status, and the staggered progress in promoting the EU's normative agenda demonstrate the ineffectiveness of conditionality—in spite of strong support in the Serbian political spectrum—in promoting EU rule transfer in Serbia. Explanations of this phenomenon within the literature vary to a large degree, but can be grouped into three general categories: (1) the EU-institutionalist explanation, (2) the power-based explanation, and (3) the domestic politics explanation.

The EU-institutionalist explanation defines the determinant of the effectiveness of EU external governance as internal EU structures, trends, law, policy implementation, and/or member states. Proponents of this explanation present numerous factors which seek to explain the inability of conditionality to ensure Serbian progress: divisions within the EU,²¹⁰ lack of EU clarity, legitimacy, or credibility,²¹¹ the flawed structure of the EU enlargement process or its general incompatibility with Serbia,²¹² the fact that individual member states exploit EU conditionality to promote national agendas,²¹³ the degree of strictness or

²¹⁰ See, e.g., Noutcheva, "Fake, Partial, and Imposed Compliance"; Wolfgang Petritsch, Goran Svilanović, and Christophe Solioz, "Why Serbia Matters," in *Serbia Matters: Domestic Reforms and European Integration*, ed. Wolfgang Petritsch, Goran Svilanović, and Christophe Solioz, Southeast European Integration Perspectives (Baden-Baden: Nomos Verlagsgesellschaft, 2009), 11-21; Beate Sissenich, "The Transfer of EU Social Policy to Poland and Hungary," in *The Europeanization of Central and Eastern Europe*, ed. Frank Schimmelfennig and Ulrich Sedelmeier, Cornell Studies in Political Economy (Ithaca and London: Cornell University Press, 2005), 156-177; Swoboda, "Serbia and European Integration," 33-40.

²¹¹ See, e.g., Bauer *et. al.*, "Differential Europeanization in Eastern Europe," 405-423; Grabbe, *The EU's Transformative Power*; Hughes *et. al.*, *Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe: The Myth of Conditionality* (New York: Palgrave Macmillan, 2004); Noutcheva, "Fake, Partial, and Imposed Compliance"; Schimmelfennig and Sedelmeier, "Governance by Conditionality," 669-687; Vachudová, *Europe Undivided*.

²¹² See, e.g., Sonja Bisserko, "Serbia's European Potential Crumbles," in *Serbia Matters: Domestic Reforms and European Integration*, ed. Goran Svilanović, Christophe Solioz, and Wolfgang Petritsch, Southeast European Integration Perspectives (Baden-Baden: Nomos Verlagsgesellschaft, 2009), 77-84; Sofia Sebastian, "The Balkans: European Inducements," in *The European Union and Democracy Promotion: A Critical Global Assessment*, ed. Richard Youngs (Baltimore: The Johns Hopkins University Press, 2010), 16-37.

²¹³ Hillion, *The Creeping Nationalisation of the EU Enlargement Policy*.

flexibility of conditions and/or conditionality implementation,²¹⁴ and EU enlargement fatigue. However, because this explanation only focuses on conditionality inefficacy from the EU perspective, it is incomplete. It does not provide an answer for the question of why such conditions remain unfulfilled by the Serbian government.

Similarly, the second explanation is also inherently insufficient. The power-based explanation claims that the outcome of EU external governance is dependent on the state of the wider political sphere; so, instead of being subject to internal affairs, conditionality is determined by the ties that exist between the EU and Serbia within international order. In this context, it is commonly argued that the global economic crisis or Serbia's tertiary relations with Russia explicate the lack of Serbian progress. While such claims warrant EU hesitation, this explanation does not account for the towering support/desire for accession in the Serbian political spectrum (despite such power-based factors); therefore, again, it is incomplete.

Thirdly, the domestic politics explanation draws on domestic factors of third countries as criteria to determine the effectiveness and impact of EU external governance. Literature which adopts this approach typically focuses on identifying and analyzing the domestic factors which determine the effectiveness of EU conditionality or the domestic factors which explain the differentiation in patterns of compliance (see chapter 2.2).²¹⁵ However, these studies' utilization of domestic factors (e.g. veto players and domestic costs) to determine the effects of EU conditionality on domestic institutions and politics are often broadly explained,

²¹⁴ See, e.g., Luca Gori, "The Balkans and the European Union," in *The Foreign Policy of the European Union: Assessing Europe's Role in the World*, ed. Federiga Bindi (Washington, D.C.: Brookings Institution Press, 2010), 148-154; Judah, "Serbia: Is the Good News Old News?," 25-31; Liu Zuokui, "EU's Conditionality and the Western Balkans' Accession Roads," *European Perspectives - Journal on European Perspectives of the Western Balkans* 2, no. 1 (April 2010): 79-98.

²¹⁵ See, e.g., Hughes et. al., *Europeanization and Regionalization*; Jacoby, *The Enlargement of the European Union and NATO*; Kelley, *Ethnic Politics in Europe*; Frank Schimmelfennig and Ulrich Sedelmeier, "Introduction: Conceptualizing the Europeanization of Central and Eastern Europe," in *The Europeanization of Central and Eastern Europe*, ed. Frank Schimmelfennig and Ulrich Sedelmeier, Cornell Studies in Political Economy (Ithaca and London: Cornell University Press, 2005); Vachudová, *Europe Undivided*.

undifferentiated, and subject to *ad hoc* applications.²¹⁶ Furthermore, these accounts limit their analysis to states which possess a ‘credible EU membership perspective’ thus insufficiently addressing those countries—such as Serbia—which do not enjoy definite membership prospects (i.e. non-candidate applicant states, potential applicant states, and states where the EU explicitly rules out membership).²¹⁷

Alternatively, a limited number of accounts—including this thesis—which also adopt the domestic politics explanation argue that the *domestic impact* of EU conditionality in such states which lack a credible EU membership perspective (e.g. non-candidate Western Balkan states) produce domestic factors (i.e. weak patterns of compliance) that negatively influence the efficacy of conditionality and EU rule transfer (see chapter 2.2).²¹⁸ Those authors whose approach, argumentation, and conclusions run parallel to the findings presented in this thesis are presented and addressed below. Essentially, these accounts argue that the domestic impact of conditionality explains the phenomenon of the Serbian status quo.

This chapter reinforces the uniqueness of this thesis’ conclusions by claiming that *the relevant literature insufficiently develops the link between the domestic impact of conditionality and Serbian patterns of compliance with EU conditions*. Similar studies explain how the domestic impact of conditionality produces weak patterns of compliance, but they do not provide a fully developed assessment of such domestic impact and thus downplay its significance in the explanation for why and how weak compliance serves as a hindrance to progress in Serbia’s EU bid. Therefore, such existing conclusions leave the key question of this thesis unanswered. The following analysis addresses prevalent arguments of the

²¹⁶ John A. Scherpereel, “Review Essay: International Organizations and Institutional Change in Central and Eastern Europe,” *Governance* 19, no. 1 (January 2006): 136; Sedelmeier, “Europeanization in New Member and Candidate States,” 30-31.

²¹⁷ Sedelmeier, “Europeanization in New Member and Candidate States,” 31.

²¹⁸ See, e.g., Freyburg and Richter, “National Identity Matters,” 263-282; Anna Grzymała-Busse and Abby Innes, “Great Expectations: The EU and Domestic Political Competition in East Central Europe,” *East European Politics and Societies* 17, no. 1 (2003): 64-73; Noutcheva, “Fake, Partial, and Imposed Compliance”; Subotić, *Hijacked Justice*; Subotić, “Europe is a State of Mind,” 1-22.

domestic politics explanation regarding each of the three critical Serbian issues and shows how they inadequately explain the status quo phenomenon.

5.2 *Cooperation with the ICTY*

Governmental cooperation with the proceedings of the International Criminal Tribunal for the Former Yugoslavia marks the principal target of EU conditionality in Serbia. As outlined in Article 29 of the Statute of the ICTY,²¹⁹ ‘full cooperation’ entails locating, detaining, and extraditing all suspected war criminals, collaborating with the subsequent proceedings, and respecting and enforcing the verdicts delivered by the court.²²⁰ In recent years, the Serbian-ICTY relationship has been characterized by occasional setbacks and challenges; in his most recent report, ICTY Chief Prosecutor Serge Brammertz deemed the current status of Serbian cooperation as ‘inadequate’.²²¹ Of the Serbian fugitives demanded by the ICTY, only Hadžić remains at large and Mladić’s extradition remains uncertain; and, as it stands, Serbian full cooperation is dependent on satisfying the demand to extradite both remaining suspects. Likewise, such demand has also been clearly adopted by the EU as a condition for Serbian accession.

Over the course of ICTY-related EU conditionality implementation, a single measurement of cooperation—transfer of war criminals to The Hague—developed.

²¹⁹ While Article 29 defines appropriate compliance of the states of the former Yugoslavia, there are other articles which also contribute to this definition of ‘full cooperation’. Article 1 establishes the ICTY’s legitimacy in international law and thus requires all states to respect its proceedings and verdicts. Articles 8 and 9 address the Tribunal’s jurisdiction and requires that certain state institutions (i.e. national courts) must defer all authority to the competence of the ICTY upon request. And, article 10 overrides the international legitimacy of similar national processes (if deemed necessary) and establishes the ICTY as the ultimate authority on violations of international humanitarian law in the former Yugoslavia since 1991.

²²⁰ International Tribunal for the Former Yugoslavia, *Statute of the International Tribunal for the Former Yugoslavia* (The Hague, May 25, 1993), http://www.icls.de/dokumente/icty_statut.pdf.

²²¹ Submitted to the UN Security Council on 17 May and scheduled for debate on 6 June; B92, “Chief Hague Prosecutor Submits Negative Report” (Belgrade, May 19, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=05&dd=19&nav_id=74420; Tanjug, “Insufficient Effort to Locate Mladic and Hadzic” (New York, May 19, 2011), <http://www.tanjug.rs/vest.asp?id=13739>.

Numerous EU documents and policies institute and reiterate this discernable criterion (e.g. the postponement of Croatia's accession negotiations in March 2005; the 2006 suspension of negotiations on Serbia's SAA; reluctance on the part of certain EU member states to sign and then ratify Serbia's SAA). As such, the EU utilizes this criterion as a mechanism to measure compliance with its conditions for ICTY cooperation. In the case of Serbia, as portrayed by official EU statements and reports, compliance hinges on the transfer of the two remaining indictees. Consequently, Serbia's failure to capture such fugitives justifies its continuously blocked accession progress.

While the strategy of strict conditionality proved successful in Croatia (see chapter 3.4), conditionality towards Serbia remains unable to bringing about full compliance with EU conditions. Throughout the course of Serbia's accession process, there have been various clashes with the EU in terms of ICTY cooperation. For example, after the February 2007 ICJ ruling in the case of *Bosnia-Herzegovina v. Serbia and Montenegro*²²² (which concluded that Serbia had violated its duties as a signatory state of the Dayton Agreement, as a member of the UN, and as a contracting party of the UN Genocide Convention) the EU reiterated its hard-line stance on Serbian non-compliance and continued to block SAA negotiations.²²³ Nevertheless, the potentially disastrous ramifications of non-compliance with EU demands and such UN legal breaches failed to coerce Serbia's full cooperation.

Today, the current pro-EU government's positive view of the ICTY, the arrest and extradition of Karadžić in July 2008, and continued, yet 'partial', cooperation with the Tribunal portray the breakdown of Serbia's previous aversions to full compliance and the legitimization of EU membership as a key incentive; however, weak compliance continues to

²²² International Court of Justice, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, General List No. 91 (The Hague, February 26, 2007), <http://www.icj-cij.org/docket/files/91/13685.pdf?PHPSESSID=c6e0d3b942981b10a5dbe958886baa31>.

²²³ B92, "Serbia, EU Talks at Standstill" (Belgrade/Brussels, May 3, 2007), http://www.b92.net/eng/news/politics-article.php?yyyy=2007&mm=05&dd=03&nav_category=90&nav_id=41026.

characterize the political action of the Serbian government in regard to such EU conditions.

Until the government complies with demands for the extradition of Hadžić and Mladić, the EU will continue to impede progress in Serbia's accession.²²⁴ Nevertheless, given the recent, pro-EU developments within the Serbian political spectrum, what explains Serbia's continued failure to fully comply with EU conditions?

It is commonly argued among proponents of the domestic politics explanation that Serbia's lack of full compliance falls on the nature of the country's political environment. Even though the strongly pro-EU, DS-led government is in power, progress continues to be threatened by numerous challenges, including parliament's sluggish adoption of reforms, lack of coordination amongst Serbia's pro-EU political parties, and widespread corruption.²²⁵ However, what explains these shortcomings? This thesis claims that the domestic impact of EU conditionality produces such factors which, in turn, result in weak patterns of compliance with EU conditions.

The rationalist, cost-benefit-balanced nature of conditionality alone does not account for the lack of progress in Serbia's EU bid. Christopher Lamont claims that guaranteeing ICTY full compliance is not solely a matter of material incentives; instead, the way in which states "[...] rationalize compliance and non-compliance acts can either serve to amplify or dilute material incentives for compliance".²²⁶ Similarly, as depicted by Freyburg and Richter (see chapter 2.3), national identity plays an important role in determining elite perceptions of

²²⁴ B92, "EU Wants Concrete Hague Results" (Belgrade, March 29, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=03&dd=29&nav_id=73489.

²²⁵ Delević, "Serbia's EU Integration," 45; Carla Del Ponte, *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity*, English language ed. (New York: Other Press, 2009): 305-332; Srdjan Cvijić, *The New Serbia: Fast Forward towards the EU?*, Policy Brief (Brussels: European Policy Center, January 2009), www.epc.eu; International Crisis Group, *Serbian Reform Stalls Again*, Balkans Report N°145 (Belgrade/Brussels, July 17, 2003): 14-16, <http://www.crisisgroup.org>; Helsinki Committee for Human Rights in Serbia, *Human Security in an Unfinished State: Serbia 2005*, Helsinki Bulletin, no. 58 (Belgrade, 2006), <http://www.helsinki.org.rs/doc/Report2005.pdf>;

Florian Trauner, *Governance by Conditionality, Network Governance or Both? Studying EU Internal Security Policies in the Western Balkans*, Western Balkans Security Observer: Ten Years of Security Sector Reform in Serbia, No. 18 (Belgrade: Belgrade Center for Security Policy, July-September 2010).

²²⁶ Lamont, *International Criminal Justice and the Politics of Compliance*, 86.

the appropriateness of political action, especially in the case of such nation-sensitive EU conditions of ICTY cooperation.²²⁷ Clearly, domestic *constructivist* factors serve as key determinants of domestic patterns of compliance and effective conditionality in Serbia.

Domestic politics explanations claim that the domestic impact of EU conditionality explains Serbia's weak patterns of compliance. Serbia's response to EU conditions on ICTY cooperation represents *fake compliance*. Jelena Subotić explains how EU demands for ICTY cooperation contradict Serb national identity and thus serve to “[...] further revitalize [Serb] nationalism and its claims to victimhood and historical injustice”.²²⁸ This increased threat to Serb national identity concurrently boosts the costs of complying with such EU conditions; therefore, the domestic impact of conditionality frames compliance as inappropriate. However, given the high material incentives provided by conditionality, domestic elites—aimed at gaining both EU rewards and domestic benefits (e.g. electoral support)—employ a strategy of fake compliance. Such strategy entails formal rule transfer, but nonexistent or inadequate rule diffusion.

From 2000-2008 (under the reign of Koštunica), the Serbian government's employment of the ‘voluntary surrender’ strategy demonstrates this fake compliance (see chapter 4.2). ‘Voluntary surrenders’ successfully glorified Serbian war ‘heroes’, reinforced the collective perception of Serb victimhood, and garnered mass public support for Serbia's EU-skeptic forces while concurrently (and legally) complying with EU conditions for ICTY cooperation. As such, this policy upheld the government's nationalist credibility and simultaneously disposed of suspected war criminals that were less of a political asset and more of a liability to receiving material EU rewards.²²⁹ This strategy secured formal transfer of EU rules, but averted regional reconciliation and demands for Serbia to deal with its past

²²⁷ Freyburg and Richter, “National Identity Matters,” 263-282.

²²⁸ Subotić, “Europe is a State of Mind,” 18.

²²⁹ Lamont, *International Criminal Justice and the Politics of Compliance*, 83.

thus effectively undermining rule diffusion.²³⁰ In this light, Subotić argues that Serbia's domestic elites interpret and utilize international norms to “[...] validate their preexisting self-interested claims and to frame their preferences and actions as consistent with the norm[s] [...] while at the same time rejecting or ignoring their substance”.²³¹

As seen by these arguments, the more emphasis the EU places on ICTY cooperation, the more of an impact the issue has on domestic factors. In turn, with a high degree of political significance but with equally high adoption costs, such conditions become more prone to weak patterns of compliance. While this argument explains the weak compliance of Serbia's previous, EU-skeptic government, it does not address the compliance patterns of the current, pro-EU government. In other words, the existing literature discusses the domestic impact of EU conditionality regarding ICTY cooperation on compliance patterns of EU-skeptic domestic elites; but what remains underdeveloped, however, is an explanation for the persistently weak compliance of pro-EU domestic elites. Therefore, existing accounts on Serbian patterns of compliance with EU conditions of ICTY cooperation do not extend to the status quo; thus, they do not explain how the domestic impact of conditionality influences the political action of the current decision-making domestic elites in Serbia.

This thesis extends this domestic politics line of argumentation to claim that *a deeper assessment of the actual degree of domestic impact of EU conditionality shows how the inappropriateness of compliance with EU conditions for ICTY cooperation persist thus resulting in the continued fake compliance of the current Serbian government given its strong aspirations for EU rewards.*

5.3 *The Kosovo Question*

²³⁰ Subotić, *Hijacked Justice*, 49-52.

²³¹ Ibid, 29.

The second critical issue characterizing the debate on Serbia's EU bid is the dilemma over Kosovo's status. It is clear from the SAP that 'regional cooperation' and 'good neighborly relations' are conditions of the EU accession process (see chapter 3.3); and it is also clear from previous EU enlargement policy (especially in the case of Croatia, see chapter 3.4) that resolution of border disputes characterizes a component of these conditions. Nevertheless, while EU conditionality surrounds—but does not officially include—a condition for the resolution of the Kosovo question, the SAP demonstrates that Serbian accession will not occur until the Kosovo issue is resolved.

After Kosovo's unilateral declaration of independence on 17 February 2008, the dynamic of Serbia's EU accession process dramatically changed. The Kosovo issue took primacy over ICTY cooperation and the EU intensified its commitment to preserving regional stability by doubling pressure on Serbia to normalize relations. As a response, the current Serbian government now employs a strategy aimed at diverting domestic attention away from Kosovo—given the destructive nature of its augmented importance—in order to preserve the position of Serbia's EU accession as the top national priority.²³² Tadić successfully accomplished this by presenting cooperation with the EU as the only means in which to negotiate a favorable solution to the Kosovo question.

As for the EU's current strategy, the tact of EU conditionality in regard to the Kosovo question relies on indirect conditions surrounding the issue to promote a solution without actually establishing an explicit '*resolution condition*' for Serbian accession. Such indirect '*surrounding conditions*' include: consent for the deployment of EULEX in December 2008, normalization of bilateral relations with those countries which recognize Kosovo's independence, exclusion of Kosovo from the November 2009 visa liberalization agreement, and participation in the 2011 EU-led Belgrade-Priština technical talks. These efforts have

²³² Hilde Katrine Haug, "Kosovo in Serbian Politics since Milošević," in *Civic and Uncivic Values: Serbia in the Post-Milošević era*, ed. Ola Listhaug, Sabrina P. Ramet, and Dragana Dulić (Budapest and New York: Central European University Press, 2011), 355.

successfully contributed to the breakdown of Serbian authority in Kosovo and the legitimization of Kosovar statehood; but, on the other hand, they have failed to make any progress in resolving the overlying border dispute and in ending the impasse on status talks. Clearly, the EU has a strong hold on the Serbian government and is making considerable progress in promoting regional cooperation; however, in the absence of a resolution condition, no solution is likely to emerge in the immediate future.

Ties between EU conditionality and the Kosovo issue are not a question of the EU's efficacy in promoting Serbian-Kosovar cooperation (considering—as opposed to the ICTY cooperation issue—it has been quite successful); but, instead, it is a matter of why EU conditionality lacks an explicit resolution condition and why surrounding conditions fail to coerce Serbia into resolving, or even addressing, the Kosovo question. Relevant literature focuses on Serbian domestic factors as an explanation for this lack of success, but they do not answer a critical question: If Serbia's EU accession depends on resolving the Kosovo issue, then why—given EU membership as the top priority of both the government and the public and that the Union considers Kosovo's independence to be “irreversible”²³³—does the government continue to promote the diplomatic gridlock on status talks?

The domestic politics explanation for this issue argues that domestic factors determine the effectiveness of the EU's conditionality policy and the success of Serbia's EU bid. Similarly, Milica Delević, head of Serbia's EU Integration Office, describes Kosovo as a determinant of “[...] the political context that affects the attitudes towards Serbia's EU integration both within the EU and also in Serbia itself.”²³⁴ In terms of theory, this statement runs parallel with Freyburg and Richter's explanation of national identity as a filter for determining elite perceptions and political action (see chapter 2.3). Clearly, Kosovo

²³³ B92, “Kosovo's Independence Irreversible”, September 28, 2008, http://www.b92.net/eng/news/comments.php?nav_id=53811; B92, “Independence ‘irreversible’, says French FM” (Priština, March 2, 2010), http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=03&dd=02&nav_id=65538.

²³⁴ Delević, “Serbia's EU Integration,” 45.

possesses an extremely high degree of importance for Serb national identity, and, likewise, characterizes political action of domestic elites; in this context, any EU condition which demands the resolution of the Kosovo issue heavily contradicts Serb national identity and, therefore, has high adoption costs. Nevertheless, with the absence of an explicit EU resolution condition for Kosovo's status, Serbian elites link no material benefits with compliance; but, the mutually exclusive nature the opposing outcomes (Kosovo or the EU), as indicated by Gergana Noutcheva, ensures that only *imposed compliance* will characterize favorable Serbian reactions.²³⁵ As such, Serbian compliance with surrounding conditions represents this form of weak compliance.

In this regard, it is commonly argued—and also advocated by this thesis—that the factors created by the domestic impact of EU conditionality dictate both its effectiveness in resolving the dispute and the imposed compliance of the Serbian government.

The most prominent explanation revolves around the resurgence of nationalism within Serbia after Kosovo's declaration of independence. The threats which the Kosovo issue presents to both Serbian territorial integrity and the Serb identity successfully reignited the fervor of nationalism in Serbian politics.²³⁶ According to Michael Barnett, “[...] moments of rapid changes in international and domestic politics [...] can trigger wide-scale domestic change and debates concerning national identity and the state’s relationship to the wider community”²³⁷ (e.g. post-Cold War nationalism revivals). Antje Wiener builds upon this ‘othering’ relationship by claiming that reciprocal international encounters (such as EU external governance) also spark similar reactions over contested norms.²³⁸ Likewise, Kosovo’s declaration of independence and the subsequent imposition of surrounding EU

²³⁵ Noutcheva, “Fake, Partial, and Imposed Compliance,” 1079-1081.

²³⁶ See, e.g., Haug, “Kosovo in Serbian Politics”; Judah, “Serbia: Is the Good News Old News?,” 25-31.

²³⁷ Barnett, “Culture, Strategy, and Foreign Policy Change,” 9-10.

²³⁸ Wiener, *The Invisible Constitution of Politics*, 28.

conditions concerning the Kosovo issue have undoubtedly caused the intensification of Serb nationalism within Serbian politics.

This revival of Serb nationalism represents merely an additional obstacle for the EU and Serbia's pro-EU forces. Political power, interests, and survival in Serbia now depend upon the ability of domestic elites to uphold Serb national identity in political action by emphasizing the importance of Kosovo. This required the strategy of Serbia's pro-EU forces to entail using Kosovo as a means in which to simultaneously secure their nationalist credentials and further their accession-focused agendas.²³⁹ Tadić's victorious 2008 presidential campaign slogan—"both the EU and Kosovo"²⁴⁰—portrays the extent to which such domestic factors permeate Serbian politics and political action. Also, a close examination of the current government's Kosovo-related actions shows how the behavior of the decision-making elites never contradicts this firm stance of Serb national identity. In fact, the government blatantly justifies its non-compliance with such EU conditions on this basis (see chapter 4.3).²⁴¹ However, given the growing perceptions within Serbian politics that Kosovo's independence is permanent and that a resolution to the Kosovo question is necessary for Serbia's EU accession,²⁴² it would seem logical that the pro-EU domestic elites would attempt to reinterpret such EU conditions as 'identity-friendly' in order to proceed with EU reforms and reap the high rewards of full compliance. Why then, does political

²³⁹ Romana Vlahutin, "The European Union, the Western Balkans, and Serbia: Can Things Be Done Better?," in *Serbia Matters: Domestic Reforms and European Integration*, ed. Goran Svilanović, Christophe Solioz, and Wolfgang Petritsch, Southeast European Integration Perspectives (Baden-Baden: Nomos Verlagsgesellschaft, 2009), 55-63.

²⁴⁰ B92, "Tadić: Serbia wants both Kosovo and EU" (Belgrade, January 10, 2008), http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=01&dd=10&nav_id=46814.

²⁴¹ B92, "President Boycotts Regional Summit over Kosovo" (Belgrade, May 24, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=05&dd=24&nav_id=74505.

²⁴² B92, "Partition of Kosovo Only Solution, Minister Says" (Priština, May 15, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=05&dd=15&nav_id=74342; B92, "Dačić in Fresh Kosovo Partition Statements" (Belgrade, May 18, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=05&dd=18&nav_id=74401; B92, "Northern Kosovo Inevitable Topic, Key to Solution" (Belgrade, May 20, 2011), http://www.b92.net/eng/news/in_focus.php?id=91&start=15; B92, "Good Neighborly Relations Requirement of EU Accession" (Priština, May 21, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=05&dd=21&nav_id=74463; Tanjug, "Tadic: Practicable and Acceptable Solution Should Be Found for Kosovo Issue" (Belgrade, May 20, 2011), <http://www.tanjug.rs/vest.asp?id=13835>.

action of Serbia's pro-EU, decision-making elites in regard to the Kosovo issue continue to result in imposed (or non-) compliance?

Relevant literature does not provide an explanation for this trend. While existing studies—as portrayed above—show the extent to which EU conditionality has impacted domestic patterns of compliance in regard to the Kosovo question, they do not sufficiently explain why Serbia's current pro-EU elites continue to refuse to come to the negotiating table despite their overwhelming desire for Union membership. This thesis claims that such accounts downplay the domestic impact of conditionality on patterns of compliance and thus underdevelops the link between the impact of conditionality and the government's continued weak compliance with surrounding EU conditions concerning the Kosovo question.

In the following chapter, this thesis continues to advocate the domestic politics explanation by arguing that *the domestic impact of EU conditionality produces domestic factors which sustain the high costs and low benefits of compliance with conditions related to the Kosovo issue (in addition to boosting its inappropriateness) thus causing the continued imposed compliance of the current Serbian government.*

5.4 The EU's Normative Agenda

Typically, only ICTY cooperation and the Kosovo question are addressed as ‘the two key issues’ in regard to domestic obstacles to Serbia’s EU accession; this thesis, however, presents a third issue—the EU’s normative agenda. This concept is defined here as the promotion of ‘European’ norms by means of conditionality, more specifically, this thesis addresses two particular norms: (1) non-ICTY-related regional reconciliation and good neighborly relations and (2) anti-discrimination and minority protection. Of course, this policy also falls under the umbrella of other, broader terms (e.g., ‘European integration’,

‘Europeanization’,²⁴³ ‘EU-ization’,²⁴⁴ the ‘EU’s transformative power’,²⁴⁵ as well as EU ‘democracy promotion’²⁴⁶); but, this particular concept is used for the sake of differentiating normative conditions from political and economic conditions. Such EU agenda—as opposed to conditionality on ICTY cooperation or the Kosovo question—aims to spread the EU’s ‘European’ identity, values, and norms in order to encourage the process of socialization to thus promote EU rule transfer (see chapter 2.2).

The emergence of the EU’s normative agenda is clearly seen in the transformation of the EU accession process (see chapter 3.2). EU enlargement beyond ‘Western’ Europe brought with it new conditions which were not present in previous enlargements. As such, the EU enlargement process now calls for democratic stability, good neighborly relations, open discussions of recent history, non-discrimination, and respect for and protection of minorities. This agenda revolves around direct EU efforts to promote its *acquis communautaire* and other related (albeit excluded from the *acquis*) accession conditions.

Only recently—with the electoral victory of Serbia’s pro-EU forces in 2008—has the Serbian government begun responding to conditionality regarding the issues of the EU’s normative agenda. Such political action of Serbia’s decision-making elites, however, demonstrates a pattern of *inconsistent compliance*. When domestic elites deem a certain EU condition as appropriate but it has high adoption costs and/or low rewards, then their political action follows their particular interest-based or norm-based orientation thus resulting in inconsistent (and possibly contradictory) action. Both issues of the EU’s normative agenda

²⁴³ See, e.g., Christoph Knill and Dirk Lehmkuhl, “How Europe Matters: Different Mechanisms of Europeanization,” *European Integration online Papers (EIoP)* 3, no. 7 (1999): 1-19; Tanja A. Börzel and Thomas Risse, “When Europe Hits Home: Europeanization and Domestic Change,” *European Integration online Papers (EIoP)* 4, no. 15 (2000): 1-20.

²⁴⁴ See, e.g., Grabbe, *The EU’s Transformative Power*; Trine Flockhart, “Europeanization or EU-ization? The Transfer of European Norms across Time and Space,” *Journal of Common Market Studies* 48, no. 4 (September 2010): 787-810.

²⁴⁵ See Grabbe, *The EU’s Transformative Power*.

²⁴⁶ See, e.g., Richard Youngs, “Introduction: Idealism at Bay,” in *The European Union and Democracy Promotion: A Critical Global Assessment*, ed. Richard Youngs (Baltimore: The Johns Hopkins University Press, 2010), 1-15; Youngs, “EU Rules Beyond EU Borders,” 105-125.

portray this inconsistent response of Serbia's decision-making elites while also identifying the extent to which conditionality is employed by the EU to promote its normative agenda.

EU conditions aimed at breaking down historical divides and encouraging regional cooperation mark the first area of Serbia's inconsistent compliance. In the April 2002 SAP report, the EU bluntly stated that "integration with the EU is only possible if future members can demonstrate that they are willing and able to interact with their neighbors *as EU member states do*" (emphasis added).²⁴⁷ What exactly does this condition entail? Various EU pressures in the case of Serbia provide a sufficient definition of this vague concept. The Union calls for Serbia and its neighbors to 'overcome regional and historical frictions' and subdue 'nationalist pressures' to normalize regional relations and promote cooperation.²⁴⁸ However, Serbian patterns of compliance with this condition vary to a large degree; some instances are marked by compliance and others by non-compliance. For example, after Ivo Josipović replaced Stjepan Mesić as President of Croatia in 2010, the two presidents of Croatia and Serbia initiated a far-reaching reconciliation campaign to comply with EU demands for the normalization of regional relations. Tadić describes his actions as "[...] sending a message not only to our compatriots and citizens, but to the international public as well, in the desire to prove to everyone that [...] *we share in the European system of values*" (emphasis added).²⁴⁹ On the other hand, relations with Montenegro have only soured since the dissolution of the State Union of Serbia and Montenegro. Fiery debates over clashing citizenship laws have led to a deadlock in such bilateral negotiations. The EU has set conditions concerning the repealment of 'all discriminatory provisions' in respect to 'legal

²⁴⁷ European Commission, The Stabilisation and Association process for South East Europe - First Annual Report [SEC(2002) 339] [SEC(2002) 340] [SEC(2002) 341] [SEC(2002) 342] [SEC(2002) 343], COM (2002) 163 Final (4 April 2002).

²⁴⁸ European Commission, Opinion on Croatia's Application for Membership of the European Union, COM (2004) 257 Final (20 April 2004): 32-37.

²⁴⁹ Serbianna, "Tadić, Josipović: Reconciliation Continues", November 7, 2010, <http://serbianna.com/news/archives/6453>.

redress and access to citizenship' between Montenegro and Serbia; but, continued non-compliance has resulted in the failure to produce a solution.²⁵⁰

Second, when it comes to concerns of minority protection and non-discrimination, as can be seen from the fourth, fifth, and sixth enlargements and the ongoing seventh enlargement in the Western Balkans, conditionality has been successfully utilized as a tool of the EU to “[...] effectively alter the situation in the field of minority protection in the candidate countries and other states willing to accede”²⁵¹ (see chapter 3.2). For example, after sharp EU criticism, the Serbian government adopted an anti-discrimination law in March 2009 which banned discrimination on the grounds of race, religion, sexual orientation, gender, and other factors. Furthermore, heavy EU pressure to enforce this law led the Serbian government to fully endorse—as opposed to the year before—the October 2010 Belgrade Pride parade. Such move was aimed at sending a clear message to the EU. As Serbian Minister of Human and Minority Rights Svetozar Čipić emphasized, “We are here to show that there isn’t a single problem which would prevent any citizen of Serbia to be free and to express his/her freedom”.²⁵² Conversely, however, the government concurrently endorses policies which promote discrimination and minority vulnerability. The enacted Law on Churches and Religious Communities advances many arbitrary practices concerning the registration of ‘non-traditional’ religious communities. In a December 2009 UN Human Rights Council report, the UN special rapporteur on freedom of religion or belief criticized this law as discriminatory and called for its reform and proper implementation.²⁵³ As of today, the Serbian government has not fully complied with such EU demands for non-

²⁵⁰ European Commission, Serbia 2009 Progress Report, SEC (2009) 1339 (14 October 2009): 22, 51.

²⁵¹ Dimitry Kochenov, Commission’s Approach to Minority Protection during the Preparation of the EU’s Eastern Enlargement: Is 2 Better than the Promised 1? (European Diversity and Autonomy Papers- EDAP, 2007): 7-8, www.eurac.edu/edap.

²⁵² Helsinki Committee for Human Rights in Serbia, *The Pride Parade: “Violence Culture” and the Offensive from the Right*, Helsinki Bulletin, no. 72 (Belgrade, November 2010), <http://www.helsinki.org.rs/doc/HB-No72.pdf>.

²⁵³ United Nations General Assembly, Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir: Mission to the Republic of Serbia, A/HRC/13/40/Add.3, (28 December 2009): 11.

discrimination and minority protection. As stated by the Helsinki Committee for Human Rights in Serbia, while Serbian political elites have “[...] finally acknowledged that EU accession preconditions some moral gestures, [they are] still not ready to make such gestures, but know they are inevitable”.²⁵⁴

These recent attempts of the EU to push such norms (directly or indirectly) vis-à-vis conditionality with varied success portray the fact that questions concerning the effectiveness of conditionality in promoting EU rule transfer remain open. Therefore, what explains the inconsistent compliance of the Serbian government?

The domestic political explanation focuses on domestic factors as the spur for such weak patterns of compliance. Within the existing literature on this topic, emphasis is placed on public perceptions within Serbian society; as Florian Bieber notes, “The particular challenge for Serbia arises from the fact that in the debates, Serb identity and Europeanization are often considered to be in conflict with each other or incompatible.”²⁵⁵ Similarly, Subotić presents the EU-incompatibility of Serb national identity as an explanation for such inconsistent compliance. She claims that a large degree of Serbian ‘identity divergence’ with the EU coupled with the Union’s employment of conditionality accounts for why “[...] Serbian elites did not work on delinking requirements of Europeanization from more contested national myths.”²⁵⁶ However, the inconsistency of political action of the Serbian government inherently suggests that competing definitions of identity thrive.²⁵⁷ Furthermore, an in-depth comparison of value perceptions within European states shows that

²⁵⁴ Helsinki Committee for Human Rights in Serbia, *Resolution on Srebrenica: Debate Opened, Notwithstanding*, Helsinki Bulletin, no. 58 (Belgrade, February 2010), <http://www.helsinki.org.rs/doc/HB-No58.pdf>.

²⁵⁵ Bieber, “Territory, Identity and the Challenge of Serbia’s EU Integration,” 71.

²⁵⁶ Subotić, “Europe is a State of Mind,” 18.

²⁵⁷ Barnett, “Culture, Strategy, and Foreign Policy Change,” 10; Freyburg and Richter, “National Identity Matters,” 267.

Serbian public opinion is, in fact, similar to its EU neighbors.²⁵⁸ Therefore, “to the degree that Serbia is separated from Europe, the explanation does not lie in exceptionally different civic opinions [...].”²⁵⁹

Explanations that rely on Freyburg and Richter’s ‘identity model’ claim that inconsistent compliance is explained by the successful (re-)interpretation of nation-sensitive conditions as conducive to national identity in order to avoid domestic adoption costs.²⁶⁰ This argument, however, also falls short given the serious gap between Serbian public opinion and political action of Serbia’s decision-making elites. As seen by the violent, public riots in response to the government’s support for the 2010 Belgrade Pride parade (see chapter 4.3) and by continued and widespread intolerance,²⁶¹ governmental compliance with such EU conditions did not hinge on public opinion or popular norms. Furthermore, efforts to reconcile and cooperate with Croatia also clash with public national perceptions. According to Gallup survey data,²⁶² between 2006 and 2010, there was a 10.2 percent increase in the number of Serbian respondents who think of Croatia as ‘hostile’ (from 47.2 to 57.4 percent). The presence of this gap between political action and public opinion suggests that the government believes the appropriateness of establishing Serb identity as ‘European’ (as seen in the provided examples) to outweigh the low domestic costs of compliance; therefore, moments of non-compliance stem from other, non-identity-related factors. In short, the existing literature’s assessment of the domestic impact of EU conditionality provides an insufficient explanation for the inconsistent compliance of Serbia’s elites concerning conditions of the EU’s normative agenda.

²⁵⁸ Ola Listhaug, Kristen Ringdal, and Albert Simkus, “Serbian Civic Values in a European Context,” in *Civic and Uncivic Values: Serbia in the Post-Milošević era*, ed. Ola Listhaug, Sabrina P. Ramet, and Dragana Dulić (Budapest and New York: Central European University Press, 2011), 51-75.

²⁵⁹ Ibid, 73.

²⁶⁰ Freyburg and Richter, “National Identity Matters,” 267.

²⁶¹ Tanjug, “Discrimination against LGBT People is Wide-spread” (Belgrade, May 17, 2011), <http://www.tanjug.rs/vest.asp?id=13548>.

²⁶² Balkan Monitor, 2010 Summary of Findings.

This thesis adopts the domestic politics approach and argues that the *domestic impact of EU conditionality produces factors which undermine the willingness—vis-à-vis a low perception of EU rewards—of Serbia’s elites to comply thus explaining the inconsistent compliance of the current Serbian government.*

Conclusions

Serbia’s weak patterns of compliance with EU conditions regarding the three critical Serbian issues represent the root of conditionality’s ineffectiveness in promoting EU rule transfer (see table 5.1 below); and, as explained in this chapter, domestic factors (whether rationalist or constructivist) ultimately determine such political action.

Table 5.1 – Weak Patterns of Compliance Model (Serbia)

		Logic of Appropriateness (with an emphasis on Serb National Identity)	
		CORRESPOND	CONTRADICT
Logic of Consequentialism	FAVORABLE	Full Compliance	Fake Compliance (ICTY COOPERATION)
	UNFAVORABLE	Inconsistent Compliance (THE EU’S NORMATIVE AGENDA)	Non-Compliance or Imposed Compliance (THE KOSOVO ISSUE)

The bulk of the existing literature which adopts this approach, however, oversimplifies domestic factors by using undifferentiated terms such as ‘veto players’ and ‘adoption costs’ without providing fully detailed definitions or delving into the question of why such factors exist. Fortunately, a select number of studies expose these shortcomings and attempt to fill these analytical gaps; they present the argument that the domestic impact of EU conditionality on the target country produces high adoption costs and constructs

national identity as a ‘filter’ for the actions of veto players. While these accounts set a firm foundation for such explanations, they are incomplete.

As seen from the conclusions of this chapter, existing literatures insufficiently identifies the full degree of impact thus downplaying its effects. This thesis completes this line of argumentation by providing a deeper analysis of the domestic impact of EU conditionality in Serbia and extending the analysis to include the patterns of compliance of the current Serbian government. In doing so, this thesis answers the questions presented above and provides an explanation for the Serbian status quo phenomenon. The following chapter analyzes the impact of EU conditionality on Serbian politics, political parties, and political elites (specifically in regard to the three critical Serbian issues) to supply the domestic politics explanation with its missing link between the domestic impact of conditionality and the lack of progress in Serbia’s EU bid.

CHAPTER 6

The Impact of EU Conditionality on the Serbian Political Spectrum

The various unexplained phenomena, missing links, and unanswered questions that have been presented by this thesis in the previous chapters represent the incomplete nature of the discussions on EU conditionality in Serbia. With this in mind, this chapter seeks to reinforce the political theory of EU external governance (see chapter 2), define the current state of the ever-transforming EU accession process (see chapter 3), determine the influence of EU conditionality in the development of the Serbian political spectrum (see chapter 4), answer the questions left open by the existing literature (see chapter 5), and provide an explanation for the phenomenon presented by the Serbian status quo (see chapter 1). As explained, this can be accomplished by focusing on the link between the domestic impact of EU conditionality and Serbian patterns of compliance with EU conditions as the source for the lack of progress in Serbia's EU bid. Therefore, this chapter identifies the impact of conditionality—in respect to the three critical Serbian issues—on the Serbian political spectrum in order to expose the ineffective nature of the EU's enlargement policy in promoting EU rule transfer. The resulting implications of this impact, however, are analyzed in the following chapter.

The three-fold domestic impact of EU conditionality is revealed by focusing attention on the three specific categories of the Serbian political spectrum—politics, political parties, and political elites. The *incarceration of Serbian politics* makes political action solely dependent on two factors: EU conditions and Serb nationalism. EU conditionality essentially

transformed Serbian politics into an exclusively condition-oriented arena effectively shifting political focus away from the actual content of EU reforms and placing emphasis on simply satisfying conditions and progressing within the framework of the accession process. Also, in tackling nation-sensitive issues, EU conditionality prompted the resurgence of Serb nationalism within Serbian politics thus defining ‘Serb national interests’ as the top priority of political action and the determinant of political survival. Within this environment, EU conditionality subsequently encourages the *marginalization of Serbia’s pro-EU political parties*. By establishing conditions and nationalism as the defining characteristics of Serbian politics, the influence of EU-skeptic/anti-EU parties has drastically strengthened while, concurrently, the credibility of pro-EU parties has been challenged. Furthermore, conditionality inherently allows for the *manipulation of the EU accession process by Serbia’s political elites* given that it provides such opportunities for elites, exposes internal EU weaknesses, and contributes to Serbia’s corrupt political environment.

This thesis does not demean the importance of EU conditionality or the magnitude to which it has benefited Serbia, instead, this assessment seeks to pinpoint its key faults in order to strengthen the EU’s influence and further advance Serbia’s overlying democratic transition. Only after problems are identified can they be solved. Hence, the following analysis expands on this three-fold impact and shows how conditionality is not only ineffective, but also *counterproductive* in promoting EU rule transfer in Serbia.

6.1 *Incarceration of Serbian Politics*

Conditionality is inherently tied to certain issues; this fact makes it impossible to separate the EU accession process from the intricacies of domestic politics. As seen in the case of Serbia, such an inevitably deep degree of EU involvement in critical domestic

issues—coupled with the fact that the government prioritizes EU membership— influenced the very nature of Serbian politics. In this respect, two key developments occurred as a result of EU conditionality in Serbia: (1) the transformation of Serbian politics into an exclusively condition-oriented arena and (2) the reinstatement of Serb nationalism as a vital aspect of political action in Serbia.

Serbian Politics as an EU Condition-Oriented Arena

The prospect of EU membership has firmly taken hold of all aspects of Serbian politics. During the 2008 parliamentary elections, the victorious coalition—‘For a European Serbia’ led by Tadić’s DS—won the most votes in all but 6 of Serbia’s 29 electoral districts. Since the SPS joined the DS-led coalition to form the current government on 7 July 2008, Serbian politics have been dominated by the country’s EU membership bid. While the process of EU rule transfer undoubtedly progresses Serbia’s EU integration, it also represents the country’s most significant challenge to its overall democratic transition. Numerous examples show how the EU’s employment of conditionality has transformed Serbian politics into an exclusively condition-oriented arena which undermines EU rule diffusion and detracts from the overlying social goals of both conditioned and non-conditioned reforms.

EU conditions for ICTY cooperation most clearly demonstrate this development in Serbian politics. As previously explained, ‘full ICTY cooperation’ has come to be measured by a single, specific criterion—the transfer of suspected war criminals to The Hague. This fact challenges the Tribunal’s contribution to Serbia’s “[...] process of national reconciliation”²⁶³ and detracts from the spread of EU norms. Cooperation with the ICTY has merely become a game of numbers; as Serbia approaches EU candidate status the fact that

²⁶³ International Criminal Tribunal for the Former Yugoslavia, *Joint Statement by the President and the Prosecutor*, Press Release, CC/PIO/027-E (The Hague, November 24, 1995), <http://www.icty.org/sid/7220>; United Nations Security Council, *Resolution 1329* (2000), November 30, 2000.

Hadžić remains at large becomes increasingly pressing. Likewise, the foremost obstacle in Serbia's accession process in its continued failure to arrest these final two fugitives. Consequently, Serbian politics have become so caught up in such EU rhetoric and demands that popular attention no longer focuses on Serbia's struggle for reconciliation.²⁶⁴ For example, Serbian media coverage of Karadžić's arrest on 21 July 2008 focused not on its meaning for reconciliation, but instead on its significance for Serbia's EU bid.²⁶⁵ Furthermore, the public seemed more interested in Karadžić's successful construction of a fake identity and alternative life than his actual arrest and extradition.²⁶⁶ Satisfying ICTY conditions will, undoubtedly, bring Serbia closer to EU membership, but it does not necessarily guarantee a solution to Serbia's regional animosities, unwillingness to confront its recent past, and popular rejection of the 'truth'.

In addition to overshadowing the broad social goals of the EU accession process, conditionality also takes focus away from the very content of the conditions or reforms. In the aftermath of Karadžić's arrest in 2008, Serbia's dispute with the Netherlands over what constitutes 'full cooperation' dominated Serbian politics. While Serbia argued that the extradition of Karadžić sufficiently demonstrates its full cooperation, the Netherlands continued to block Serbia's EU bid citing the country's failure to capture and extradite Hadžić and Mladić.²⁶⁷ This example portrays how Serbian politics focus not on the substantive content of EU conditions, but instead on the mere process of fulfilling them. Such preoccupation with the technicalities of conditionality reinforces the fact that condition fulfillment is the key priority of both the EU and Serbia. Similarly, Serbia's acceptance of

²⁶⁴ See, e.g., Clark, *Serbia in the Shadow of Milošević*; Eric D. Gordy, "Confronting the Past in Serbia: Obstacles and Opportunities," in *Serbia Matters: Domestic Reforms and European Integration*, ed. Goran Svilanović, Christophe Solioz, and Wolfgang Petritsch, Southeast European Integration Perspectives (Baden-Baden: Nomos Verlagsgesellschaft, 2009), 137-141; Subotić, *Hijacked Justice*.

²⁶⁵ B92, "EU: Karadžić Arrest Important Step" (Belgrade/Brussels/The Hague, July 22, 2008), http://xs4.b92.net/eng/news/politics-article.php?yyyy=2008&mm=07&dd=22&nav_id=52102.

²⁶⁶ B92, "Karadžić 'Practiced Alternative Medicine'" (Belgrade, July 22, 2008), http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=07&dd=22&nav_id=52109.

²⁶⁷ B92, "Holland Steadfast in SAA Refusal" (Belgrade, October 27, 2008), http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=10&dd=27&nav_id=54530&version=print.

the EU's condition that Kosovo be “[...] excluded from the visa-free regime for Serbia”²⁶⁸ also represents the prioritization of conditions over norms. In signing the agreement, the Serbian government—given that Serbia and five EU member states continue to view Kosovo as a part of Serbia’s sovereign territory—deprived select Serbian citizens from their freedom of movement. Such discrimination on the grounds of residence and ethnicity clearly contradicts European standards of equality, minority protection, and regional relations. These instances show how conditionality has effectively incarcerated Serbian politics to the extent where European norms and social goals are freely sacrificed for the sake of progressing within the framework of the EU accession process.

Restoration of Serb Nationalism within Serbian Politics

Kosovo’s unilateral declaration of independence in 2008 brought with it a swift revival of Serb nationalism just as EU membership had officially become the government’s top priority (see chapter 5.3). Previously, EU member states had only been involved in Serbia’s nation-sensitive issues indirectly (i.e. conditioning ICTY cooperation); but, after 22 member states recognized Kosovo’s independence from Serbia, the dynamic of Serbia’s EU bid changed. The implementation of conditionality caused the EU accession process to become directly linked with Serb national identity.²⁶⁹ Consequently, Serbia’s EU-skeptic/anti-EU forces present the EU as a threat to Serb national values and promote a negative perception of the EU. In effect, as represented by the massive, violent reaction to the EU-supported 2010 Belgrade Pride Parade, the government’s pro-EU orientation suffers

²⁶⁸ Council of the European Union, *Council Regulation (EC) No 1244/2009*, Official Journal L 336/1, November 30, 2009, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:336:0001:0003:EN:PDF>.

²⁶⁹ See, e.g., Barnett, “Culture, Strategy, and Foreign Policy Change,” 5-36; Dittmer and Kim, “In Search of a Theory of National Identity,” 1-31; Freyburg and Richter, “National Identity Matters,” 263-282; Wiener, *The Invisible Constitution of Politics*.

from numerous popular attacks.²⁷⁰ Associating EU conditions with issues concerning Serb nationhood create the perception of the accession process as a vehicle of the EU to persecute Serb war ‘heroes’, invalidate Serbian territorial integrity, and challenge traditional Serb values. Furthermore, with an EU-deemed importance—due to its heavy conditioning—issues dealing with the ICTY become incredibly public and are awarded a high degree of media coverage. This, in turn, (1) allows popular nationalists (e.g. Šešelj) to acquire political benefits from extensive media coverage of their trial, (2) lets elite-provoked threats to Serb nationalism be widely broadcasted in Serbia, and thus (3) permits nationalist issues, revived controversies, and traditional Serb values to more deeply permeate Serbian politics. In sum, the EU’s policy of constant conditioning clearly explains Serbia’s lack of EU rule transfer²⁷¹ and greatly contributes to the decreasing popular support for EU accession.²⁷²

Clearly, conditionality has formed a strong, negative link between EU membership and Serbia’s nation-sensitive issues. This debate over clashing identities and the adoption cost of EU integration, however, convolutes the actual benefits Serbia would obtain from reforms and condition fulfillment.²⁷³ As such, it presents a serious challenge to Serbia’s pro-EU who must now situate the country’s EU bid into the framework of Serb nationalism in order to promote their political interest, values, and survival and to continue the EU integration process.²⁷⁴ This balancing act can be seen in the government’s unwavering position on Kosovo’s status and related nationalist acts (e.g. continually calling on Kosovar Serbs to boycott elections in Kosovo). This universal and steadfast acceptance of nationalism in the Serbian political spectrum (excluding the LDP) is not the result of mutual agreement,

²⁷⁰ Helsinki Committee for Human Rights in Serbia, *The Pride Parade: “Violence Culture” and the Offensive from the Right*, Helsinki Bulletin, no. 72 (Belgrade, November 2010), <http://www.helsinki.org.rs/doc/HB-No72.pdf>.

²⁷¹ European Integration Office, *European Orientation of Serbian Citizens Trends: Results of Public Opinion Poll* (Belgrade: Government of Serbia, June 2010), <http://www.seio.gov.rs>.

²⁷² Balkan Monitor, *2010 Summary of Findings*.

²⁷³ See, e.g., Bieber, “Territory, Identity and the Challenge of Serbia’s EU Integration,” 65-71.

²⁷⁴ See, e.g., Freyburg and Richter, “National Identity Matters”.

but an outcome of lacking leeway and the fear of political consequences if one were to divert on this issue.²⁷⁵

These two popularly accepted developments within Serbian politics—as a result of the EU’s implementation of conditionality—set the stage for the following discussion on consequential domestic factors in Serbia’s political parties and political elites.

6.2 *Marginalization of Serbia’s Pro-EU Political Parties*

The balance of Serbian political parties has, too, transformed since the fall of Milošević and the strengthening of Serbia’s EU membership prospects. As the EU’s leverage increased and Serbia’s pro-EU orientation solidified, the chances of reversing this process or taking an alternate path became almost impossible. Today, every leading Serbian political party (both EU-skeptic and pro-EU) supports Serbia’s EU accession and vies for popular support;²⁷⁶ however, conditionality has ultimately undermined governmental support and maximized the influence of EU-skeptic and anti-EU forces thus marginalizing Serbia’s pro-EU political parties.

Maximization of EU-skeptic/anti-EU Influence

When mentioning EU-skeptic political parties, this thesis is referring to, primarily, the SNS and the SPS (and, to some extent, NS), and anti-EU parties include the SRS and the DSS. This EU-skeptic category only recently emerged after the 2008 presidential and

²⁷⁵ See, e.g., Grzymała-Busse and Innes, “Great Expectations,” 64-73; Haug, “Kosovo in Serbian Politics,” 329-368.

²⁷⁶ See, e.g., Milada Vachudová, “Center-Right Parties and Political Outcomes in East Central Europe,” *Party Politics* 14, no. 4 (2008): 387-405; Milada Vachudová, “Tempered by the EU? Political Parties and Party Systems Before and After Accession,” *Journal of European Public Policy* 15, no. 6 (September 2008): 861-879; Vachudová, “Corruption and Compliance”.

parliamentary elections when it became clear that the majority of the Serbian electorate favored EU membership. Conversely, parties which criticized EU accession and emphasized Kosovo lost the most support. This apparent center-right void in the Serbian political spectrum was immediately capitalized on and filled by the SNS and the SPS. These parties—as opposed to the anti-EU parties—uphold both EU membership and nationalist issues (e.g. Kosovo, Serb external kin population, and relations with Russia), but if these two components were to ever conflict, the latter would take priority. This precarious political position—support for nationalist issues *and* Serbia’s EU bid—has won EU-skeptic parties a mass popular following and an extremely influential position within Serbian politics. Nearly three years after its creation, the SNS has become, arguably, the most popular political party in Serbia and represents the largest threat to the government (as municipal election results and numerous polls suggest) in the upcoming 2012 parliamentary elections in which a coalition of EU-skeptic parties—mainly the SNS and NS and perhaps the DSS—could form a government. Similarly, the repositioned SPS successfully established itself as the most significant swing party in Serbia (the current government was formed only after acquiring SPS support and the fact that the SPS will likely enjoy a similar position after the 2012 parliamentary elections) and guaranteed itself a powerful spot in the government (SPS leader Ivica Dačić is the First Deputy Prime Minister and the Minister of Internal Affairs).

The opportunities presented by EU conditionality serve mainly to maximize the influence of such EU-skeptic political parties in Serbia. Given that the majority of the Serbian public (1) supports Serbia’s EU accession (albeit not necessarily viewing EU membership as a good thing),²⁷⁷ (2) feels that the country’s current pace of accession is significantly below the desired pace,²⁷⁸ and (3) considers conditionality and the government’s

²⁷⁷ Balkan Monitor, *2010 Summary of Findings*.

²⁷⁸ European Integration Office, *European Orientation of Serbian Citizens Trends*.

failure to meet conditions as the primary reasons for Serbia's lack of progress,²⁷⁹ EU-skeptical opposition parties developed their political programs in order to tap into this pro-EU support base and tailored their argumentation to use the ineffectiveness of conditionality as a means to discredit the government. This is clearly seen in the numerous SNS-sponsored mass rallies—the largest and most recent of which was held on 16 April 2011—in which Nikolić relentlessly demands the dissolution of parliament and calls for early elections.²⁸⁰ Likewise, anti-EU parties have also benefited from the failure of EU conditionality to promote accession progress in Serbia. Koštunica's criticism of both the EU and the government's inability to guarantee Serbian progress bolsters the credibility of the DSS's unique pro-European/anti-EU stance on Serbia's future.²⁸¹ Furthermore, the SRS continues to sharply reject the EU and the ICTY as threats to the Serb identity thus boosting its nationalist standing and contributing to unfavorable perceptions of the government.²⁸² The Kosovo question, in particular, is employed as a political tool—by presenting EU accession as a trade-off for Serbian recognition of Kosovo's independence—to simultaneously further discredit the government and more radically pro-EU parties and boost their nationalist credentials.

As seen, Serbia's EU-skeptical/anti-EU political parties utilize both passive and active EU leverage to garner public support and attack the DS-led governing coalition. In the end, however, these parties come to power, they will ultimately prevent Serbia's EU accession given that the resolution of the Kosovo question will soon emerge as an explicit condition. Until that time, EU conditionality will continue to allow for an overrepresentation of such 'dead end' political parties in Serbia's political spectrum.

²⁷⁹ Ibid.

²⁸⁰ B92, "Opposition SNS Party Leader Starts Hunger Strike" (Belgrade, April 16, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=04&dd=16&nav_id=73833.

²⁸¹ B92, "'Government Barely Has Majority, No Authority'" (Belgrade, May 13, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=05&dd=13&nav_id=74321.

²⁸² B92, "No Justice at Hague, say Radicals" (Belgrade, May 4, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=05&dd=04&nav_id=74153.

Minimization of EU, Pro-EU, and Government Influence

In adopting pro-EU political programs and harsh criticisms of the government's lack of progress, EU-skeptic parties have successfully taken popular support away from pro-EU parties. A recent Serbian public opinion poll conducted in March 2011 shows that a SNS-NS coalition leads the DS-led coalition 41.7 percent to 24.3 percent and that 66.4 percent of the Serbian electorate supports Nikolić's call for early elections.²⁸³ This clearly demonstrates the pull of the dual pro-EU/Serb nationalist agenda; however, the mass popularity of these parties inaccurately portrays the majority EU-orientation of the Serbian public given that the nationalist component of their dual agenda takes priority over EU membership. Essentially, this undermines the influence of the truly pro-EU forces whose progress is being countered by the EU's reluctance—citing the absence of full compliance with EU conditions—to reward its positive efforts. Serbia's pro-EU forces are in desperate need of EU recognition for their progress in order to boost their credibility, satisfy the electorate, and encourage future reforms. In short, the EU's strict conditionality challenges the credibility and popular support of the EU, pro-EU parties, and the government.

Additionally, the ineffectiveness of EU conditionality also contributes to this misrepresentation in the Serbian political spectrum. Such ardent, hasty EU demands for condition fulfillment produce counterproductive consequences. For example, EU calls for 'regional cooperation' and 'good neighborly relations' may be too much, too soon. In adhering to EU demands, other EU-oriented states of the Western Balkans were quick to recognize Kosovo's independence; yet, as a result, this proved counterproductive as their

²⁸³ B92, "New Poll Gives Opposition Parties Lead" (Belgrade, April 6, 2011), http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=04&dd=06&nav_id=73645.

bilateral relations with Serbia dramatically worsened.²⁸⁴ Such added friction in the region impedes EU progress and reinforces anti-government criticism. Again, the counter-productivity of EU conditionality upholds and even contributes to the pessimism of the status quo which only jeopardizes the stability of the current government.

Besides (1) the maximized influence of EU-skeptic/anti-EU parties, (2) the strict implementation of EU conditions, and (3) the ineffective and counterproductive nature of EU conditionality, internal divisions and non-consensus *within* Serbia's pro-EU ranks also add to the marginalization of pro-EU political parties in Serbia. In December 2004, internal DS divisions over the party's level of EU compliance culminated in the expulsion of Jovanović who, less than a year later, founded the LDP (see chapter 4.2). The emergence of the LDP filled the void at the far-left of the Serbian political spectrum; likewise, the party adopted a much more radical approach to Serbia's EU accession process which denounced the widespread hesitation regarding ICTY cooperation, the Kosovo question, and the EU's normative agenda. To this day, the LDP represents yet another threat to the DS's electoral support base; hence, Tadić continues to rule out any DS-LDP coalition in order to deprive the dissident party of credibility, popularity, and governing opportunity. In the dearth of cooperation, the LDP openly criticizes the government and oftentimes rejects proposed EU reforms citing their lack of scale or scope. Such non-consensus among Serbia's pro-EU parties undermines the effectiveness of EU conditionality and the transfer of EU rules.

These examples illuminate the reality that EU conditionality maximizes the influence of EU-skeptic/anti-EU parties while concurrently undermining the clout of the EU, pro-EU forces, and the government in Serbia; consequently, Serbia's pro-EU political parties are marginalized, discredited, and underrepresented.

²⁸⁴ See Irena Ristić, "Stuck between a Rock and a Hard Place: Serbia's EU Integration Process," in *Serbia Matters: Domestic Reforms and European Integration*, ed. Goran Svilanović, Christophe Solioz, and Wolfgang Petritsch, Southeast European Integration Perspectives (Baden-Baden: Nomos Verlagsgesellschaft, 2009), 53.

6.3 *Manipulation of EU Conditionality by Serbian Political Elites*

Hitherto, the domestic impact of EU conditionality in Serbia has shown how the nature of Serbian politics and the balance of Serbian political parties have been transformed by the EU accession process, but it has yet to provide an explanation for the Serbian status quo phenomenon. These prior developments merely set the stage for answering the critical questions previously outlined (see chapter 5).

Politics and political parties are inherently driven by the ambitions and actions of political elites; and, as EU conditionality impacted the former two aspects of the Serbian political spectrum, it, too, has had a profound impact on the behavior and political action of Serbia's elites. Conditionality has altered the way in which Serbia's political elites behave by exposing the vulnerabilities and weaknesses of the EU accession process; in turn, this impacted behavior determines domestic patterns of compliance with EU conditions. The following analysis supplies the missing link of the domestic politics explanation between the domestic impact of conditionality and the lack of progress in Serbia's EU bid.

Political Elite Behavior: Exploitation of Vulnerabilities and Weaknesses

Studies often cite EU clarity, legitimacy, and credibility as the three critical aspects of conditionality which determine its effectiveness (see chapters 2.2 and 5.1). Vague conditions, spurious processes, and inconsistent implementation typify the most common explanations for the lack of Serbian progress within the existing literature; nevertheless, the success of conditionality in promoting EU rule transfer—as previously explained—ultimately depends on domestic factors and, most importantly, the orientation of the particular decision-

making elites involved.²⁸⁵ These EU-focused explanations, however, do not assess the degree to which such shortcomings impact the behavior of domestic elites. Instead, they focus on how such factors influence domestic polity, politics, and policy. Only a limited number of studies—typically characteristic of the domestic politics approach—move beyond this common approach to analyze the impact of conditionality on political action of domestic elites, but not on their particular orientation (whether interest-oriented or norm-oriented; see chapter 2.2). In the end, the domestic impact on elite behavior remains underdeveloped. The following analysis focuses on conditionality’s domestic impact on political elite behavior and how that subsequently determines political action and domestic patterns of compliance.

Implementation of the EU’s policy of conditionality in Serbia exposes internal divisions within the Union.²⁸⁶ Two particular disputes have come to dominate Serbia’s EU bid. First, questions regarding ICTY cooperation in Serbia’s accession process represent the source of many disputes among EU member states. Proponents of unyieldingly strict conditionality—chiefly, the Netherlands—clash sharply with those member states—such as Austria and Italy—which actively lobby for EU leniency and flexibility in order to push forward with EU reforms in Serbia. Second, the dispute among EU member states over the Kosovo question also characterizes this internal EU divide. While 22 EU member states recognize Kosovo’s independence from Serbia, five—Cyprus, Greece, Romania, Slovakia, and Spain—support the position of the Serbian government. These disputes not only hampers the EU’s role as a mediator and enforcer, but also send convoluted signals to Serbian elites that either (1) Serbia’s current state of compliance is satisfactory or (2) compliance is

²⁸⁵ Heather Grabbe, “Europeanization goes East: Power and Uncertainty in the EU Accession Process,” in *The Politics of Europeanization*, ed. Kevin Featherstone and Claudio M. Radaelli (Oxford: Oxford University Press, 2003), 303-327; Dimitris Papadimitriou and David Phinnemore, “Europeanization, Conditionality, and Domestic Change: The Twinning Exercise and Administrative Reform in Romania,” *Journal of Common Market Studies* 42, no. 3 (2004): 619-639; Pridham, *Designing Democracy*.

²⁸⁶ See, e.g., Noutcheva, “Fake, Partial, and Imposed Compliance,” 1065-1084; Petritsch *et. al.*, “Why Serbia Matters,” 11-21; Sissenich, “The Transfer of EU Social Policy to Poland and Hungary,” 156-177; Swoboda, “Serbia and European Integration,” 33-40.

not even necessary. In short, the absence of an internal consensus erodes clarity, legitimacy, and credibility of EU conditionality.

These two internal EU divisions also serve as prime examples with which to illustrate the impact of EU conditionality on Serbian political elite behavior. The inconsistent implementation of conditionality in Serbia—a result of the internal divide over Serbia’s ‘full cooperation’ with the ICTY—encourages the country’s political elites to exploit the exposed weaknesses of the EU accession process. When Serbia handed Karadžić over to The Hague in July 2008, many EU member states viewed this as a demonstration of Serbia’s commitment to full ICTY cooperation even though Hadžić and Mladić remained at large; however, Serbia’s SAA (albeit signed) remained frozen as a result of the Netherlands’ veto in September 2008. Less than two years later, on 14 June 2010, the Commission decided to open the SAA ratification process despite Serbia’s lack of progress, and within six months, a third of the EU member states ratified the agreement. Clearly, perceptions of what constitutes ‘full cooperation’ vary within the EU thus convoluting the clarity of EU conditions (as claimed early, see chapter 6.1). This example not only reinforces the fact that non-consensus exists within the EU, but demonstrates the inconsistency of EU conditionality.²⁸⁷ As seen in this instance, despite a lack of measurable progress (i.e. the arrest and extradition of Hadžić and Mladić), previously strict conditions eased and Serbia’s EU bid resumed. Consequently, EU conditionality has yet to produce full Serbian compliance. Freezing SAA negotiations for ICTY non-cooperation and subsequently unfreezing the process in spite of continued non-cooperation sends the message to Serbian

²⁸⁷ Other instances of this pattern are littered throughout Serbia’s recent history. For example, after Đindić’s assassination, the EU extended rewards (the 2004 European Partnership and the 2005 positive Feasibility Report) to Serbia’s less EU-oriented government in an attempt to encourage continued progress; but, after Košunica’s continued non-compliance, the EU froze Serbia’s SAA in May 2006. A year later, in June 2007, negotiations were reopened after a brief display of commitment from the Serbian government. Furthermore, despite a lack of progress, the EU signed an SAA with Serbia in April 2008 on the eve of the 2008 parliamentary elections to simultaneously undermine support of the EU-skeptic parties (i.e. the SRS and the DSS) and boost the DS’s credibility. The SAA was quickly refrozen.

political elites that full compliance with EU conditions is superfluous and that they simply need to wait until the pattern continues. This tendency has clearly impacted political elite behavior by opening the possibility for elites to monopolize on EU vulnerabilities and weaknesses; instead of searching for a way of promoting socialization or boosting appropriateness, elites focus on how to exploit such EU factors to acquire material incentives and avoid intrinsic costs.

Furthermore, this tendency can also be seen from political elite behavior in regard to surround EU conditions on the Kosovo question. After the Kosovo question was accepted by the ICJ in 2008, Serbian Foreign Minister Jeremić adopted an extremely proactive, two year-long campaign to gain international support for Serbia's position (see chapter 4.3). Bilateral relations were strengthened with the five EU member states which reject Kosovo's independence; this, in turn, further solidified the inner EU divide thus providing Serbian elites with room to maneuver and promote their political and personal goals. Likewise, during the negotiations for the replacement of UNMIK with EULEX in mid-2008, Tadić used the leverage Serbia acquired from the inner EU divide to broker a favorable agreement. As he clearly explained, "The EULEX mission is welcome in Kosovo under two conditions: that it is preceded by a UN Security Council decision and that it does not implement the Ahtisaari plan, which includes Kosovo's supervised independence."²⁸⁸ Tadić fought for these concessions primarily to secure his nationalist credentials (through emphasizing Russia's influential clout in the UNSC and the mission's illegitimacy in solidifying Kosovo's independence) with the Serbian public; and, he consented to EULEX deployment in order to further Serbia's EU bid and to satisfy the EU's surrounding conditions regarding the Kosovo issue. Clearly, Serbian elites believe a delicate balance between the logics of

²⁸⁸ B92, "Tadić: Kosovo Constitution Legally Invalid" (Belgrade, June 15, 2008), http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=06&dd=15&nav_id=51104.

consequentialism and appropriateness characterizes Serbia, and that political action must sustain this balance.

Apart from internal clashes on the rationalist level, contradicting EU normative standards suggest an additional clash on the constructivist level. While EU law focuses heavily on non-discrimination standards (primarily via EU Council Directive 2000/43/EC²⁸⁹ and Article 21(1) of the Charter of the Fundamental Rights of the European Union²⁹⁰ which call for equal treatment and non-discrimination of national minorities), it does not require member states to provide any sort of special measures for minority protection.²⁹¹ Conversely, EU enlargement law is centered on the promotion of the Copenhagen criteria which includes ‘respect for and protection of minorities’ (see chapter 3.2). Even though no minority protection standards exist in EU doctrine, minority rights are a cornerstone of EU enlargement policy.

Previous EU enlargement rounds suggest that within the Union’s conditionality policy, there are two mutually exclusive standards—one which promotes non-discrimination and minority protection and one which tolerates nationalizing policies (i.e. assimilation, exclusion, disenfranchisement, and marginalization). In some cases, the EU upholds minority protection conditions, and in other instances, such conditions are watered-down or not applied at all. In Serbia, the EU’s inconsistency in promoting such norms is most apparent in its visa liberalization agreement with the EU. As previously stated, in accepting the EU’s condition of excluding Kosovo, the Serbian government consented to a policy which directly discriminates against certain groups of its own citizens. In effect, EU conditionality legitimized state-led discrimination and established the conviction among Serbian political elites that strict adherence to EU norms is unnecessary thus discrediting the strength and value of such European norms. As such, even though the Serbian government

²⁸⁹ Council Directive 2000/43/EC, 29 June 2000, *OJ* (L 180/22).

²⁹⁰ Charter of Fundamental Rights of the European Union, 18 December 2000, *OJ* (C 364/1).

²⁹¹ Kochenov, “EU’s Numerous Contradictory Approaches”, 8-11.

stands firm on enforcing non-discrimination and minority protection (e.g. adoption of the anti-discrimination law, inclusion of legal minority protections, and governmental support for the 2010 Belgrade Pride parade), its exclusion of Kosovar residents from the November 2009 visa liberalization agreement challenges the legitimacy and credibility of all its prior positive acts. Furthermore, such EU double standards allow Serbia's elites to confront EU conditions on normative grounds in order to 'pick and choose' which conditions with which they will comply.²⁹² Again, this further reinforces the tendency of Serbian elites to manipulate EU conditionality with the intention of maintaining the delicate balance in Serbia.

These examples clearly show how the domestic impact of conditionality encourages political elite behavior which aims at not satisfying EU conditions, but instead searching for means of exploiting the vulnerability and weaknesses of the EU's enlargement policy. Accordingly, this behavior determines elite political action.

Elite Political Action: Explaining the Weak Patterns of Compliance in Serbia

Finally, in encouraging such counterproductive political elite behavior, the numerous faults of the EU's enlargement policy effectively contribute to the failure of conditionality to promote EU rule transfer. The two overlying characteristics of Serbian politics—EU condition fulfillment and Serb nationalism appeasement—and the upset balance among Serbian political parties act as the vital criteria which determine the actions of Serbia's political elites. The tactics utilized to manipulate EU conditionality fall under three categories: (1) 'win-win manipulation', (2) the 'last minute strategy', and (3) 'selection bias'.

Win-win manipulation most accurately describes the approach of Serbia's current decision-making elites to conditionality regarding EU condition for ICTY cooperation; the

²⁹² See, e.g., Noutcheva, "Fake, Partial, and Imposed Compliance," 1081.

ultimate aim of this strategy entails dealing with conditionality in ways which comply with EU conditions while also appeasing the more nationalist electorate. Numerous examples show how Serbian elites present political action from a different angle in order to appease EU conditions without sparking costly domestic responses. In other words, domestic elites tailor their political action to acquire the desired EU rewards of full compliance while avoiding the consequential domestic adoption costs (i.e. threats to their political power, interests, and survival). In matters of ICTY cooperation, political action risks contradicting Serb national identity; therefore, domestic elites must position compliance within the framework of identity appropriateness to justify its rationalist value (see chapter 2.3). This tract represents *fake compliance* (see chapters 2.2 and 5.2).

Since the new pro-EU government took power in 2008, ICTY cooperation issues became overshadowed by the looming Kosovo question. Consequently, the popularly perceived appropriateness of such EU conditions eased slightly as seen by the fairly constructive response to the extradition of Karadžić in 2008; however, opinion polls show—in regard to questions regarding public perceptions of Mladić—that ICTY cooperation remains largely (albeit less so than before) inappropriate. The most critical compliance act of the current government in regard to ICTY cooperation concerns the 2010 Srebrenica resolution adopted by the Serbian parliament on 31 March.

In the judgment of the ICJ's 2007 case of *Bosnia-Herzegovina v. Serbia and Montenegro*, the court declared Serbia's violation of the UN Genocide Convention by failing to prevent the Srebrenica massacre and punish those responsible. Given that Article VI of the Convention requires states to accept the jurisdiction of the 'international penal tribunal', the Court concluded that Serbia's "cooperation with the ICTY constitutes [...] an obligation arising from its status as a party to the Genocide Convention"; therefore, Serbia's failure regarding prevention and punishment led the Court to declare that Serbia had "[...] failed in

its duty to cooperate fully with the ICTY".²⁹³ In response, the EU declared—as stated in the standing European Partnership with Serbia—that abiding by this ICJ ruling contributes to the definition of its reiterated demands of full ICTY cooperation.²⁹⁴ As such, resolutions condemning the Srebrenica massacre and accepting it as an act of genocide constitutes EU conditions for ICTY cooperation.

Two European Parliament resolutions (adopted on July 2005²⁹⁵ and January 2009²⁹⁶) accept the 1995 Srebrenica massacre as an act of genocide while also stressing that “there cannot be real peace without justice”.²⁹⁷ In suit, the EU instructed the Serbian parliament to accept the EU’s interpretation and adopt a similar resolution. Under the rule of the current Serbian government, such strong EU pressure resulted in Parliament’s adoption of the March 2010 Srebrenica resolution. However, this act of compliance proves insufficient. While the resolution condemns the massacre and accepts EU and other international interpretations of it as an act of genocide, it does not directly declare the crime as such. Instead, the document merely refers to the massacre as a “war crime”, “killings”, “mass murder”, or the crime committed in a manner “[...] as determined by the International Court of Justice ruling”.²⁹⁸ This win-win manipulation shows how the government satisfied the EU condition while concurrently preserving the victimhood of Serb national identity thus prescribing to the pressures of nationalism within Serbian politics. This example clearly demonstrates the employment of the win-win manipulation tact—fake compliance—by the current decision-making domestic elites in Serbia concerning EU conditions for ICTY cooperation. As such,

²⁹³ International Court of Justice, Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), General List no. 91 (The Hague, February 26, 2007), <http://www.icj-cij.org/docket/files/91/13685.pdf?PHPSESSID=c6e0d3b942981b10a5dbe958886baa31>.

²⁹⁴ Council Decision No. 2008/213/EC, 19 March 2008, *OJ* (L 080).

²⁹⁵ European Parliament Resolution of 7 July 2005 on Srebrenica, 6 July 2006, *OJ C* 157 E/468.

²⁹⁶ European Parliament Resolution of 15 January 2009 on Srebrenica, 14 February 2010, *OJ C* 46 E/111.

²⁹⁷ Ibid.

²⁹⁸ Helsinki Committee for Human Rights in Serbia, *Resolution on Srebrenica: Debate Opened, Notwithstanding*, Helsinki Bulletin, no. 58 (Belgrade, February 2010), <http://www.helsinki.org.rs/doc/HB-No58.pdf>.

this weak pattern of compliance undermines the effectiveness of conditionality in promoting EU rule transfer.

The second tact of Serbian political elites to conditionality—the last minute strategy—relies on deceiving the public in order to advance certain reforms or justify certain concessions in light of the high perceived inappropriateness of EU conditions and equally high adoption costs. As seen from the Kosovo-sparked resurgence of nationalism discussed earlier, the dual identification of Serbs as both Serb and European has become extremely vulnerable and subject to reinterpretation at the hands of domestic elites. In particular regard to the Kosovo issue, Serb national identity clearly deems all political action as inappropriate and thus attaches threateningly disastrous adoption costs onto compliance with related EU conditions. However, Serbia’s EU accession necessitates such compliance. Given this situation, any resulting compliance from Serbian elites can only be characterized as *imposed compliance* (see chapters 2.2 and 5.3).

In regard to the EU’s surrounding conditions concerning the Kosovo question, the government uses Kosovo-oriented arguments as a misdirection device to overshadow nation-sensitive, imposed EU conditions. For example, the EU’s concessions regarding the 2008 deployment of EULEX were presented by Tadić as a Serbian victory, but, in actuality, EULEX represents the EU’s commitment to Kosovo’s integrity, the legitimacy of Kosovar authorities, and the integration of Kosovar Serbs into the new state.²⁹⁹ Koštunica sharply criticized this action by describing, rightly so, Tadić’s proposed conditions for EULEX deployment—UNSC consent and exclusion of the Ahtisaari plan—as “propaganda”, and saying that Serbia’s decision-making elites are “[...] *deceiving their own citizens* regarding how they allegedly do not create the institutions of an independent state of Kosovo”

²⁹⁹ Council Joint Action 2008/124/CFSP, 16 February 2008, *OJ* (L 42/92).

(emphasis added).³⁰⁰ Tadić, on the other hand, accepts such imposed Kosovo-related concessions because he understands the inevitability of a resolution condition as part of Serbia's EU accession. Such understanding is apparent given Tadić's appointment of diplomacy-leaning Oliver Ivanović as State Secretary of Serbia's Kosovo Ministry and the country's participation in the 2011 EU-led Belgrade-Priština talks. In this example, by accepting such EU conditions at the last minute (Tadić's consent came exactly one month before EULEX troops set foot in Kosovo on 8 December 2008) and presented under false pretenses, the Serbian government utilized the last minute strategy in an attempt to avert the high costs (both rationalist and constructivist) of such imposed compliance.

Similarly, the current Serbian government also uses the guise of EU integration—appealing to popular desires for EU membership—to direct attention away from its Kosovo concessions. The 2009 visa liberalization agreement is a prime example of this strategy; despite Tadić's strong push for EU progress ("[...] there can be no membership in the EU without visa liberalization"³⁰¹), in accepting the exclusion of Kosovo from the visa-free regime, the Serbian government essentially further distanced Kosovo from Serbia and solidified the separation. EU calls for Serbia to normalize regional relations with those countries which recognize Kosovo's independence, also indirectly suggests Serbia's acceptance of the legitimacy of Kosovo's independence. Most explicitly, after the delivery of the July 2010 ICJ advisory opinion on Kosovo, the Serbian government developed and promoted a one-sided, nationalist resolution to put before the UN General Assembly; however, after harsh EU criticism and an intense period of head-on debates, the Serbian government—at the last minute—accepted the EU's alternative joint resolution (see chapter 4.3). This resolution stipulates bilateral dialogue between Belgrade and Priština aimed at

³⁰⁰ B92, "Tadić Says No EULEX without Guarantees" (Belgrade, November 9, 2008), http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=11&dd=09&nav_id=54868.

³⁰¹ B92, "EU Lifts Visa Restrictions for Serbia" (Belgrade/Brussels, November 30, 2009), <http://www.b92.net/eng/news/politics-article.php?mm=11&dd=30&yyyy=2009>.

promoting cooperation and progress in related EU reform implementation (i.e. surrounding conditions on the Kosovo issue). While this increased cooperation with the EU and Serbia's participation in the subsequent 2011 EU-led Belgrade-Priština talks positioned the country closer to the EU, it also represents a *de facto* recognition of Kosovar statehood; but, this imposed concession remained hidden under the heavy presentation by Tadić of such EU reforms as much-needed progress in Serbia's EU bid.

Undoubtedly, the EU reform efforts of Tadić and the DS-led government continue freely and outstandingly successfully. In fact, public opinion polls show that the Kosovo issue is far down the list of popularly-perceived national priorities. This demonstrates the government's successful diversion of public attention away from Kosovo. Diminished electoral support for nationalist political parties—the DSS and the SRS—portray the effectiveness of the government's last minute strategy to emphasize the importance of Serbia's EU bid over the Kosovo issue. And, the inability of Tadić and the governing coalition to be branded as national traitors proves that the government's extremely public and aggressive international rhetoric against Kosovo appeals to the recently reinforced Serb national identity.

These examples portray a few key instance of the utilization of the last minute strategy by the current decision-making domestic elites in Serbia regarding surrounding EU conditions on the Kosovo question. As such, this imposed compliance undermines the effectiveness of conditionality to promote EU rule transfer.

Thirdly, selection bias constitutes the strategy of Serbia's decision-making elites in regard to conditions of the EU's normative agenda. As described in the previous chapter, the civic opinions constituting the Serb national identity do not diverge with the opinions of Serbia's EU neighbors; however, public reactions to and opinions of such moments of compliance suggest that national identity remains a key factor (see chapter 5.4). The blatant

attempts of Serbia’s decision-making elites to depict certain EU conditions as appropriate for Serb national identity—Tadić’s 2010 reconciliation campaign with Croatia and the government’s support for the 2010 Belgrade Pride parade—proves that the current government prioritizes the European aspect of Serb identity over the low domestic costs of compliance. However, despite the perceived appropriateness of EU demands, the current government’s approach to EU normative conditions remains characterized by *inconsistent compliance* (see chapter 2.2).

Given the decision-making elites’ perceived appropriateness of conditions regarding the EU’s normative agenda, the key question concerns not instances of compliance, but instances of non-compliance. This inconsistency makes all such compliance with related conditions undermine EU rule transfer thus establishing it as a weak pattern of compliance. So, the question is: what explains instances of Serbian non-compliance with conditions of the EU’s normative agenda? The selection bias tact explains the elite strategy behind such weak compliance; given, as explained above, the inconsistency of conditionality implementation and the double standards in the EU’s enlargement policy (typically arising from the EU’s prioritization of strategic goals over normative goals³⁰²), political elite behavior follows a pick and choose pattern. If elites suspect normative EU conditions as inconsistent and/or interest-based and not norm-based, then the perceived intrinsic EU rewards of compliance are delegitimized thus sparking the tendency of domestic elites to manipulate conditionality with the intention of maintaining the delicate balance in Serbia (i.e. higher risk of non-compliance).

For example, in light of EU calls to “overcome regional and historical frictions”, to fight “nationalist pressures”, and to stress “reconciliation as part of the European integration

³⁰² See, e.g., Noutcheva, “Fake, Partial, and Imposed Compliance,” 1081.

process,”³⁰³ the Serbian and Croatian governments launched a highly public reconciliation campaign (see chapter 5.4). However, despite this compliance, both governments continually refuse to drop their genocide lawsuits against each other. On 4 January 2010, Serbia filed a genocide countersuit with the ICJ as a delayed response to Croatia’s initial 1999 genocide lawsuit.³⁰⁴ Since then, bilateral tension has continued to build, but the EU officially remained silent in regard to conditioning a solution. Instead, the Union only acknowledged the fact that such controversy existed without demanding any results.³⁰⁵ Consequently, this stalemate has effectively countered reconciliation efforts and further undermined good neighborly relations between the two countries. While Tadić and Josipović pursued reconciliation to appease the EU and show their commitment to establishing regional cooperation and good neighborly relations, the fact that the dual genocide lawsuits remain alive reinforces nationalist perceptions and contradicts EU efforts to promote its normative agenda.

Clearly, the lack of consistent conditionality implementation fosters manipulative political elite behavior (given the lack of perceived rewards for compliance) founded on the selection bias tact, which ultimately results in inconsistent compliance with EU conditions. As seen from the example above, this weak compliance undermines the EU’s normative agenda thus resulting in the ineffectiveness of conditionality in promoting EU rule transfer.

As products of the domestic impact of EU conditionality, these three tactics—win-win manipulation, the last minute strategy, and selection bias—utilized by Serbia’s political elites to manipulate conditionality explain how the resulting weak patterns of compliance with EU conditions greatly contribute to the ineffective transfer of EU rules in Serbia.

³⁰³ European Parliament Resolution of 15 January 2009 on Srebrenica, 14 February 2010, *OJC* 46 E/111.

³⁰⁴ B92, “Serbia Files Genocide Lawsuit Against Croatia” (Belgrade, January 4, 2010),

http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=01&dd=04&nav_id=64226.

³⁰⁵ Council Decision No. 2008/213/EC; European Commission, Serbia 2009 Progress Report, SEC (2009) 1339 (14 October 2009).

Conclusions

Ultimately, this three-fold impact of EU conditionality on the Serbian political spectrum shows how the transformed nature of Serbian politics, the offset balance among Serbian political parties, and the impacted behavior of political elites influence political action thus determining Serbian patterns of compliance with EU conditions. Likewise, such domestic impact illuminates the counterproductive nature of conditionality in promoting EU rule transfer, hampers further progress in Serbia's EU bid, and fully explains the questions left open by the existing literature on EU conditionality in Serbia. (1) In regard to EU conditions for ICTY cooperation, the domestic impact of EU conditionality sparked the resurgence of Serb nationalism within Serbian politics thus sustaining the inappropriateness of such EU conditions; accordingly, the current Serbian government adopted the win-win manipulation tact thus continuing Serbia's affinity for fake compliance. (2) On top of the nationalist revival, the domestic impact of EU conditionality also marginalized Serbia's pro-EU political parties effectively making them subject to control by the mounting popularity of alternative EU-skeptic parties; consequently, this undermines the appropriateness of EU conditions surrounding the Kosovo issue and thus forces the Serbian government to utilize the last minute strategy in order to further their accession ambitions while avoiding high adoption costs. Such tact results in imposed compliance. However, in the absence of an explicit resolution condition, the perceived benefits of compliance—as opposed to surrounding conditions—are nonexistent thus sustaining the diplomatic gridlock on status talks seen in the status quo. Finally, (3) the domestic impact of EU conditionality clearly produced domestic factors (both rationalist and constructivist) which undercut the perceived EU intrinsic rewards from compliance with conditions of the EU's normative agenda (despite its perceived appropriateness); this, in turn, counters the willingness of domestic elites to adopt a

norm-based orientation thus resulting in their usage of the selection bias tact. Such inconsistent compliance ultimately hampers the effectiveness of EU conditionality to promote full, consistent cooperation and jeopardizes the diffusion of EU rules in Serbian society.

Clearly, EU conditionality has had a profound domestic impact on the Serbian political spectrum. This clearly provides an answer for questions concerning weak patterns of compliance in Serbia and explains the Serbian status quo phenomenon; but, more broadly, the implications of such weak compliance for Serbia's overlying democratic transformation remain vague. The following chapter assesses how the EU accession process in Serbia has effected Serbia's delayed post-communist, democratic transition.

CHAPTER 7

Implications of the EU's Enlargement Policy for Serbia's Democratic Transition

The three-fold impact of conditionality on the Serbian political spectrum presented in the previous chapter explains to what extent the counter-productivity of EU conditionality undermines the goals of the EU's enlargement policy; but, it is important to note the stark difference between EU accession and democratic transition. Membership in the EU, no doubt, encourages the democratic transformation of member states post-accession as in the cases of Greece, Portugal, and Spain in the second and third enlargements (see chapter 3.2), but the domestic impact of conditionality in Serbia shows that certain counter-effects greatly jeopardize the further postponement of Serbia's post-communist trajectory. This chapter analyzes the implications of the domestic impact of EU conditionality in Serbia in order to determine how the EU's enlargement policy influences the country's overlying democratic transition.

7.1 *Dominance of the EU Accession Orientation*

A predominant top-down approach characterizes the very nature of the EU's enlargement policy when it comes to policy/law alignment and condition implementation. As can be seen from the domestic impact of conditionality on the Serbian political spectrum, conditionality mainly produces *formal* but not *substantial* EU rule transfer. For example, the 2010 Srebrenica resolution adopted by the Serbian parliament shows how the formal position

of the state had changed, but the substance of the previous position remained strong. Also, while the government legally enforces anti-discrimination measures and minority protections, the mass riots on the streets of Belgrade spurred by the 2010 Belgrade Pride parade illuminate the fact that substantial change on the ground continues to lack. As explained, Serbian weak patterns of compliance—fake compliance, inconsistent compliance, and imposed compliance—allow for such inefficient EU rule transfer (see chapter 5.3). While EU conditionality promotes the fulfillment of conditions, it does not guarantee the promotion of democracy or rule acceptance.

Furthermore, the manipulation of EU conditions by elites (encouraged by conditionality) also undermines Serbia’s democratic transition. With the primary goal of satisfying EU demands, domestic elites adopt particular tacts—win-win manipulation, the last minute strategy, and selection bias—which produce weak compliance. Elite manipulation aims to appease the interests and values of Serb nationalism which inherently threatening the country’s prospects for democracy as seen from the decade of Milošević rule. The sparked nationalist resurgence in Serbian politics, in effect, successfully counters progress in the normalization of regional relations and reconciliation efforts, deepens the bipolar divide in Serbian politics, and undermines the integration of Kosovar Serbs into Kosovo. Furthermore, this trend raises the possibility of resumed ethnic violence, region-wide destabilization, and severe economic consequences. Clearly, rampant Serb nationalism serves as a heavy impediment to Serbia’s democratic transition; and, as an impact of EU conditionality, nationalist fervor was restored and is sustained in the Serbian political spectrum.

It is also clear from an assessment of Serbian political parties, that the LDP is the most democracy-oriented (as opposed to EU-oriented) political force in Serbia. While the DS-led governing coalition parties also uphold a strong EU orientation, they are more susceptible to utilizing manipulation to remain in power (see chapter 6). Nevertheless, the

marginalization of pro-EU Serbian political parties—encouraged by EU conditionality—undermines the credibility and support of, not only the DS-led government, but also the opposition LDP. Such minimization of influence supports the rise of EU-skeptic parties which ultimately challenge and slow Serbia's overall democratic transition.

Finally, the contradicting standards of EU conditionality—norm promotion versus strategic goal promotion—also undercut the stability of democracy in Serbia. The 2009 visa liberalization agreement represents a prime example which portrays this clash. In this case, Serbian domestic elites sacrifice the promotion of European norms (i.e. non-discrimination, respect for and protection of minorities, and regional cooperation and good neighborly relations) for the sake of upholding EU strategic goals (i.e. continued detachment of Kosovo from Serbia in order to encourage the legitimization of Kosovar statehood and minimization of the level of organized crime and corruption within the Schengen zone). Clearly, in certain instances, the foreign policy goals of the EU's enlargement policy run perpendicular to the progression of Serbia's democratic transformation.

The inherent focus of the EU accession process on fulfilling conditions and progressing within its structured framework dominates the orientation of the Serbian political spectrum which, therefore, slows and even undermines Serbia's overlying democratic transition.

7.2 *Sustainment of Serbia's Corrupt Political Environment*

The impact of conditionality on the Serbian political spectrum makes it quite clear that conditionality encourages manipulation of the EU accession process by Serbia's political elites which, in turn, sustains the corrupt political environment in Serbia. According to the

results of public opinion polls,³⁰⁶ in 2010, 88.2 percent of the Serbian public viewed corruption as either a ‘serious’ or ‘very serious’ problem in Serbia; and, 50.2 percent believed corruption either ‘increased’ or ‘increased a lot’ over the last three years. Furthermore, from 2006 to 2010, there was a 9.8 percent increase in the widely popular view rampant governmental corruption (from 71.4 to 81.2 percent) while, concurrently, there was a 6.4 percent decrease in the perception that the government was not corrupt (from 10.2 to 3.8 percent). This shows that despite Serbia’s progress in its EU accession process (especially since the new government came to power), corruption has not only been sustained but increased. As seen from the domestic impact of EU conditionality, the source of Serbia’s increasingly corrupt political environment lies with the domestic elites’ weak patterns of compliance with EU conditions.

Justifications by elites that weak patterns of compliance, nevertheless, fulfill EU conditions and processes Serbia’s EU bid only hides the actual level of corruption in Serbia. Such concealment bolsters public deception, Serb nationalism, contradicting standards and norms, and ultimately undermines Serbia’s democratic transition.

Conclusions

While the nature and scope of the EU’s enlargement policy intends to stimulate the democratic transformation of post-communist states and fuel their integration into the EU and other European structures (see chapter 3.2), the employment of conditionality as the chief instrument to ensure compliance—in the context of the three critical Serbian issues (ICTY cooperation, the Kosovo question, and the EU’s normative agenda)—guarantees the EU’s ineffectiveness in achieving such goals thus slowing Serbia’s EU bid. Moreover, the

³⁰⁶ Balkan Monitor, 2010 *Summary of Findings*.

domestic impact of conditionality in Serbia illuminates the fact that the EU's enlargement policy has proved to be detrimental to Serbia's overlying democratic transition.

CHAPTER 8

Conclusion

This thesis has examined the domestic impact of conditionality in Serbia, focusing particularly on the Serbian political spectrum and how such impact influences the patterns of compliance of Serbia's political elites with EU conditions. The EU's influence in domestic politics has developed significantly since the inception of enlargement law to its full transformation into an enlargement *policy* (see chapter 3). The development of the Serbian political spectrum since the fall of Milošević in 2000 accurately portrays the extent to which EU conditionality impacts domestic factors (see chapter 4); however, the existing literature on EU conditionality in Serbia underplays the importance of such impact in determining why the EU's enlargement policy continuously fails to bringing about EU rule transfer (see chapter 5). After in-depth analysis, this thesis concludes that EU conditionality impacted Serbia by (1) incarcerating Serbian politics, (2) marginalizing pro-EU political parties, and (3) promoting manipulation of EU conditionality by Serbian political elites (see chapter 6). In turn, such impact undermines Serbia's post-communist democratic transition (see chapter 7).

Utilization of conditionality as the chief instrument of the EU's enlargement policy clearly impacts Serbia's political spectrum in a way which produces weak patterns of compliance that undermine the effectiveness of EU rule transfer thus jeopardizing Serbia's overlying democratic transition.

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