

INTEGRATION OR DISINTEGRATION?

SERBIA'S RELUCTANT COMPLIANCE WITH EU CONDITIONALITY

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INTRODUCTION

Since the end of the Cold War the EU has increasingly taken use of external conditionality as a tool to foster democracy and market economy in its neighbourhood. This went hand in hand with the fall of communism, and was part of the process of integrating the former communist states into European structures. The fall of the iron curtain that had previously divided the European continent therefore created a large group of possible candidates. However, these countries had experienced decades under a totally different rule and were severely different from the existing EU members. To harmonise and prevent a clash between the diversified groups, the EU developed an additional set of conditions for membership. These criteria demanded certain standards of democratic development, market economy and respect for human and minority rights. In an overall perspective this was relatively successful, and scholars began speaking of ‘the EU as a gravity model of democratization’ (Emmerson and Noutcheva 2004) and ‘the EU’s transformative power’ (Grabbe 2006). However, in the Western Balkans transition did not follow the same smooth track. In the 1990s the region experienced the dissolution of Yugoslavia and a series of violent wars between the separate republics. As a consequence of the wars, the region encountered a setback in development and was faced with supplementary preconditions. From the Western Balkans the EU therefore also demanded regional cooperation and compliance with the International Criminal Tribunal for the Former Yugoslavia (ICTY) by the countries that participated in the wars.

While most of the Western Balkan countries have been relatively eager to establish closer relations with the Union, Serbia has appeared somewhat more sceptical. The country has been

rather hesitant to comply with the EU's demands and aligning itself with the Union's policies. As the largest country in the Western Balkans, stabilization and reform in Serbia is necessary to secure stability and progress in the region as a whole, something that will be at the forefront of the EU's enlargement agenda in the years to come. Yet a problem with the EU's approach is that there seems to be an underlying assumption that the conditionality policy will have the same affect in Serbia and South Eastern Europe (SEE) as it did in the case of the Central and Eastern European countries (CEECs). The Serbian case however, clearly demonstrates that the compliance pattern cannot be compared to that of the earlier enlargements. The Western Balkan countries had a totally different starting point than the CEECs, and therefore also need a different and more innovative approach.

A number of Serbian writers have criticised the EU's strategy, but a problem with several of these appeals is that they are often largely biased and emotionally loaded. For this reason there is a need for more objective papers that are grounded on strong theoretical support. Many academics have naturally written about EU conditionality and Serbia in a more objective and scholarly fashion, but there are very few works where these two issues are properly combined. At the moment the research areas rather exist more or less independently of each other. Most of the literature rather focuses on the EU's role in conflict resolution and conflict prevention,¹ or refers to Serbia when discussing the EU's Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP).²

¹ For more on the EU's role in conflict resolutions see Coppieters et al 2005; Emmerson 2005; Emmerson et al 2003 and 2005; Jenson 2003; Tocci 2007.

² For a more detailed discussion on Serbia in relation to the EU CFSP see for instance Larson (2002), Friis and Murphy (2006), or Wallace (2006).

Dimitris Papadimitriou (2001) and Othon Anastasakis and Dimitar Bechev (2003) have written respectable pieces on the ineffectiveness of the EU's policy in the Western Balkans. However, both works treat the region as a whole, and pays little attention to how the different policies are perceived domestically. Gergana Noutcheva (2006, 2007) on the other hand, has stressed the importance of incorporating the domestic sphere. She claims that factors such as state sovereignty and lack of legitimacy can explain hesitant compliance. Her arguments are strong and convincing in the cases that the preservation of territorial integrity has been contested, but her theory is less persuasive when it comes to issues such as compliance with the International Criminal Tribunal for the Former Yugoslavia (ICTY). The Tribunal is established on the bases of international law, so its legitimacy is difficult to question. What is important is therefore not only whether a policy is legitimate or not, but whether it is perceived as such by the population in question.

Given that much of the existing literature on Serbian reluctant compliance with EU conditionality essentially fails to consider the aspect of domestic interpretation the aim of this thesis is to analyse this scenario by taking both exogenous and endogenous interests into account. I will specifically be focusing on the interplay between external incentives and domestic adoption costs. Serbia's reluctant compliance can partially be explained by the limitations of the EU's political approach, but domestic perceptions of the external policies are also essential for explaining the matter as a whole.

In order to explain the Serbian situation I will concentrate on the cases of the ICTY and Kosovo. These are important cases because they are perhaps the areas where Serbian and EU views diverge the most. While the recent parliamentary elections in May 2008 showed that there is a

majority in favour of continued European integration, there is still strong resentment both towards cooperating with the ICTY and recognizing the independent status of Kosovo. Serbia has made considerable progress in several areas, but in these two matters the country has been especially hesitant to comply. There is large difference between the way these issues are perceived by Serbia and the way they are understood by the Union. Yet overcoming these two issues is essential both for Serbia to develop further and for the continuation of EU-Serbian cooperation.

The discussion of the case studies will be related to the literature on Europeanization. The Europeanization literature focuses particularly on the domestic impact of the EU, and Schimmelfennig and Sedelmeier's (2004, 2005) 'External Incentives Model' will be my point of departure. This model, which draws on theory from rational choice, is perhaps the 'best-fit' model to explain compliance with EU conditionality in Central and Eastern Europe. Nevertheless, in the Serbian case I argue that the model only provides a partial explanation. It is useful to locate the limits of the EU's approach, and detect that there are high compliance costs, but it is not sufficient for explaining the complexities at work on the Serbian domestic arena. Reluctant compliance cannot be explained only by rational cost-benefit calculations based on security, wealth and power, but is also largely dependent on how the EU policies are perceived by the public. Both the ICTY and Kosovo are issues that are crucial to the perception of Serbian national identity, and various actors considered preserving these national interests as equally important to receiving increased economic support. To better explain this commitment to national issues I will draw on Ole Wæver's (2002) post-structivist model, which stresses the

importance of ideas and identity, and uses discourse analysis to explain foreign policy.³ Wæver's model emphasises very different factors than Schimmelfennig and Sedelmeier's rationalist model, so only by combining them can we get an integral understanding of the situation.

To avoid confusion and misunderstandings I would like to make a few clarifying remarks. First of all, it is not my intention to treat either the EU or Serbia as unitary actors, rejecting any internal division or oppositional forces. My aim is rather to detect more 'general trends', so when referring to things like 'Serbian perceptions' this should not be taken to mean all Serbians as a whole, but rather a sizable majority. Secondly, it should be mentioned that other international actors that also used conditionality, such as the United States and the International Monetary Fund, most likely influenced Serbian behaviour in addition to the EU. To the extent that the conditionality overlapped, this might also have contributed to Serbian compliance. Nevertheless, this paper will exclusively focus on the conditionality of the EU, which in the long run has been the largest financial contributor, and perhaps the most important external actor involved. Finally, it should also be noted that the EU only formally became the European Union in 1993. Before that it was the 'European Community,' but to make things less complicated I will hereafter refer to the organization as the EU. The same will be done in the Serbian case. Following the Balkan wars Serbia was referred to as the Former Republic of Yugoslavia (FRY). In 2002 it became Serbia and Montenegro, but after the state union ceased to exist in 2006 it became the Republic of Serbia as it is today.

³ The model was originally used for a study of Germany and France, but is also the basis for the book entitled, *European Integration and National Identity. The Challenges of the Nordic States*, where it is used to explain EU scepticism in the Nordic countries (Hansen and Wæver 2002).

To start off I will position the research question in a larger context, connecting the Serbian case to the developed literature on Europeanization and approaches to European integration. Then, in chapter 2, I will look closer at the development of Serbian EU relations. In Chapter 3, I will present the theoretical framework more in detail before I turn to the empirical cases. In the first empirical chapter (Chapter 4) I will analyse Serbian reluctant compliance with the ICTY, and in the following chapter (Chapter 5) I will examine the issue of Kosovo.

CHAPTER 1 – THE EFFECTS OF EU CONDITIONALITY

EU conditionality has had varying effects depending both on what the EU has been able to offer, and how the offers are perceived by the respective countries. A better understanding of EU conditionality is necessary to recognize the exceptionality of the Serbian case, but also to better understand the development of the theoretical framework that will be discussed in chapter 3. In the first section of this chapter I will present EU conditionality more in general before discussing how it has previously been evaluated in the existing literature. Section 1.2 will examine the Europeanization literature, while section 1.3 will stress the importance of perceptions and historical narratives.

1.1 EU Conditionality

Despite varying degrees of achievement in the CEECs the use of conditionality on candidate countries has overall been perceived as a success (Grabbe 2006). Conditionality has also been applied to the EU's wider neighbourhood through the European Neighbourhood Policy, but in these cases a prospect of membership was not offered, so it did not have the same transformative effect. The theoretical literature on EU conditionality however, is largely influenced by the way conditionality worked in the case of the CEECs. Most authors consider conditionality to have worked according to its intended purpose, but several scholars have also criticised its effect, claiming that the Union's leverage was limited and that the candidates were uncommitted to the implementation of the criteria.⁴ They usually refer to specific policy fields where it was complicated for the Union to monitor actual enforcement. In an overall context however, it is

⁴ For critics of EU conditionality see for instance Hughes and Sasse 2003; Hughes, Sasse & Gordon 2003; Steunenberg and Dimitrova 2007; or Topidi 2003.

clear that EU conditionality had significant effect. The difference between the new candidates and the existing EU members was considerable, and the EU's impact therefore became much more explicit and comprehensive than before.

The use of conditionality applied to eligible candidates is also different from the conditionality the EU applies to existing member states. One can distinguish between *acquis* and *political* conditionality (Schimmelfennig & Sedelmeier 2004: 677). Acquis conditionality is EU law, based on the *acquis communautaire*, and applies to all the members and candidate countries alike. For the candidates compliance with *acquis* conditionality is a condition for obtaining membership, while for the existing members this is an obligation. Political conditionality, on the contrary, is *additional* conditionality that the candidate countries have to fulfil in order to gain specific EU rewards. This can mean further financial assistance, trade agreements, visa liberation, closer ties with the union, or actual EU membership. Depending on the situation in the various states the EU will put emphasis on different country specific conditions.

The political conditionality that first applied to the CEECs is stated in the Copenhagen Criteria from 1993. These criteria also apply to all other prospective members, and require that the candidates have achieved:

...stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union. (European Council, 1993)

In addition, there is also a fourth point that stresses the ‘Union’s capacity to absorb new members,’ and gives the EU an opportunity to regulate further enlargement (European Council, 1993). This criterion is often neglected, but as the Union now has exceeded to 27 members it could be of increasing importance.

1.2 Europeanization

Europeanization is a rather new term, but since the late 1990s it has established itself as a distinct subfield within European studies (Schimmelfennig 2006). The literary meaning of the term Europeanization is somewhat misleading. I will still stick to it, as this has become the dominant expression, but one should acknowledge, as Helen Wallace has specified, that the term ‘EU-ization’ perhaps is more correct (Wallace 2001). Europeanization deals with the domestic influence of the EU. This can also refer to the impact on existing members, but after the eastern enlargement in 2004 the term is usually associated with the EU’s influence on candidate countries (Schimmelfennig 2006). The eastern enlargement was totally different from the previous enlargements, something that also influenced the literature and established certain assumptions about the relationship between the EU and the candidate countries. The EU adopted a ‘carrot and stick approach,’ where conditionality became the most important instrument for encouraging reform (Seunenber & Dimitova 2007: 2). The use of positive conditionality dominated, and Schimmelfennig and Sedelmeier (2004, 2005) characterize the transition of CEE as an overwhelmingly top-down EU-driven process of ‘reinforcement by reward,’ where the candidates implemented EU rules in order to obtain EU benefits. This was based on individual cost-benefit calculations where the candidates accepted the EU’s conditions because they saw them as exceeding the costs of undertaking extensive domestic reforms or being excluded from the European club. According to Vachudova (2001, 2005), much of the Union’s leverage can

therefore be explained by ‘asymmetrical interdependence’⁵ and the favourable bargaining position of the EU.

Based on this logic of asymmetrical interdependence and reinforcement of reward Schimmelfennig and Sedelmeier (2004, 2005) created their external incentives model. The model will be explained in more detail in the theoretical part, but it is already evident that the Serbian case seems to conflict with the established assumptions. A considerable percentage of the Serbian population does not seem to agree that the economic and political rewards of complying with EU conditions will outweigh the cost of modifying their domestic priorities. The model will therefore be used in ‘reverse,’ emphasising the factors that clearly distinguishes the EU’s approach to the Western Balkans from its previous approach to the CEECs. It will be used to explain the limits of the EU’s policies, rather than the Union’s leverage.

Another problem with much of the Europeanization literature is that it fails to take the domestic context sufficiently into account. The external incentives model is able to locate that veto players and domestic adoption costs can work as obstacles to reform. It can tell us that these obstacles exist, but it does not present us with a framework to explain in any depth why it is so in the individual cases. It is therefore more useful to employ a ‘two way approach,’ so that both domestic and EU conditions are both taken sufficiently into account. Noutcheva (2006, 2007) is one of the few that has accomplished this task, but as mentioned before she emphasises factors that are not applicable for describing compliance with the ICTY. Like many others Noutcheva

⁵ Asymmetrical Interdependence is a concept originally used by Robert Koehane and Joseph S. Nye in their book, *Power an Interdependence* (1977).

tries to limit her explanation to a narrow set of factors, but in order to understand the complete picture it is necessary to combine factors from the different schools of thought.

1.3 Taking Perceptions and Historical Narratives into Account

To outside observers it might seem more rational for a country to comply with the option that gets it the highest reward, but if this is not what happens the actor must have good reasons to refuse so. This discrepancy can therefore be better explained if one can understand the actor's interpretation of the state of affairs. Diverging interpretations can usually be traced back to the difference in social context. People will always perceive things in accordance to the particular social reality that they have been exposed, regardless of whether it has been socially constructed or established on a more objective depiction of the truth. In post-authoritarian and post-conflict societies it is even more important to understand reluctant and suspicious behaviour through a contextual point of view. In these cases the citizens have generally been subject to a great amount of propaganda, both from the political elite, the media and textbooks at school. The population will usually interpret information through a filter of what they have experienced or learned before, and because these societies often have been subject to a great deal of misinformation, and in lack of a critical and objective press, people's comprehension of reality can often be somewhat biased. Even if people do not believe the propaganda in its entirety, the great amount of it and the shortage of alternative sources are likely to have had a certain effect.

To properly handle perceptions of policy it is helpful to turn towards the constructivist school of international relations, which is most clearly associated with the works of Alexander Wendt. The constructivists challenge the view that state interests are composed of purely material factors, and argue that interests can also be endogenously given, taking the power of identities and ideas

into concern. Sedelmeier and Schimmelfennig (2004, 2005) have also developed a ‘lesson drawing model’ and a ‘social learning model’ to supplement the rational explanations of the external incentives model that is mentioned before. These other two models have roots in the constructivist school, but they are based on rule adoption in the absence of conditionality and are thus not applicable here. Pure constructivists explain *why* identities should be recognized, but they often fail to explain exactly *what* that identity is, and how the different states interpret the various political structures. I will therefore use Ole Wæver’s (2002) post-structivist theory, which views European integration from a domestic angle and uses discourse analysis to depict foreign policy, especially in relation to the EU. The difference between constructivists and post-structivists is that the latter use language as a system of analysis. Wæver stresses the importance of the identity and says that the individuals’ perception of their national identity is vital for their perception of Europe and the EU. Identities change over time, and by looking at the language used in public statements one can therefore analyse how the concept of Europe has been integrated into the national identity or the nation’s perception of the ‘we’ (Wæver 2002: 25). In Wæver’s book (2002) the theory is originally used to describe EU scepticism in the Nordic countries, and the main finding was that the countries were sceptic to the EU because they saw it as threatening to their national identity. Compared to Serbia the Nordic countries are all in a considerably better economic position. In the Serbian case it would therefore be reasonable to assume that the EU’s material incentives would be superior to these identity related concerns, but so far this has not been the case.

This chapter has given a background on how EU conditionality has worked previously, so it will be easier to understand the Serbian case and the elaboration of the theoretical approach. The Union increasingly uses its position as an attractive external organization of membership to

encourage political development in its neighbouring countries. The conditions that the Europeanization literature used to explain why conditionality was successful in the CEECs can now be used to explain why it has been less successful in SEE. However, the dominant approaches focuses mostly on material and rational factors. But because the EU's position is still strong, internal factors that influence the public opinion also have to be considered. A framework that stresses the importance of domestic perceptions is therefore necessary to accurately explain the effect that conditionality can have.

CHAPTER 2 – SERBIA EU RELATIONS

Serbia's relationship with the EU has in many instances been turbulent, but there are also examples of more harmonious interaction. In the previous section I examined the EU's leverage, Europeanization, and aspects that are essential for how the EU is perceived. Now I turn to the more specific EU policies towards Serbia, so one can better understand the case at hand. I will start by presenting a brief overview of the EU's earlier policies. In the next section (2.2) I will elaborate on how the EU changed to a more ambitious strategy following the Kosovo crises. After that I will examine the EU's involvement in both the creation and dissolution of the Federal State Union of Serbia and Montenegro (section 2.3), before I turn to the SAP, which is the base of the Union's current approach (section 2.4).

2.1 Historical Overview of EU's Earlier Policies towards Serbia

In a wider context Serbian EU relations also have to be seen as part of the EU's approach towards the Western Balkans.⁶ The EU has been present in Serbia for over 20 years. In 1980 the EU signed a Cooperation Agreement with the Socialist Federal Republic of Yugoslavia, and a delegation of the European Commission (EC) opened in Belgrade in 1981. The agreement was annulled in 1991, due to the disintegration of Yugoslavia, but the delegation remained in place (Delegation of the EC). The Union's first initiative after the wars was the so-called *Royaumont Process*, which was launched in December 1996. The aim of this process was to assure that the *Dayton Peace Agreement* was followed, and to foster stability and cooperation among the countries of the region. The *Royaumont Process* was further developed when the EU adopted a

⁶ The term 'Western Balkans' is also a term 'invented' by the EU, encompassing Albania and all the successor states of the former Yugoslavia.

Regional Policy towards the Western Balkans in April 1997. With this policy the EU developed both political and economic conditionality for further cooperation and development of bilateral relations. The conditions included respect for democratic principles, human rights, the rule of law, protection of minorities, market economy, and regional cooperation. In return the countries would then be eligible for trade concessions, financial and economic assistance and eventual establishment of different contractual relations (Papadimitriou 2001: 75).

2.2 Changes to a More Comprehensive Policy after the Kosovo Crisis

That the previous policy was insufficient and that stronger measures were needed became evident as the violence in Kosovo increased. At the EU convention in Vienna in December 1998 the EU member states agreed to establish a *Common Policy*, but due to the escalation of the Kosovo war, which was followed by the controversial NATO bombings in 1999, there was a sharp change in EU policy. The EU recognized the need for a more comprehensive approach, and took use of its 'strongest weapon of foreign policy' by offering the countries a prospect of membership.⁷ This was done through the *Stabilization and Association Process* (SAP), which was the EU's contribution to the international initiative, the *Stability Pact for South Eastern Europe* (SP). Serbia endorsed the SAP at the Zagreb Summit in November, where it also signed a *Framework Agreement*, enabling the country to benefit from autonomous trade preferences (Delegation of the EC). The membership perspective was reconfirmed at the Thessaloniki Summit in 2003 where the SAP was enriched with new instruments to support the reform process. The most important of these instruments was the *European Partnerships* that identified

⁷ The offering of a membership perspective is considered the EU's strongest weapon of foreign policy precisely because it has proven to have such considerable effect. The EU's leverage has been much higher in those cases where the Union has been able to offer a realistic membership perspective.

the various short and medium-term priorities the countries needed to address in order to gain closer ties with the Union (Delegation of the EC).

2.3 EU Involvement in State Building and State Dissolution

In addition to the previous initiatives, the EU was also actively involved in Serbian relations with the Republic of Montenegro. The EU functioned as an important mediator when the two actors signed the *Belgrade Agreement* in 2002, which established a loose confederation and restructured the FRY into a State Union of the two republics. This was the EU's first supported state building project in the Western Balkans, but after three years of existence it ended in a 'velvet divorce' (Noutcheva 2007: 3). In fear that this would cause destabilization and some sort of a domino effect the EU preferred to postpone separation as long as possible. However, the Union was not able to secure consensus or a domestic majority for its policy. Strong forces in Montenegro wanted separation, arguing that they also had the right to exercise self-determination as done by the other former Yugoslav republics. At the same time, they argued that the State Union was not effective and slowed down Montenegro's effort to reform. Similarly, the Serbian side was also disappointed in the functioning of the common state. They wanted a more centralised state and a clear division of competences, claiming that state union was ineffective, costly and disproportionate, considering that power sharing was divided 50-50 and the actual economic ratio was 95 to 5⁸ (Noutcheva 2007:14). The EU did not exclude separation, but it still had high security related concerns. In 2004 the EU adopted a '*twin track approach*,' and the two republics were treated as two economically separate entities. The Belgrade Agreement allowed either country to hold a referendum about separation after three years, and for that reason the

⁸ The Serbian opposition to the State Union is perhaps most notable when referring to the G-17 political party which was established in May 2003 on an anti-State Union platform. In December that year they also achieved 11,5% of public support (Noutcheva 2007: 14).

republic of Montenegro became independent in 2006, when the referendum passed the EU set threshold of a 55 percent majority. This was a peaceful dissolution, and the Union complimented Serbia on how it handled the situation.

2.4 The Current Approach: The Stabilization and Association Process (SAP)

The core of the EU's approach and policy framework for the western Balkans is the previously mentioned SAP. The aim of the SAP is to promote stabilization and transition to market economy, regional cooperation, and a prospect of EU integration (Delegation of the EC). As part of this process the individual countries will also sign a bilateral *Stabilization and Association Agreement* (SAA), which is considered to be the first major step towards closer integration with the Union. Signing of the SAA makes the country an 'official candidate' and its future within the Union is more credible. Nevertheless, Serbia must be considered a special case. In April 2005 the European Commission presented a Feasibility Report that concluded that the state Union of Serbia and Montenegro was ready to start negotiations on the SAA. The negotiations started in October 2005, but were called off on 3 May 2006 because the country did not fulfil its commitment of full cooperation with the ICTY. The negotiations were re-opened on 13 June 2007 after Serbia had shown stronger commitment to cooperate with The Hague. Full compliance is still not achieved, but due to political circumstances the SAA was signed on 29 April 2008. Under normal circumstances Serbia should then have progressed from potential to official candidate, but as the implementation of the SAA still is dependent Serbia's cooperation with the ICTY, the country's official position remains somewhat obscure.

This chapter has shown the development of EU Serbian relations, and it is apparent that EU conditionality towards Serbia rests on a variety of different policies and agreements: the

Copenhagen Criteria, the Regional Approach, the SAP, individual country specific conditions associated with the SAA, conditions related to individual projects and granting of aid, in addition to the conditions that arose out of international peace agreements and political deals. The EU's commitment to the West Balkan region has strengthened over the years, and the EU's strategy underwent a major shift in response to the Kosovo war. This resulted in the SAP, which offered the countries a prospect of membership. The SAP was more extensive than any of the Union's earlier approaches, and enabled the individual countries to sign SAAs with the EU. Serbia signed the SAAs on 29 April 2008, but certain conditions still need to be fulfilled before the agreement will be in effect. In addition to the above, the EU was also actively involved as a mediator in Serbia's relations with the republic of Montenegro, both in the creation and the separation of the federal state. In the following chapters EU conditionality will be connected to the cases of the ICTY and Kosovo and it will become apparent how efficient this policy has been. But first I will present the theoretical approach.

CHAPTER 3 – THEORETICAL FRAMEWORK:

COMBINING RATIONALIST AND CONSTRUCTIVIST THEORY

The theoretical framework will enable us to get a more systematic understanding of the empirical case, and prove that Serbia's actions corresponds with existing logics of thought. In this chapter I will first present the rationalist approach and the external incentives model (section 3.1), before I continue with a presentation of social constructivism and Wæver's identity based model (section 3.2). In a larger context the theoretical discussion can also be placed within the so-called fourth debate between rationalists and constructivists in international relations, also referred to as the 'material-ideational debate.' The former draws on economic theory of rational choice, and describes state behaviour as a consequence of utility maximizing calculations based on materialistic and security related concerns. In contrast, the constructivist school takes more subjective factors such as ideas, norms and identity into account. In other words, it seeks not only to *explain* the objective factors, but also to *understand* what is at stake. When related to conditionality compliance the constructivist school therefore presents a framework that enables us to take a closer look at the domestic social context.

3.1 The Rationalist Approach and the External Incentives Model

Rational choice theory assumes that states will act according to the principle of utility maximization. National interests will therefore drive the state's actions. The theory is grounded in 'the logic of consequences,' and the idea is that the actor will always choose the alternative that provides the best way to reach its strategic goals. An important thing to note however is that

the rationalist school perceives preferences and interests to be exogenously given. What this refers to is therefore more stable material and security related concerns. Rationality is defined by realistic concerns, so that the actors own preferences will always be prioritised first. The goal tends to be material gain, so moral or identity-based considerations will usually not be considered rational (Allison 1969: 693-698). The external incentives model below elaborates further on more EU specific conditions.

Schimmelfennig and Sedelmeier's (2004, 2005) external incentives model is based on the logic of rational choice, and can best be explained by the previously mentioned logic of 'reinforcement by reward'. The respective country has to fulfil a set of conditions in order to benefit from EU rewards. The rewards can range from financial assistance, closer ties with the union to full membership. The underlying assumption is that the state will adopt the conditions if the benefits of the EU rewards prove to be higher than the domestic adoption costs. According to Schimmelfennig and Sedelmeier the state then performs a calculation of costs and benefits based on four determining factors: 1) the determinacy of conditions, 2) the size and speed of rewards 3) the credibility of conditionality, and 4) veto players and adoption costs.

3.1.1 Determinacy of Conditions

The first factor is determinacy of conditions. This concerns both the clarity and the formality of the rule. The idea is that the likelihood of rule adoption will increase if the rules are set as conditions for rewards and according to how determinate they are. A high degree of determinacy also adds legitimacy to the whole process. Not only does it provide information about what is expected, but it also makes the conditionality more credible.

3.1.2 Size and Speed of Rewards

In relation to the second point, the hypothesis is that the effectiveness of conditionality will increase with the size and speed of the conditional rewards. A promise of membership is assumed to be more powerful than a smaller financial reward or some form of closer association. In addition, the closer in time the state can obtain the reward will also be relevant for compliance.

3.1.3 Credibility of Conditionality

The likelihood of compliance will increase with the credibility of the conditionality. This refers to threats and promises alike, and the EU's ability to both withhold and provide the rewards. First, it is important is that the EU is able to maintain a consistent policy. The EU's own interests therefore have to be taken into consideration, and the conditionality has to be superior to other political, economic or strategic considerations. Internal consensus is therefore necessary. If this is not the case, then the candidate state might be tempted to withhold compliance, thinking that it can receive the reward regardless of compliance. 'If target states hear about such internal conflict and receive inconsistent signals they would be tempted to manipulate it to their advantage or simply be confused' (Schimmelfennig & Sedelmeier 2004: 674).

Secondly, it is vital that the EU is able to maintain a credible policy at a low cost to itself, so that its promises are in line with its capabilities. In this respect so-called 'sunk costs' also have to be taken into account. In contrast to assistance, enlargement involves long-term negotiations and sometimes even restructuring of the EU institutions and policies.

Thirdly, for the conditionality to work it is also important there is no cross conditionality, and that the respective state is more dependent on the EU than the other way around. For that reason it is helpful if there exists some kind of interdependence supporting the EU. If the state for example can obtain the same benefits from other sources it is less likely that the conditions will be fulfilled.

3.1.4 Veto Players and Adoption Costs

The last factors taken into account in the cost benefit calculations are veto players and adoption costs. Initially it is assumed that compliance always is costly, otherwise it should occur in the absence of conditionality. The belief is that a larger number of veto players will decrease the probability of compliance because then a larger number of adoption costs will have to be taken into account. The adoptions costs can be balanced by the EU rewards, but in the end, it depends on the preferences of the government and the respective veto players.

3.2 Social Constructivism and the Identity Based Approach

The constructivist approach studies international relations by looking closer at the social realities that can better explain the perceptions of the actors. They take into account non-material factors such as identities, ideas, fears, and threats. I will use Ole Wæver's (2002) three-layered model of discourse analysis to determine the Serbian choice of compliance and non-compliance with regards to its EU related foreign policy. Wæver stresses the importance of identity and claims that states' foreign policy can be explained by examining discourses and linguistics. The aim is not to detect what people actually think, which would have severe methodological complications, but rather to analyse the structure of the language and detect which 'codes' that are used when

the different actors relate to each other. By doing this it is possible to detect a systematic pattern of thought and capture the logic at play.

Wæver suggests a three layered, interconnected framework. The first layer consists of the constellation of the concepts of state and nation. The second layer concerns the relational position of the state/nation vis-à-vis Europe, and the third depicts the state's concrete policy towards Europe. Seeing the ICTY and Kosovo in relation to the state/nation position will help better explain Serbia's response to the EU's conditionality. As Wæver stresses, the different layers should always be seen in relation to each other. Serbia's concrete policy towards the EU (layer 3) will therefore involve a specific construction of Europe and EU conditionality (layer 2), building on the relationship between the respective case study and the state-nation constellation (layer 1). The Serbian perception of the EU conditionality will therefore be dependent on the way they see the ICTY and Kosovo issues as crucial to their perception of the state/nation dichotomy. EU policy will then be formulated in a specific way in order to fit or conflict with the overall perception of the state and the nation.

This chapter has clarified the theoretical approach that will be used to explain Serbia's reluctant compliance with the EU's conditionality. Neither the rational nor the social constructivist models can explain the complexities of the situation on their own, but when used together they have a complementary effect. While the rational model primarily focuses on exogenous conditions, Wæver and the constructivist school gives more attention to endogenous factors and precedence to the interpretations of ideas and identity. Not only does this permit us to study different factors, but it also enables us to examine closer both the domestic and EU-centred sphere.

CHAPTER 4 – SERBIAN RELUCTANT COMPLIANCE WITH THE ICTY

The ICTY was established as a result of the UN Security Council resolution 827 on 25 May 1993 to address the violations of international humanitarian law committed on the territories of the former Yugoslavia. The aim of the Tribunal is to prosecute war criminals and to give the victims and their families a kind of moral compensation, which is considered necessary for the reconciliation process to proceed. In addition, it is also supposed to work as a deterrent for similar crimes being committed in the future (The ICTY Homepage). The states are legally obliged to cooperate, but in reality the Tribunal has no enforcement capability. It is therefore totally dependent on state cooperation for its proper functioning. This also makes it considerably dependent on the attitudes of the respective state governments and the domestic media (Kerr 2007: 373). After the Dayton Agreement in 1995 international peacekeeping forces were given authority to make arrests, but they often hesitated to do so in order to avoid casualties. This improved over the years, but because Serbia is a sovereign state there are no international peacekeeping forces on Serbian territory (excluding Kosovo). To encourage enforcement the ICTY is therefore dependent on the help of other international organizations, and this is where the EU comes into play.

This chapter will examine why Serbia has been so reluctant to comply with the ICTY. To start out I will discuss the development of the EU's ICTY conditionality (section 4.1), followed by a brief overview of Serbian compliance patterns since the fall of the Milosevic regime (section 4.2). Then in the following parts I will analyse it from a more theoretical point of view. In

section 4.3 I will consider the rational explanations, and highlight the limits of the EU's strategy by using the external incentives model. In the final section (4.4) I will consider the social constructivist explanations and take perceptions and constructed narratives into account.

4.1 The Development of the EU's ICTY Conditionality

Full compliance with the ICTY was an element of conditionality that developed over time. It is not relevant to talk about compliance before the change to a democratic regime in 2000, but even after the regime change compliance with the Tribunal was not an explicit EU condition. In contrast, the United States (US) warned Belgrade already in February 2001 that it would freeze its non-humanitarian aid and veto aid loans from international monetary institutions if Serbia did not arrest Milosevic and increase its cooperation with the ICTY (Schimmelfennig et al. 2006: 91). The EU gradually aligned itself with the US position, and went from 'urging' Serbia to cooperate with the Tribunal to making its financial assistance dependent on the transfer of Milosevic to The Hague (Schimmelfennig et al. 2006:92). Later increased compliance was stressed as necessary for Serbia to start negotiations on the SAA. When the SAA negotiations started in 2005 it was then decided that full compliance with the Tribunal would be required before the agreement could be signed. Nevertheless, following the independence of Kosovo, on 17 February 2008, which strengthened the radical and nationalistic forces in Serbia, the EU 'cut back' on its original conditions and decided that the SAA would be signed despite unsatisfactory compliance with the ICTY. Governmental elections were coming up and the EU wanted to send a clear signal to encourage the pro-European forces (EU Observer 2008a). However, the implementation of the SAA will still be dependent on Serbian compliance with the Tribunal, and determining this will require a unanimous decision by all the members of the Union (Election Guide, 2008).

4.2 Serbian Compliance Patterns

In Serbia there has always been low public support for meeting the terms of the ICTY. Full compliance is still not achieved, and in an overall perspective one can argue that Serbia has been relatively hesitant to comply. The first democratic Prime Minister, Zoran Djindjic, 'backed down' to international pressure and had Milosevic extradited to The Hague on 28 June 2001. Yet this made him rather unpopular at home. President Vojislav Kostunica's party withdrew from the reform coalition and several ministers stepped down in protest, causing the government to break down. Some even speculate that Djindjic's assassination on 12 March 2003 was a result of his willing cooperation with the ICTY (Kerr 2007: 381). It is hard to say with certainty whether this is true, but one can definitely assume that the compliance costs for the following governments were higher as they had to take this possibility into account.

Djindjic was replaced by the liberal and Zoran Zivkovic. Zivkovic's pro-Western government was possibly the most likely actor to secure Serbian cooperation with The Hague, but because elections were coming up in November and December the same year, they wished to avoid this unpopular issue (Rajkovic 2005: 46). The ICTY Chief Prosecutor, Carla Del Ponte, came with public indictments against four Serbian generals (Pavkovic, Lazarevic, Lukic and Djordjevic), but Zivkovic's government did not arrest or extradite any of them (Rajkovic 2007: 14).

Nevertheless, the impeachment of the four generals right before the elections contributed to the strengthening of the Serbian Radical Party, which was running on an anti-Hague agenda. The Radicals got 46 percent of the votes in the presidential elections and 28 percent of the

parliamentary vote (Rajkovic 2007: 15). However, it was not enough to get an absolute majority, so they were not able to benefit from their victory. Instead, Kostunica's Democratic Party of Serbia, which received the second highest number of votes, was given the opportunity to form a minority coalition. Nonetheless, considering the political climate and the rise of the Radical Party, Kostunica's government was cautious when it came to cooperating with the ICTY (Rajkovic 2007: 16).

In 2005 however, Serbia seem to have responded to the EU demands and there was a new breakthrough in cooperation with the ICTY. In January the EU's new Commissioner for Enlargement, Olli Rehn, had made clear that further cooperation with the Tribunal was necessary for starting negotiations on the SAA. In addition, international condemnation had made the pro-European forces in Serbia criticise Kostunica's policy at home (Rajkovic 2007: 17). Already on 29 January, General Lazarevic announced that he would surrender 'voluntarily.' This started a new wave of 'voluntary surrenders,' which ended with the extradition of sixteen of the accused, including high profile indictees such as Pavkovic and Lukic (Rajkovic 2007: 19). The EU complimented Serbia on its cooperation, but the country still had a longer way to go before the condition of full compliance could be met. Zdravko Tolmir, a senior military aide to Mladic was also arrested and transferred to The Hague on 31 May 2007, but his superior, Mladic himself, is still at large.

It is evident that Serbia has cooperated with the ICTY on several occasions, but considering that such high profile suspects as Karadzic and Mladic are still at large more than a decade after the creation of the Tribunal, there is reason to conclude that overall compliance has been reluctant. As stated by Rachel Kerr (2007: 383), the main issue is really not that Karadzic and Mladic have

not been sent to The Hague, but that there are still people in power protecting them. Serbia's commitment to democratic principles is therefore remains a concern.

4.3 The Rationalist Explanation and the Limitations of the EU's Policy

Judging by the patterns of compliance and non-compliance presented in the previous section it becomes apparent that Serbia rationally complied with the ICTY conditions at times when the external incentives seemed to outweigh the domestic compliance costs. From an economic perspective however, it seems that Serbia would have benefited from complying with the Tribunal at *all* times, especially when taking into consideration the poor situation in which the country was left after the wars. How can one then explain that the reluctance to comply remained so high? From a materialistic point of view rational explanations are not entirely sufficient. Yet one can still claim that Serbia had rational reasons to withhold compliance based on the limitations of the EU's policy. By examining the factors of the external incentives model this becomes more apparent.

4.3.1 Determinacy of Conditions

With relation to determinacy one has to agree that the EU's ICTY conditionality is relatively clear, especially when it comes to understanding the expectations at stake. The EU requires full compliance, meaning that all the suspects should be arrested and transferred to The Hague. Cooperation with the ICTY is a 'country specific' condition, and it applies only to the candidates that participated in the Yugoslav wars. It does not apply to any of the other EU members or candidate states, but it can still be regarded as having high legitimacy as it is based on achieving the rule of law. The formality of the condition is therefore also hard to criticise.

Since 2005 full compliance has been a condition for signing the SAA, but this was still done on 29 April 2008. For this reason it appears that the EU backed down on its original conditionality and started on a less consistent path. However, when taking into consideration that full compliance is still a condition for starting the implementation of the agreement, not much has really changed. This was more of a ‘symbolic signature’ without any significantly transforming effect. Although some EU-members have expressed willingness to loosen up on the SAA conditionality, there seems to be a general consensus among the member states that cooperation with the ICTY will still remain a condition for achieving EU accession in the end.

4.3.2 Size and Speed of Rewards

In this respect Serbia and several of the other Western Balkan countries have to face a challenge that was less salient for the CEECs. Cooperation with EU policy will in the first instance only lead to financial support, trade and visa arrangements, or implementation of the SAAs. The bigger rewards are far away, and actual membership can only be achieved in the medium to long-term. In addition, there has been growing scepticism to further enlargement within the Union. Eurobarometer polls from 2006 showed that only 23 percent of the EU-25 considered the accession of the Western Balkans to be in the Union’s interest. Only accession of Croatia enjoyed the support of the majority with 56 percent. Serbia however, got the least support of all the former Yugoslav countries, and its accession was only supported by 47 percent (Eurobarometer 2006). This could halt the enlargement process, because enlargement is considered a ‘sensitive’ policy area, so any decision to enlarge has to be agreed by all the EU members unanimously. As stressed in the Copenhagen Criteria, for enlargement to take place it is also vital that the Union is capable and has the necessary capacity to accept new members. This has weakened the credibility of the EU’s rewards. As stated by Gordana Lazarevic, Serbian

Assistant Minister for International Economic Relations, ‘God is in heaven, and Brussels is too far away’ (cited in Delevic 2007:36). It has therefore been hard to explain the benefits of compliance to the public.

This internal ‘enlargement fatigue’ might often be exaggerated, but both negative polling data and the rejection of the proposed constitutional treaty in 2005 are factors that strengthens this case (Brown & Attenborough 2007: 7). Even if history shows that the members usually agree on accepting new applicants, especially in their nearest neighbourhood, the lack of enthusiasm for further enlargement might still be interpreted differently from the outside. James Gow (2007) refers to this as the ‘dilemma of the Union:’

It will need to continue its path of using its influence and the prospect of membership to encourage future security and stability at its borders necessary to the prosperity of the EU; yet, in doing so it will create a new range of potential candidate countries. Once it does this it will face internal resistance to further enlargement. (Gow 2007: 346)

Paradoxically, the EU’s external leverage declines the more it is needed and used. All in all, it is therefore evident that the short-term rewards for Serbia are relatively small. Considering the EU’s enlargement fatigue there is also little reason to think that this would change any time soon.

4.3.3 Credibility of Conditionality

It is possible to argue that lack of consistency and internal consensus within the EU has provided a space for Serbia to withhold and refuse compliance. All the members seem to agree that full compliance should be a condition for EU membership, but there has been disagreement about whether it should be a definite condition for signing the SAA. When the negotiations were reopened in 2007, only Belgium and the Netherlands insisted that full compliance with the

Tribunal had to be fulfilled⁹ (Reuters, 2008). Due to this opposition, cooperation with the ICTY will still be a condition for implementation of the SAA, but as there are only two countries strongly backing this stance the conditionality has lost some of its strength and become less credible. In sum, this has created a higher possibility that Serbia perhaps would be able to receive EU benefits even if it refuses to comply.

In addition, there seems to be a ‘conflict of interest’ within the Union that also has hampered the EU’s credibility. The Union’s concerns in the Serbian case are multi-dimensional. Not only are the concerns about complying with the ICTY, but they are also about enlargement issues in general as well as security, stability and the future of the EU’s CFSP and the ESDP. It was initially through the latter policy fields that the closer EU-West Balkan relations were established. This leads back to the violent conflicts of the 1990s when the EU through the development of the CFSP was trying to establish itself internationally as a credible foreign policy actor. In a wider context there was also strong pressure from the US, which stressed that since the Balkan wars were on European soil this was something that the EU should try to deal with on its own. The success of the CFSP and the EU’s future as a foreign policy actor was therefore dependent on the EU’s success in the Balkans (Larsen 2002: 295). In retrospect it became apparent that the Union was not unified and strong enough to deal with the Balkan wars without help from other big powers, but the EU’s role has increased in the times of peace. The EU is therefore caught in a dilemma about how to best achieve its own goals. On the one hand it has to secure stability and security in the region. But on the other hand, it is also important to the EU that Serbia, akin to any other candidate country, shows commitment to the principles of

⁹ For the Netherlands this is a sensitive issue domestically because most of the United Nations troops in Srebrenica were Dutch.

democratization and international public law. It is therefore evident that the EU's policy is based on somewhat conflicting goals, and that the Union needs to consider whether it should prioritise the need for stability or its commitment to democracy and justice.

This internal policy conflict became more apparent when the EU had to deal with the status of Kosovo. Kosovo's proclamation of independence contributed to strengthening the nationalist forces in Serbia. Because the EU largely supported this act many Serbians became more sceptical to European integration, and several important political figures even argued that Serbia should turn its back on the Union. The issue divided the Serbian public and the sitting government collapsed. Before the new elections, 11 May 2008, the EU was therefore faced with the risk of 'losing' Serbia to the radicals. Having no remaining carrots to offer, the EU decided to modify its original policy and let Serbia sign the SAA. As mentioned before, the early signing of the agreement did not change the actual conditions a lot, but it signalled that it was important for the EU to have Serbia on a 'European track.' An opposite scenario would be more costly for the Union, so in order to secure stability the EU relaxed its commitment to legal and democratic norms.

4.3.4 Veto Players and Adoption Costs

It is clear that the issue of the ICTY is not popular among the Serbian public. Hence, it is obvious that the adoption costs are high, and that cooperation with the Tribunal is politically risky. The actual number of veto players is relatively small, but one has to assume that the politicians involved are rational actors interested in winning elections. Playing the wrong card in relation to this sensitive issue can result in great personal power losses. It is therefore likely that these considerations were taken into account. Even if the politicians understand what the

consequences on non-compliance can mean for the state it is logical that they fear the risk of working against national interest and being labelled ‘unpatriotic’ (Rajkovic 2007:20). After the assassination of the former Prime Minister, Zoran Djindjic, in 2003, it became even more obvious that cooperation with The Hague could be dangerous, as the people connected to the Milosevic regime and to the ICTY suspects still had a large degree of influence over the military and the political processes (Peskin and Boduszynski 2003: 1122). The medium to long-term rewards of the EU was therefore not always enough to outweigh the domestic adoption costs.

Considering the high adoption costs, one can claim that the politicians made rational cost-benefit calculations, which made them reluctant to complying with EU demands. However, this is only rational from a domestic point of view. In a foreign policy perspective rationality usually refers to values of ‘hard currency,’ such as material gain or increased power and security (Allison 1969). Consequently, this means values that are exogenously given and that are more stable over time. Opting for long-term profits should therefore be considered as more rational than short-term gain. By cooperation with the ICTY Serbia would, in addition to gaining international credibility and trust, have a better chance both to secure economic growth and to stabilize and reform. While being reluctant to comply, the Serbian politicians gain popular support and win elections. From this perspective however, this behaviour cannot be considered rational. The political actors are taking endogenous interests into account, and the outcome does not seem to benefit Serbia’s population as a whole. There were limitations with the EU’s approach, but it is reasonable to argue that Serbia still would have gained more from aligning itself with the EU’s policy. To some extent one can say that Serbia’s reluctant compliance has been politically rational domestically, but in an overall economic perspective it has certainly not. The question

then remains as to why opposition to the ICTY is more important than closer ties to the EU that could substantially increase the standard of living.

Robert D. Putnam (1988) stresses that such international interactions usually take place on two levels, namely the domestic and the international. This interaction should therefore be interpreted as a 'two-level game.' The usual complexity of such two-level games is that what is rational on one level may not be rational at the other. However, it should still be possible for clever layers to find a solution that will be accepted at both levels (Putnam 1988: 434). In the Serbian case it seems like the largest obstacles are to be found domestically, as there is such strong public opposition to cooperation with the ICTY. To find a solution to this it is necessary to look closer at the domestic context in order to determine the factors that have shaped the perceptions of the Serbian public sphere.

4.4 The Social Constructivist Explanation:

Taking Perceptions and Constructed Narratives into Account

Why is opposition to cooperating with the ICTY so strong in Serbia when it is so obvious to outsiders that not much can be gained from this? To explain this it is important to look at the Serbian social context, not only the current, but also the previous ones, which set the stage for the present. During the Milosevic regime, the Serbian people were subject to a large amount of propaganda. Most of the media was controlled by the government and misinformed and biased reporting flourished. This means that the exploitation of facts, historical denials, myths of victimization and misinformation to a large extent obscured peoples' perception of the truth.

Serbia is now a democratic regime, but according to a thorough report by the Serbian Helsinki Committee (2004) a considerable proportion of the discourse in the media has not changed significantly since the time of Milosevic. In addition, a rating on freedom of the press done by Freedom House in 2007 only listed Serbia as 'partly free.' They underline that the independent and oppositional media is frequently harassed, and made dependent on the government for funding and broadcasting licences. The government, local officials, media owners and businessmen put excessive pressure on journalists causing many to practice self-censorship and avoid controversial issues such as precisely cooperation with the ICTY and the status of Kosovo (Freedom House, 2007). Judging by the above it becomes evident that these factors have influenced Serbian perceptions of the situations, and therefore have to be given serious attention. As expressively put by Blagojevic (2003: 181), 'the media is not only a mirror of reality, but it is creating reality, and it is extremely difficult to find a boundary between the two.' Using both media discourse and the discourse used by the main political actors I will show with Wæver's

model that the ICTY is presented as conflicting with what is perceived as ‘Serbian national interest.’

4.4.1 Serbian Perceptions of the ICTY

It is understandable that people closely linked to the ICTY indictees are opposed to the Tribunal, but opinion polls show that a majority of the public is also against cooperation. Over the last years support for cooperation has increased, but the latest opinion poll carried out by the EU Integration Office in Serbia shows that 54 percent of the population is still against compliance. Out of these 54 percent 23 said that they would support cooperation with the Tribunal if the EU integration process would be discontinued in the opposite case. Yet 77 percent of the opposed remained that they would be against cooperation regardless of any implications it might have for Serbia’s relations with the Union (EU Integration Office, 2007). It is therefore obvious that a considerable proportion of the public to a large extent supports the accused and their involvement in the wars.

The Serbian Helsinki Committee states that the ICTY is characterized as ‘one of the most negatively treated topics in the Serbian media’ (2004:22). While the victims are rarely mentioned, the war criminals are continuously presented from a ‘human angle’ and celebrated as national heroes. At the same time, the war crimes are being downplayed and ‘legitimized.’ The media is also still under though influence from the anti-Hague lobby and people connected to the Milosevic regime (Helsinki Committee, 2004). Being subject to this kind of reality there is no wonder that there is a less developed feeling of responsibility and remorse among the Serbian public. Furthermore one must also take into account that biased pictures of the enemies were also being propagated, leaving Serbia as the guiltless victim of the horrible atrocities.

Vojislav Kostunica, president in Serbia following Milosevic and prime minister from 2004 to 2008, has on several occasions expressed his attitude towards the Tribunal. In an interview given to the Serbian broadcaster B92 on October 23, 2003 he indicated his opinion to Serbian ICTY cooperation:

The Justice of The Hague Tribunal is selective and we have to take a different, more aggressive approach; to make it clear that we will cooperate with The Hague, but not in a way where it appears that only one side is responsible for the war. [...] I have one political agenda, and it is the protection of state interests in some national sense, whether it's about the reputation of the country, or in a material way... (Cited in Rajkovic 2007: 16)

By stating that the Tribunal is selective and biased he is able to relate to the myth of victimization of the Serbian people. Not only were they victims in the war, but they are also treated unfairly with respect to the ICTY. In earlier statements he has also expressed that the 'selective justice' of the Tribunal attempted to pose collective guilt on the Serbs (Rajkovic 2005: 38). In other words, the Tribunal is presented as an unjust, biased, and trivial institution that does not take Serbian national interest sufficiently into account.

Concern about the legality of the ICTY was also expressed in 2001 when Milosevic was extradited to The Hague. In order to make it happen without any major complications, the then Prime Minister Zoran Djindjic adopted a government decree that permitted extradition of the former president without parliamentary approval (Schimmelfennig et al 2006: 92). This was perhaps the only way to facilitate the extradition of Milosevic, but it was simultaneously a violation of Serbian law, making it a controversial act open to critique. Kostunica took advantage of the situation and expressed his opposition to what had been done:

Cooperation with The Hague, which was of course necessary, has come down to the mere extradition of the accused without any protection of the citizens and, in the end, without any protection for the interest of the state itself. (Cited in Rajkovic 2005)

Even though he knew that cooperation was absolutely necessary he nevertheless used the situation to criticize Djindjic for betraying the Serbian constitution and jeopardising the protection of the country's nationals. But by doing this he also established that cooperation with The Hague was unjust, sacrificing the legal protection of Serbian citizens.

A common reason why conditionality can fail to promote compliance and public support is that states often tend to politicise the conditions (Checkel 2000). This was definitely done in Serbia, and opinion polls from 2004 showed that 76 percent considered the ICTY to be a 'political' rather than a 'legal' institution (Rajkovic 2007: 19). This also becomes evident when looking at the main demonstration slogan of a nation wide campaign against cooperation with the ICTY held in 2003 that asked: 'Is it a crime to defend your country?' (Rajkovic 2005:50). The public therefore perceived the Tribunal to have some political aim instead its intended mission to achieve justice. This suggests that the social context, the media and the more nationalist politicians were largely able to frame the Tribunal as an unfair, political institution, incompatible with Serbian national interests, and infiltrate peoples' perception of the ICTY.

4.4.2 Serbian Perceptions of the EU

In addition to influencing the public's perception of the ICTY, the discourse also created a particular picture of the EU. Many Serbians are enthusiastic about the Union itself, but when it comes to the Union's ICTY conditionality the discourse has been much less positive. When Djindjic handed Milosevic over to The Hague, Kostunica said that he felt like 'a hostage of international pressure' (Rajkovic 2005: 45). In this sense, he presents the international

community, of which the EU was a major player, as a ‘hostage taker.’ This obviously does not provide any positive connotations by itself, but it also links the EU to other international actors. Initially this might not appear as problematic, but, when considering Serbia’s history, it is clear that the country has experienced rather unpleasant encounters with the international community in its recent past. The NATO member states, and especially the US, lost much of Serbian respect after their participation and support for the controversial bombings during the Kosovo war in 1999. Negative representations of the international community was also common in the media, and the Helsinki Committee (2004) even categorize the media as part of the ‘anti-European front.’ Hence, when the EU is associated with these unpopular international actors it is obvious that the Union is put in a negative light.

When Kostunica and the media questioned the legal authority of the Tribunal they were also able to undermine the legitimacy and the founding principles of the EU. Even though the majority of the public does not disagree with the founding principles of the EU as such, cooperation with the ICTY never won substantial public support, and reluctance to comply remained. This negative and unjust picture of the EU-ICTY conditionality thus clearly created a gap between what the Tribunal is supposed to represent and how it is perceived. But by understanding this imbalance it is also possible to better understand Serbian reluctance to comply.

Yet an analysis of the identity related discourse also shows how Serbia was able to comply. In the previous section (4.2) I illustrated that Serbian compliance, most notably in 2001 and 2005, was easily explained by rational choice and pursuit of the external incentives. However, when taking a closer look at the situation it becomes apparent that the compliance was framed as corresponding with national concerns. When Milosevic was taken down on April 1, 2001 he was

not arrested based on the charges brought against him by the Tribunal. Instead he was arrested for breaking domestic law on the grounds of corruption and abuse of power (Rajkovic 2005:39). The arrest was then presented as a matter of ‘national interest,’ overlapping with the process of overthrowing the previous regime (Rajkovic 2005:39). The wave of arrests in 2005 followed a similar discourse. The suspects were not transferred to The Hague as a matter of securing closer ties with the EU, but it was stressed that they simply felt it as ‘their patriotic duty to surrender,’ something that led to a series of ‘voluntary arrests’ (Rajkovic 2005; 2007).

The fact that four Serbian suspects are still at large however, proves that the political risks of arresting them are still high. Although in a statement made by the Serbian Interior Minister, Dragan Jovic May 5, 2006 we see that he is trying to make compliance fit with the image of national interest: ‘I have to say that no one has the right to choose himself over his nation, especially when he has a duty to defend his people’ (Cited in Rajkovic 2007: 23). By looking at how the policies were framed, both with regards to positive and negative compliance, one is able to locate the dominant perception of Serbian national interests and how this fits and conflicts with the EU’s ICTY conditionality. On the one hand it is obvious that compliance is inconsistent with Serbian national interests. The perceptions that the Tribunal and the EU is threatening to Serbian national interests have been dominant. But on the other hand however, it is also apparent that these perceptions of interests are fluid and able to change over time.

This chapter has analysed Serbian reluctant compliance with the ICTY, and non-compliance and the failure to indict top suspects not only prove the limitations of the external incentives of the EU, but it also proves the success of the individual criminals and the Serbian government in defying the Tribunals authority. The determinacy of conditions has been relatively clear, but

internal enlargement fatigue might have weakened the incentive. Internal disagreement and conflicting goals have made the incentives less convincing. Low public support for compliance has always been a factor strengthening the domestic adoption costs, but a major reason for this disapproving attitude is that both the media and the political rhetoric is still largely influenced by the anti-Hague lobby and people connected to the Milosevic regime. This has for the most part provided an illusion that compliance and national interests conflict. Yet this is not always true. What is important to encourage compliance is therefore not only to strengthen the credibility of the external incentives, but also to change people's perceptions by providing awareness about what is actually going on.

CHAPTER 5 - KOSOVO:

WIDENING THE GAP BETWEEN SERBIA AND THE EU

Looking back at the years following the Kosovo war one can observe a certain form of duality in Serbian politics. Serbia has committed itself to EU integration, and, at the same time, dealt with its territorial issues concerning the province of Kosovo. However, after Kosovo proclaimed independence on 17 February 2008, supported by a majority of the EU member states, it was impossible to treat these two issues separately any longer. This split the Serbian government and also polarized the public. Simultaneously it also led to a setback in EU-Serbian relations, because it would be impossible for the EU to offer membership to Serbia as long as there exist unresolved issues or territorial claims to any neighbouring state. Yet it seems this is a condition Serbia has to overcome in order to receive continued support from the EU and continue on its way towards further integration.

This chapter will evaluate Serbia's compliance with EU conditionality in relation to Kosovo in the same manner as chapter four about the ICTY. I will first explain EU's policy on the issue before I turn to the actual analysis. Kosovo will first be examined from the rationalist point of view (section 5.2), using Sedelmeier and Schimmelfennig's external incentives model, and then from a constructivist angle where it will be tested whether the national perception of Kosovo is compatible with that of the EU (section 5.3).

5.1 EU Policy for Kosovo

The EU has not been directly responsible for the state building efforts in Kosovo after it became a UN protectorate in 1999, but it has been the main financial contributor. Overall, the EU has tended to keep a low profile and emphasised its secondary role to the UN (Noutcheva 2007: 8). With regards to the question of Kosovo's status, the EU has also tried to avoid taking a direct, official position. In 1995 the Brussels European Council adopted a Special Declaration on Kosovo, outlining several acceptable solutions. Independence was not excluded, but there was internal disagreement among the member states concerning premises of international law and whether to give precedence to the right to self-determination or to the principle of territorial integrity (Noutcheva 2007:10). Those countries with sizable minorities, such as Cyprus, Romania, Slovakia and Spain, risking secessionist conflicts at home, were especially opposed to supporting independence. In addition, this would not pass in the UN, as it would be blocked by Russia, a permanent member of the Security Council.

However, the overall majority of the EU has still leaned towards the understanding that there seemed to be no conceivable alternative to legal separation and the creation of an independent state. (Noutcheva 2007: 9). Even though Kosovo is a controversial issue, there is a general consensus that it should be treated as an exceptional case. The violations of human rights in Kosovo have strengthened the argument for independence. In addition, pragmatic reasons on the ground have also contributed to this. It would for instance be impossible for the territory to develop economically without clarity about its final status. In addition, demonstrations and popular support for independence in Kosovo itself have also been important factors at play (Noutcheva 2007: 9). Nevertheless, when Kosovo proclaimed independence in February 2008 the EU left it to the individual member states to decide whether they would recognise the new

state. The EU General Affairs and External Relations Council (18.02.2008) concluded that the ‘Member States will decide, in accordance with national practices and international law, on their relations with Kosovo.’ They also emphasized the EU’s adherence to international agreements that recognize the principles of sovereignty and territorial integrity. But at the same time they stated that, ‘in view of the conflict of the 1990s and the extended period of international administration under SCR 1244, Kosovo constitutes a *sui generis* case’ (EU General Affairs Council, 2008).

5.2 Why Serbia is Reluctant to Align Itself with EU Policy?

The Rationalist Explanation and the Limits of the EU’s Approach

Serbia has in several respects been hesitant about aligning itself with EU policy, but no other issue has ever driven the two actors further apart. With the EU supporting Kosovo’s secession, Serbia cut diplomatic ties with the countries that have formally recognised Kosovo as an independent state. Serbia has not been willing to comply one hundred percent with the ICTY, but these EU demands have not made Serbia seriously consider abandoning its path of European integration. From both a reformist and economic perspective however, it is evident that it would be beneficial for Serbia to align itself with the EU. If one takes demography into consideration, many Serbs are also less enthusiastic about living in a state with approximately two million Albanians. How can one then explain the fact that reluctance to accept EU policy remains so high? Losing Kosovo would mean losing territory, but at the same time one has to acknowledge that the province has been under non-Serbian administration since 1999. From a reform oriented and demographic point of view, rational explanations are therefore not entirely sufficient. However, one can also claim that Serbia had rational reason to withhold compliance based on the limitations of EU policy.

5.2.1 Determinacy of Conditions

Unlike the conditionality related to the ICTY, the Union's conditionality concerning Kosovo it is not especially clear. The EU has been reluctant to come up with an official standpoint in the matter itself, and by having several of its own members opposing Kosovo's independence it has been difficult to make any direct recommendations about how Serbia should best handle the situation. Then again, it is stated in the earlier policies that both regional cooperation and good neighbourly relations are required for obtaining EU benefits, further integration and eventual membership. Controversially the EU accepted the divided state of Cyprus as a member in 2004. However, this is largely regarded as a mistake, and is not something the Union would want to reiterate. While regional cooperation was only encouraged in for CEECs it was made compulsory for the countries of the Western Balkans, and most of the political agreements and financial assistance programs were supplement with important regional components (Delevic 2007: 26).

The EU's position is also rather vague when it comes to the issue of legitimacy. Neither the NATO bombings during the Kosovo war, nor the independence of Kosovo was backed by any UN mandate. EU policy is perceived to be in line with the major international actors, but it is still a controversial matter of public international law (Noutcheva 2007: 16). Serbia therefore had reason to question the clarity, the formality and the legitimacy of the EU policy.

5.2.2 Size and Speed of Rewards

As reflected in the case of the ICTY, the size and speed of the EU's rewards are not particularly promising. Internal scepticism towards further enlargement has created uncertainty about the

Union's commitment, and hampered its ability to achieve both political and public support among the candidates for undertaking comprehensive reforms. The EU modified its original conditionality with regard to the ICTY, but Kosovo is a much more comprehensive issue, so any similar procedures cannot be expected in this case.

5.2.3 Credibility of Conditionality

Like in the case of the ICTY, internal disagreement and conflicting goals concerning stability and enlargement have hampered the EU's credibility with regard to its Kosovo policy. The different institutions have had different priorities, and concerning Kosovo's status there has also been internal disagreement between the different member states. While the majority of members have already recognised Kosovo as an independent entity, Cyprus, Romania, Slovakia and Spain are not expected to recognise Kosovo at all. Serbia, on the contrary, is more or less forced to recognise the current outcome if it wants to become an EU member. This therefore demonstrates a certain double standard in the EU's external approach.

It is also possible to argue that the EU was influenced by the position of the USA. For practical reasons, and with fewer moral and security related concerns, the US was more eager to finalise Kosovo's status. With this strong pull there was little the EU could do to stop the process that had already started, but at the same time, the EU did little to encourage a more federally oriented and conflict minimising result. Historically, the EU can be perceived as the most successful peace project ever, offering an alternative to divided societies, but in this case it chose to take a rather selective approach. Serbian concerns were largely ignored, and although it is not realistic to assume that they could have prevented a different outcome, it is reasonable to argue that they could have come up with a more impressive and mutually acceptable solution. According to a

public opinion poll conducted by the International Institute for Middle East and Balkan Studies (IFIMES) in Ljubljana, public support for Serbian EU accession was only 52 percent in late April 2008 (IFIMES 2008), which is almost 20 percent less than the year before (EU Integration Office 2007). Even though the Serbian response to the situation was contentious, and contained elements of self-isolation, the EU also contributed to distancing Serbia from the European sphere. For this reason a number of people started questioning the Union's commitment to the Serbian state.

With reference to cross-conditionality it is possible to argue that Russia can be considered a counterweight to the EU that limits the Serbian incentives to comply. Russia has given its full support to Serbia, and hindered the UN Security Council's efforts of finding a common position on the question of Kosovo. Nonetheless, it is hard to imagine that Russia can offer Serbia the same benefits as the EU, especially taking into account that this would isolate Serbia considerably from both Europe and 'the West.' In addition, it is also questionable if Russia really has the best of Serbian interests in mind. It is also possible that Russia is concerned about a similar outcome in Chechnya, or simply enjoys acting as a counterweight to the US and the EU.

5.2.4 Veto Players and Adoption Costs

The number of veto payers is generally low, as in the case of the ICTY, but the domestic adoption costs with regards to Kosovo are perhaps even higher. To openly accept the secession of Kosovo would mean political suicide for any Serbian politician. According to Florian Bieber (2003:325) not even the post-Milosevic opposition has been able to break with the nationalist rhetoric in this respect. Yet, in a larger context, the Serbian politicians operate in several arenas. One should therefore assume that they are not only concerned with winning national elections,

but also care about gaining status, trust and influence internationally. Nonetheless, in the Kosovo case it seems like the domestic concerns have prevailed.

Judging by the above can one claim that the respective politicians acted rationally? Taking into account the limits of the EU policy Serbia had several reasons to doubt Union's commitment and credibility, and therefore delay or refuse compliance. In a foreign policy respect however, rationality usually means securing power and wealth for the state. Losing Kosovo means losing territory, but at the same time Kosovo would drain Serbia's economy and be a source of internal conflict. Holding on to Kosovo can therefore be perceived more as a 'heroic act' for the nation. Weber writes about 'value rationality' where such behaviour is defined as rational (Cited in Hollis & Smith 1983: 77). But in any case, this rational approach only provides a partial explanation. It does not enable us to take a deeper look at the national arena to completely understand the complexities at work. Now I will therefore turn to the constructivist approach to better explain *why* the adoption costs are so high with regards to Kosovo.

5.3 The Constructivist Explanation:

The Importance of National Identity and Historical Narratives

From the rationalist explanation it is evident that the EU rewards were unable to balance out the domestic adoption costs. For this reason, one understands that the political leaders were opposed to modification of Serbia's Kosovo policy, but it does not adequately explain why this is also the position of the public. Only about 120 000 Serbians live in Kosovo, and it is not usually considered an attractive place to move. Why is Kosovo then such a sensitive issue for most of the Serbian population?

As in the case of the ICTY, the people have been subject to a great deal of government and media propaganda with respect to Kosovo as well. In reaction to NATO's threats of bombing Serbia the government imposed increased restrictions on the press and passed a law that made all the universities declare that they would be loyal to the regime (Bieber 2003: 323-324). In comparison to the ICTY, the issue of Kosovo is much more complex and goes much further back, with a significant share of ancient historical and mythical justifications. Although such constructs are commonly not given serious consideration in secessionist conflicts there seems to be a general consensus among scholars of Balkan studies that in the case of Kosovo such interpretations are given higher precedence than usual.¹⁰ The question of Kosovo has therefore been significantly misrepresented over a longer period of time, and the difference between truth and invention has been significantly blurred.

5.3.1 The Meaning of Kosovo to the Serbian State and Nation

It cannot be denied that Kosovo is particularly important to the Serbian national identity.

Kosovo is central to the main Serbian national myth. In this myth about the Kosovo battle on 28 June 1389 Serbia suffered a great military defeat to the Ottomans. But according to the myth however, Prince Lazar, the head of the Serbian army, was given a choice by God to choose between an earthly and a heavenly kingdom. Lazar chose the latter and thus sacrificed himself and his nation for the greater 'kingdom of heaven' (Pavkovic 2001:7). As a result of this Kosovo has constantly been portrayed as 'the cradle of the Serb nation' (Ramet 2003:31). As put eloquently by Milosevic in his address to the nation at the 600th anniversary of the Kosovo battle

¹⁰ For literature emphasising the importance of historical and mythical interpretations of Kosovo see for instance Judah 2000, Monnesland 2006, or Ramet 2003.

in 1989, 'Every nation has a love which eternally warms its heart. For Serbia it is Kosovo' (Cited in Malcolm 1998: 344).

The fact that the Kosovo myth has been a popular topic not only among Serbian artists and poetic writers, but also among historians and prominent intellectuals has contributed to strengthening the historical narratives that links Kosovo to the essence of Serbian national identity. The historical myth has helped legitimize Serbian claims to Kosovo and is still used in the same manner today. According to the Serbian Helsinki Committee (2004), references to the myth is an important component of both public and private discourse that is watered down by nationalism and the projection of 'otherness.' By reinforcing the historical narratives the dominant trend in the discourse has been to insist on Serbia's claims to Kosovo by portraying Serbia as a 'natural community,' being the just, suffering and innocent victim in the conflict (Helsinki Committee, 2004). A quote by former Foreign Minister, Vuk Draskovic, clearly demonstrates the fact that the Serbian perceptions of Kosovo are still largely determined by history, 'For me, a Serb, Kosovo is and will go on being what it was in the past: the cradle of the Serb state' (Cited in Blumi 2006: 1).

The Serbian nationalist rhetoric concerning Kosovo hit a new peak in the aftermath of Kosovo's proclamation of independence in February 2008. A few days after the declaration the Serbian Government organized a mass national protest with the theme 'Kosovo is Serbia,' to show its opposition to what it considered being an illegitimate act (Serbian Government, 2008a). Both key politicians and important public figures addressed the nation and expressed their concern. Then Prime Minister, Vojislav Kostunica, was exceptionally direct:

Is there a nation in the world that is being asked to renounce everything that makes it a nation, as is being sought of the Serbs today? [...] Kosovo – that's Serbia's first name. Kosovo belongs to Serbia. Kosovo belongs to the Serbian people. That's how it has been forever. That's how it's going to be forever. (Serbian Government, 2008b)

By this articulation he not only makes it sound like this is a completely exceptional case, but he gives the impression that Serbia is losing its reason for existence. In a similar manner, Tomislav Nikolic, Deputy President of the Serbian Radical Party, also stated that, 'Kosovo-Metohija is Serbia's heart, and that heart is irreplaceable' (Serbian Government, 21.02.2008a). Neither focus on objective facts, but present it more as a metaphor of life and death. The more Europe oriented Boris Tadic, was not present at the protest, but has also on later occasions expressed that Serbia will never let Kosovo go (CNN, 28.08.2008).

Serbian claims to Kosovo have also been actively defended by the Serbian Orthodox Church. Religious legitimacy has therefore been an important aspect as well. A quote from the Serbian newspaper NIN shows how this religious connection was used, 'Kosovo is our motherland, hence only the solution proposed by the Serbian Orthodox Church, the one entailing a division similar to the one applied in the holy land is applicable' (Serbian Helsinki Committee, 2004). Instead of relying on more objective explanations, both the media and the dominant political actors have deeply failed to clarify that much of the collective memory is constructed, and that these narratives and the situation in reality does not always correspond. Even if the public does not believe these narratives in their entirety it must be understood that the Serbian peoples' perception of Kosovo is largely affected by the way in which it has been represented and misrepresented in the Serbian public sphere.

5.3.2 The Serbian Perception of the EU

As mentioned before, the Serbian attitude towards the EU has generally been positive, and many politicians have emphasised the importance of continuing on a path of EU integration. On the issue of Kosovo's secession however, most Serbians have been disappointed and opposed to the EU's handling of the matter. Four days after Kosovo proclaimed independence, which was positively welcomed by the EU, Serbian Foreign Minister, Vuk Jeremic, told the members of the Parliamentary Foreign Committee that he was ashamed by the EU's actions, 'I am ashamed, because if recognizing this act of ethnically motivated secession from a democratic European state is not wrong, then nothing is wrong' (EU Observer, 2008b). By doing this he not only 'glorifies' Serbia's image, but he puts into question the legitimacy of the EU. From this it is therefore apparent that the Serbian state-nation-Kosovo constellation does not fit the policy of the Union.

The perception of the EU should also be seen in relation to the previously mentioned negative images of 'the West' and the international community. Ever since the NATO bombings Serbian discourse has continuously portrayed the international community as unjust, Albanian collaborators that care little about the destiny of the Serbs (Serbian Helsinki Committee, 2004). As confirmed by several sources (Bieber 2003; Blagojevic 2003; Helsinki Committee 2004) there also existed a trend in the media to regularly present 'intelligence reports,' confirming conspiracy theories of the West. Serbian media has also on several occasions reported that the international forces in Kosovo were engaged in ethnic cleansing of Serbs, and that they did nothing to prevent the vandalization of Serbian monasteries and religious sites. For these reasons, the EU, as an actor of the West, was too often put in a negative light.

In this chapter I have explained why Serbia has been opposed and reluctant to aligning itself with EU policy on Kosovo. This can to a certain extent be explained in a rational manner when taking into account the limitations of the EU's approach. The EU has not been able to come up with a unified position on Kosovo, but Serbia needs to accept Kosovo's independence if it wants to become an EU member. In addition, the membership perspective offered is too distant, and not credible enough to change Serbian policy. These conditions have therefore not been able to balance out the Serbian adoption costs. Considering these factors, the Serbian leaders made a somewhat rational choice by distancing themselves from EU policy. However, social context and identity perceptions also seem to have been crucial factors in the explanation. By analysing this it is apparent that Kosovo is closely tied with the Serbian national identity. EU policy favouring an independent Kosovo is therefore not reconcilable with the Serbian view. Even if Serbian EU supporters have been able to convince the Serbian people about the importance of European integration, they have not been able to make the same arguments defending the EU's position on Kosovo.

CONCLUSION

The analysis of the EU's external conditionality through the external incentives model in chapter four and five reveals serious shortcomings of the Union's approach to Serbia. Even though there are also severe problems on the Serbian part, there seem to be several weaknesses in the Union's external policy. First of all, the external incentives do not enjoy credible support from the existing EU members, something that has created a perception of a certain 'commitment deficit.' Lack of internal consensus, enlargement fatigue and conflicting priorities have disrupted the Union's assurance to Serbia, and given the country fewer reasons to comply with the conditionality set out. Controversially, the EU has increased its commitment mostly in the times of crisis. The Union came up with a more comprehensive approach to the region after the Kosovo war in 1999 and let Serbia sign the SAAs during the rise of the radical forces in the aftermath of Kosovo's secession this year, despite insufficient compliance with the ICTY. Therefore it is also not clear whether it is crisis or compliance that actually leads to the largest rewards.

Secondly, the analysis uncovers that the EU's major challenge lie in addressing the domestic adoption costs. Both the rationalist and the constructivist model show that the most important obstacle lies in persuading the Serbian public that EU integration is compatible with Serbian national interests. Closer examination of both the ICTY and Kosovo show that the Serbian perceptions of the two issues are grounded on grave misrepresentations of reality. The EU therefore needs to pay additional attention to how its policies are perceived and interpreted by the public. Even if the Union's intentions and policies primarily are beneficial to Serbia, there

seems to be a gap between the way the policies are articulated and the way the policies are perceived. Although it might be obvious to a great number of Serbians that the country's future without EU support could have serious consequences, many still have problems recognising the benefits of aligning Serbian policies of ICTY and Kosovo to that suggested by the EU. It is therefore not enough for the EU to 'sell' its policies to the country's political elite; the Union must make greater efforts to convince the public as well.

Of equal importance is the fact that both Serbian and EU interests are largely motivated and strengthened by interests of other actors that are more powerful than them on the international stage. Both the interests of Russia and the USA are largely taken into account. Serbia is able to maintain its strong stance on Kosovo largely because it is backed by Russia, which has prohibited the international community to find a common position on the case in the UN Security Council. The EU on the other hand has been more influenced by the USA. The study therefore shows that there is also a wider context that has to be considered when explaining the EU's leverage and the candidate's ability or willingness to comply.

As demonstrated by the internal scepticism towards further enlargement, generating public support is not only an external concern. If the EU wants to pursue an effective enlargement policy, not suffering from a democratic deficit, it also needs to explain the benefits of its policies better and clearer to the public in the existing member states. At the moment, the EU therefore seems to be more of an 'elite-oriented' project, unable to generate sufficient public support. In order to address these shortcomings the Union should assign greater attention to public awareness campaigns both internally and externally and strengthening of the independent media in places where freedom of the press is still not achieved. This is naturally an area that the EU

has prioritised for some time, but it is obvious from the analysis that these efforts should be strengthened and improved.

BIBLIOGRAPHY

- Allison, Graham T. (1969): 'Conceptual Models and the Cuban Missile Crisis,' *American Political Science Review* 3: 689-718.
- Anastasakis, Othon (2005): 'Europeanization of the Balkans,' *Brown Journal of World Affairs* 12(1): 77-88.
- Anastasakis, Othon & Bechev, Dimitar (2003): 'EU Conditionality in South East Europe: Bringing Commitment to the Process' Working Paper, European Studies Centre, Oxford, <<http://www.cespi.it/STOCCHIERO/dossierBalceni/conditionality.PDF>>(23.04.2008).
- Bieber, Florian (2003): 'Serbia After the Kosovo War: The Defeat of Nationalism and the Change of Regime,' *Understanding the War in Kosovo*, Florian Bieber & Zidas Daskalovski (eds.) London & Portland: Franc Cass.
- Blagojevic, Mariana (2003): 'The on Kosovo: A victory for the Media?' *Understanding the War in Kosovo*, Florian Bieber & Zidas Daskalovski (eds.) London & Portland: Franc Cass.
- Blumi, Isa (2006): 'Is Kosova a Late creation of the Yugoslav State and Should it be Considered the Cradle of the Serb Nation?' *The Case for Kosova: Passage to Independence*, Anna Di Lellio (ed.) London & New York: Anthem Press.
- CNN (2008): 'Serb President Wants Kosovo and EU Keys,' published 28.02.2008, <<http://edition.cnn.com/2008/WORLD/europe/02/28/serbia.kosovo/index.html?iref=newssearch>> (29.03.2008).
- Coppieters, Bruno et al (2004): *Europeanization and Conflict Resolution. Case Studies from the European Periphery*, Gent: Academia Press.
- Delegation of the European Commission (2008): Belgrade, <<http://www.europa.org.yu>> (12.03.2008).
- Delevic, Milica (2007): 'Regional Cooperation in the Western Balkans,' *Challiot Paper*, No. 104/2007, Paris: Institute for Security Studies, <www.iss.europa.eu> (01.02.2008).
- Election Guide (2008): 'Serbia Signs EU Agreement Before Parliamentary Elections,' published 29.04.2008, <<http://www.electionguide.org/country-news.php?ID=242>> (06.05.2008).
- Emerson, Micheal & Tocci, Nathalie & Vahl, Marius (2003): 'European Institutional Models as Instruments of Conflict resolution in the Divided States of the European Periphery,' CEPS Working document No. 195.
- Emerson, Michael & Noutcheva, Gergana (2004): 'Europeanization as a Gravity Model of Democratization,' CEPS Working Document No. 214, Brussels: CEPS, <http://shop.ceps.eu/BookDetail.php?item_id=1175> (12.12.2007).
- Emerson, Michael & Aydın, Senem & Noutcheva, Gergana & Tocci, Nathalie & Vahl, Marius and Youngs, Richard (2005): 'The Reluctant Debutante: The European Union as a Promoter of Democracy in its Neighbourhood,' CEPS Working Document No. 223, Brussels: CEPS.
- Emerson, Michael (2005): *Democratization in the European Neighbourhood*, Center for European Policy Studies, Brussels.
- EU Integration Office (2007): 'European Orientation of the Citizens of Serbia, Trends June 2007,' Belgrade 31.07.2007, <<http://www.seio.sr.gov.yu/code/navigate.asp?Id=90>> (12.04.2008).

- EU Observer (2008a): 'EU Attempts to Woo Serbia With Pre-Election Deal,' Brussels 29.04.2008, < <http://euobserver.com/?aid=26064>> (30.04.2008).
- EU Observer (2008b): 'Serbian FM says he is ashamed by the EU's actions in Kosovo, Brussels 21.04.2008, < <http://euobserver.com/?aid=25699>> (30.04.2008).
- Eurobarometer (2006): 'Attitudes Towards European Union Enlargement,' < http://ec.europa.eu/public_opinion/archives/ebs/ebs_255_en.pdf> (20.05.2008).
- European Council, Conclusions of the Presidency, Copenhagen 21-22 June 1993, < http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf> (27.05.2008).
- Freedom House (2007): 'Freedom of the Press in Serbia,' Country Report, < <http://www.freedomhouse.org/template.cfm?page=251&year=2007>> (24.04.2008).
- Friis, Lykke and Murphy, Anna (2000): "Negotiating in a Time of Crisis: the EU's Response to the Military Conflict in Kosovo", Robert Schuman Centre, Working Paper No 20, Florence: European University Institute.
- Gow, James (2007): 'Dark Histories, Brighter Futures? The Balkans and Black sea Region: European Union Frontiers, War Crimes and Confronting the Past,' *Southeast European and Black Sea Studies* 7(3): 345-355.
- Grabbe, Heather (2006): *The EU's Transformative Power: Europeanization Through Conditionality in Central and Eastern Europe*, Basingstoke: Palgrave Macmillan.
- Hansen, Lene and Wæver, Ole (2002): *European Integration and National Identity. The Challenge of the Nordic States*, Lene Hansen and Ole Wæver (eds.), London: Routledge.
- Helsinki Committee for Human Rights in Serbia, 'The Media as part of the Anti-European Front. The Press: An Unchanged Matrix,' Belgrade, December 2004 < <http://www.helsinki.org.yu/doc/Media-Unchanged-Matrix.pdf>> (15.03.2008).
- Hollis, Martin & Smith, Steve (1983): *Explaining and Understanding in International Relations*, Oxford: Oxford University Press.
- Hughes, James & Sasse, Gwendolyn (2003): 'Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs,' *Journal on Ethnopolitics and Minority Issues in Europe* 1(1): 1-37.
- Hughes, James & Sasse, Gwendolyn & Gordon, Claire (2003): 'EU Enlargement and Power Asymmetries: Conditionality and the Commission's Role in Regionalisation in Central and Eastern Europe,' ESRC working paper 49(3), Sussex: European Institute.
- ICTY Homepage (2008): 'ICTY at a Glance,' < <http://www.un.org/icty/glance-e/index.htm>> (07.01.2008).
- IFIMES (2008): 'Parliamentary, Provincial and Lokal Elections in Serbia: The EU Interferes in the Election Campaign,' International Institute for Middle-East and Balkan Studies, Ljubljana, < <http://www.ifimes.org/default.cfm?Jezik=En&Kat=09&ID=371>> (08.05.2008).
- Jensen, Jody (2003): *Europe Bound. Faultlines and Frontlines of Security in the Balkans*, Szombathely: Savaria University Press.
- Judah, Tim (2000): *Kosovo. War and Revenge*. New Haven and London: Yale University Press.
- Kerr, Rachel (2007): 'Peace through Justice? The International Criminal Tribunal for the Former Yugoslavia,' *Southeast European and Black Sea Studies* 7(3): 373-385.
- Malcolm, Noel (1998): *Kosovo: A Short History*, London & Basingstoke: Macmillan.
- Mønnesland, Svein (2006): *Before Yugoslavia and After* [Før Jugoslavia og etter], Oslo: Sypress Forlag.

- Noutcheva, Gergana (2006): 'EU Conditionality, State Sovereignty and the Compliance Patterns of Balkan States,' Centre for European Policy Studies, Paper prepared for the 3rd Pan-European Conference on EU Politics, European Consortium for Political Research, Bilgi University, Istanbul.
- Noutcheva, Gergana (2007): 'Fake Partial and Imposed Compliance: The Limits of the EU's Normative Power in the Western Balkans,' CEPS Working Document No. 274, CEPS, Brussels.
- Papadimitriou, Dimitris (2001): 'The EU's Strategy in the Post Communist Balkans,' *Southeast European and Black Sea Studies* 1(3): 69-94.
- Pavkovic, Alexander (2001): 'Kosovo/Kosova: A land of Conflicting Myths,' *Kosovo: The Politics of Delusion*, Michael Waller, Kyril Drezov & Bulent Gokay (eds.) London & Portland: Frank Cass.
- Peskin, Victor and Boduszynski, P. Mieczyslaw (2003): 'International Justice and Domestic Politics: Post-Tudjman Croatia and the International Criminal Tribunal for Former Yugoslavia,' *Europe-Asia Studies* 55(7).
- Pridham, Geoffrey (2005): *Designing Democracy. EU Enlargement and Regime Change in Post-Communist Europe*, Palgrave Macmillan.
- Putnam, Robert D. (1988): 'Diplomacy and Domestic Politics: The Logic of Two-Level Games,' *International Organization* 42(3): 427-460.
- Rajkovic, Nikolas Milan (2005): 'Conditionality and the Public Sphere: A Synthetic Explanation of Hague Conditionality and (Non) Compliance in Serbia,' Department of International Relations and European Studies, Central European University: Budapest.
- Rajkovic, Nikolas Milan (2007): 'The Limits of Consequentialism: ICTY Conditionality and (Non) Compliance in the Post-Milosevic Serbia,' paper presented at an EUI Conference: EU Conditionality and Intervention in Eastern Europe and the Balkans, 3-4th of April 2007.
- Ramet, Sabrina Petra (2001): 'The Kingdom of God or the Kingdom of Ends: Kosovo in Serbian Perception,' *Kosovo, Perceptions of War and its Aftermath*, Mary Buckley and Sally N. Cummings (eds.) London & New York: Continuum.
- Reuters (2008): 'The EU Must Beware of Rush to Woo Serbia,' Reuters 28.01.2008, <<http://www.alertnet.org/thenews/newsdesk/L2454465.htm>> (02.03.2008).
- Scimmelfennig, Frank & Sedelmeier, Ulrich (2004): 'Governance by Conditionality: EU rule transfer to the countries of Central and Eastern Europe,' *Journal of European Public Policy* 11(4): 669-687.
- Scimmelfennig, Frank & Sedelmeier, Ulrich (2005): *The Europeanization of Central and Eastern Europe*, New York: Cornell University Press.
- Schimmelfennig, Frank & Engert, Stefan & Knobel, Heiko (2006): *International Socialization of Europe. European Organizations, Political Conditionality and Democratic Change*, Hampshire: Palgrave Macmillan.
- Sedelmeier, Ulrich (2006): 'Europeanization in New Member and Candidate States,' *Living Reviews in European Governance* 1(3), <<http://www.livingreviews.org/lreg-2006-3>> (28.01.2008).
- Serbian Government (2008a): Mass protest held against unilateral declaration of independence by Kosovo, Belgrade 21.02.2008, <<http://www.srbija.sr.gov.yu/vesti/vest.php?id=43424>> (04.04.2008).

- Serbian Government (2008b): 'Serbia has and will annul every act of the fictitious state on its territory,' Belgrade: 21.02.2008, < <http://www.srbija.sr.gov.yu/vesti/vest.php?id=43419>> (03.04.2008).
- Steunenbergh, Bernard & Dimitrova, Antoaneta (2007): 'Compliance in the EU enlargement process: The limits of conditionality,' *European Integration online Papers* 11(7), <http://eiop.or.at/eiop/texte/2007-005a.htm> (12.02.2008).
- Tocci, Nathalie (2007): *The EU and Conflict Resolution. Promoting Peace in the Backyard*, Oxon: Routledge.
- Vachudova, Milanda Anna (2001): 'The Leverage of International Institutions on Democratizing States: The European Union and Eastern Europe,' Florence: European University Institute, RSCAS Working Paper no. 2001/33.
- Vachudova, Milanda Anna (2005): *Europe Undivided: Democracy, Leverage and Integration after Communism*, Oxford and New York: Oxford University Press.
- Wallace Helen (2001): *Interlocking Dimensions of European Integration*, Basingstoke: Palgrave.
- Wallace, William (2006): 'Foreign and Security Policy,' *Policy-Making in the European Union*, Helen Wallace, William Wallace & Mark A. Pollack (eds.), New York: Oxford University Press.
- Wæver, Ole (2002): 'Identity, communities and foreign policy: Discourse analysis as a foreign policy theory,' *European Integration and National Identity. The Challenge of the Nordic States*, Lene Hansen and Ole Wæver (eds.), London: Routledge.