

**EU Political Conditionality and Domestic Politics:
Cooperation with the International Criminal Tribunal
for the Former Yugoslavia in Croatia and Serbia**

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DECLARATION

I hereby declare that no parts of the thesis have been submitted to no other institution different from CEU towards a degree. To my knowledge nor does the thesis contains unreferenced material or ideas from other authors.

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Summary

Starting from the literature that analyzes the influence of the EU on domestic conditions in member states the thesis attempts to expand the scope of literature by focusing on candidate and potential candidate states Croatia and Serbia. The thesis identifies the main factors that influence the fulfillment of the specific EU membership conditions, especially the cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). The main question is which factors hamper or facilitate compliance with political conditionality and how the variation of the compliance record between the states and within the same states during different time periods can be explained. The research uses rationalist arguments, where actors are studied in terms of how they react to external pressures in light of their interests in the domestic political arena. The factors are threat of incumbent government losing power, attitude of governments towards the ICTY and EU, partisan veto players, institutional veto points and size and timing of EU rewards. The two countries are divided into seven cases, on the basis of the elections held in the last twelve years.

The conclusions can be summarized as follows: EU rewards are necessary but not sufficient to tip off the balance in favor of fulfillment of the conditions for membership. As both Croatia and Serbia demonstrated there are certain issues related to national sovereignty that are not easily sidelined. Therefore, when domestic conditions are ripe and if they do not endanger government position and are not against fundamental principles on which the governing party makes its policy, then the conditions are fulfilled.

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Chapter 1 - Introduction

The study of the European Union (EU) has primarily been focusing on the process of integration: its accelerating and impeding factors, the interests and ideas of its creation and development, the actors and the processes of its evolution. The main questions have been related to the reasons why states agree to give competence to supranational bodies. Still, integration comprises two processes, while delegating sovereignty is just one of them; another is “how the delegation to the European level affects policy outcomes in the domestic arena.”¹

The influence of the EU institutions, rules and principles on member states, has been studied in a separate, growing literature commonly known as Europeanization. There have been some contesting opinions regarding this body of literature; however, this research will not deal with definitions of Europeanization. For the purposes of this paper, Europeanization is understood as an impact of the EU on a number of issues in member states and applicant countries. This impact of the EU institutions on EU membership candidates and potential candidates seems equally important to investigate and is currently a growing research topic.² As Ulrich Sedelmeier summarizes the results of a key word search of the Social Science Citation Index and concludes that, the research of Europeanization of new members and applicant states is a “still comparatively small, but fast-growing research area.”³

¹ Klaus H. Goetz and Simon Hix (eds.), “Europeanised Politics, European Integration and National Political Systems”, *West European Politics*, Special Issue, 23, no. 4 (October 2000): 3.

² Some of the authors include Milada Ana Vachudova, Frank Schimmelfennig, Judith Kelly, Jan Kubicek, etc.

³ Ulrich Sedelmeier, “Europeanisation in new member and candidate states”, *Living Rev. Euro. Gov.*, 1, no. 3, (2006):6. [Online article]: cited [<10 Nov 2006>], <http://www.livingreviews.org/lreg-2006-3>

The main dilemma in this fast growing research area has been how to account for the differences in circumstances between the influence of the EU on its members, which participate in the decision making process of the EU, and the influence of the EU on the new- comers that were not taking part in creating rules that they now need to abide by. The additional question is how the EU influences applicant states. These particular countries are not member states which is why their response to the EU influence has been different and seems to be mostly driven by the desire to join the EU, thus being termed by some as ‘EU-ization’ rather than Europeanization.⁴

This specific circumstance of many of the new EU members and potential new members of the ‘return to Europe’ makes it difficult to frame the research on the topic using one theoretical background. Europeanization literature, generally taken as an impact of the EU on domestic political systems of a member/applicant country can be used. However, as the position of the candidate countries is inferior in the relationship with the EU institutions, and as the institutional relations move to a higher level only if the EU conditions for membership are fulfilled, the body of literature on conditionality has been used for a better analysis of the EU influence on candidate and accession countries. Even though most of the research conducted on the topic deals with the impact of the EU membership conditionality on domestic politics, there is still not enough engagement with the domestic politics; accordingly, more research is necessary to explain how these conditions are transformed into compliance through national political systems and how they lead to the improvement of the institutional relations with the EU.

⁴ Jan Zielonka and Peter Mair (eds.), ‘The Enlarged European Union: Diversity and Adaptation’, *West European Politics*, Special Issue, 25, no.2, (April 2002): 102.

“To understand the practical domestic implications of conditionality in general and political conditionality in particular, more research is necessary.”⁵

Conditionality has been used as a diplomatic tool for decades. It has been an important research topic particularly as a foreign policy tool in attempts to democratize certain countries. “Since international factors crucially contribute to the process of democratization, it is important to understand more precisely how they work.”⁶ It seems essential to continue research into the interplay of international conditions and domestic players.

1.1 Research Question

Within the context of Europeanization of applicants and new members against the background of conditionality, this research will look into domestic implications of the EU political conditionality within national political systems. To this end, the question to what extent potential EU members Serbia and Croatia comply with political conditions for membership and specifically with cooperation with International Criminal Tribunal for former Yugoslavia will be the focus.

The thesis will try to identify the main factors that influence the fulfillment of this specific membership condition, and how they facilitate or debilitate the process of the fulfillment of conditions. The main question is which factors hamper or facilitate compliance with political conditionality and how the variation of the compliance record between the states and within the same states during different time periods can be explained. The research will use rationalist arguments, where actors will be studied in

⁵ Judith G. Kelley, *Ethnic Politics in Europe: The Power of Norms and Incentives*, (Princeton: Princeton University Press: 2004), 10.

⁶ Hans Peter Schmitz and Katrin Sell, “International factors in processes of political democratization: towards a theoretical integration” in Grugel Jean (ed.), *Democracy without borders: transnationalization and conditionality in new democracies*, (London: Routledge, 1999), 33.

terms of how they react to external pressures in light of their interests in the domestic political arena.

1.2 Evolution of EU relations with former Yugoslav republics

The EU started using conditionality after the end of the cold war. When it began to be used in 1989, conditionality was not seen as a legal instrument.⁷ Trade and cooperation agreements were used to promote human rights. Smith emphasizes that conditionality developed first and to the highest extent in relation with Central and Eastern Europe countries (CEEC) in the post-1990 period. By applying conditionality, the European Community (EC) hoped to ensure reform in these countries in order to establish long-term stability in the region. However, in 1992, the Council officially decided to include in the agreements with third countries “a clause permitting the suspension of the agreement if human rights and democratic principles are not respected.”⁸ All agreements with the CEEC and the partnership agreements with the former Soviet republics contain this clause.

Breaking off relations that have already been established, which is a form of negative conditionality, seems to be difficult for the EU. No external agreement has been suspended explicitly on the grounds of human rights, although in the framework of the UN sanctions have been imposed.⁹ Usually, agreement is upheld whenever possible and consultations are organized before taking any action. Complete suspension of ongoing projects is rare. Humanitarian aid and aid for non-governmental projects are usually not

⁷Karen E. Smith, “The Use of Political Conditionality in the EU’s Relations with Third Countries: How Effective?”, European University Institute, Political and Social Sciences Department, *EUI Working Papers* SPS, no. 97/7, 10.

⁸ *Ibid.*, 14.

⁹ *Ibid.*, 29.

suspended.¹⁰ In addition, Smith points out that negative measures are not always effective because if there are no relations with a state there can be no influence by the EU. Furthermore, in the case of the CEEC it was feared that cutting help might have destabilized fragile democracies and initiated reforms, thus leading to more problems for the EU than if the support continued.¹¹

As said above, after the disintegration of the Soviet Union, the countries of the EU quickly reached agreements with the countries of Central Europe.¹² All of these countries are now full members of the EU. The remaining countries that expressed intention to join the EU are the countries of former Yugoslavia, then in the process of gaining their independence through a violent conflict. As a result, these countries were excluded from the process of signing the European Agreement. Before the disintegration, during the 1970s the EC developed individual relations with Yugoslavia, which showed that the EC would extend benefits to the countries of Eastern Europe for their independent foreign policies.¹³ The starting point of the institutional relations between the EEC and the Socialist Federal Republic of Yugoslavia (SFRY) was the Cooperation Agreement signed in Belgrade on April 1, 1980.¹⁴ This agreement was an outcome of long negotiations after the signing of the so-called Belgrade Declaration in 1976, in which the Community expressed its determination to support independence and integrity of the SFRY and its wish to institutionalize relations with the EEC.¹⁵ Yugoslavia was

¹⁰ Ibid., 30.

¹¹ Ibid., 35.

¹² "EU Enlargement: a historic opportunity" 26 March 2001
<<http://www.europa.eu.int/comm/enlargement/intro/index.htm>>

¹³ Karen E. Smith, *The Making of EU Foreign Policy the Case of Eastern Europe*, (London: Macmillan, 1999), 29.

¹⁴ Jelica Minic (eds.), *EU enlargement: Yugoslavia and the Balkans*, European Movement in Serbia, 1997, 140.

¹⁵ Ibid., 141.

regarded as a developing country and as such had preferential treatment in terms of access to the Community's market.¹⁶

In December 1989, Yugoslavia was among the four countries that were considered for aid and it became the recipient of it in July 1990.¹⁷ In September of the same year, Yugoslavia became beneficiary of the PHARE program.¹⁸ The government of SFRY had a vision of the relations with the EC, planning to sign an association agreement with the EC and a Free Trade Agreement with EFTA.¹⁹ However, successful co-operation between Yugoslavia and the EC was interrupted by the break-up of the country. The Cooperation agreement had a provision by which it could have been terminated by either party upon notice. This notice expired in 1992 and therefore the agreement could not be reactivated.²⁰ As a result, the former SFRY republics had to start their relations with the EU once more.

After the signing of the Dayton Peace Agreement in 1995, the EU implemented several policies and programs in the SEE region.²¹ These include the Royaumont Process (1996), Regional Approach (1997), Stabilization and Association Process (SAP) and Stability Pact (1999). The first one aimed at implementing the Dayton Peace Agreements and its focus was regional projects connected with civil society, culture and human rights. In 1997, in the framework of the Regional Approach, the EC General Affairs Council decided on economic and political conditionality as pre-conditions for the development of bilateral relations between the EU and Albania, Bosnia and Herzegovina, Croatia,

¹⁶ Ibid., 142.

¹⁷ Smith, *The Making of the EU Foreign Policy the Case of Eastern Europe*, 68.

¹⁸ Ibid., 71.

¹⁹ Minic, *EU enlargement: Yugoslavia and the Balkans*, 144

²⁰ Ibid.

²¹ "Building on the Model of European Integration" 26 March 2001 available at: http://www.europa.eu.int/comm/external_relations/see/region/europe_integration.pdf

FRY²² and FYROM²³. Stability Pact was an EU initiative in June 1999. It was not a direct EU instrument but was supported by the EU, and aimed to bring peace, stability and development to the region. It links the EU, Russia, the US, Japan, SEE countries as well as international and regional organizations and international financial institutions.

SAP was a new framework for the relations between the EU and South Eastern Europe or what was later called Western Balkans (Albania and all the former Yugoslav republics excluding Slovenia). SAP offers Albania, Bosnia and Herzegovina, Croatia, FRY and FYROM the possibility of joining the EU and this approach is adapted to individual circumstances of each country. This program marks a historic turning point in the relations of the EU and the five countries.²⁴ The approach is tailored to fit each country, and each will progress individually at its own speed regardless of the progress of others. This will be a contractual arrangement offering clear possibilities for the EU membership provided the criteria are met. In order to achieve peace, security and economic development in the region, which is the ultimate goal of the process, specific policies will be used. These include asymmetric trade liberalization, economic and financial assistance, help in refugee problems, building civil society and strengthening democracy and co-operation in justice and home affairs.

SAP conditionality was based on the Council conclusion on the application of conditionality with a view to develop a coherent strategy for relations with the countries

²² FRY-Federal Republic of Yugoslavia was created in 1992 and was a federation of Serbia and Montenegro. In 2003, it changed the name to Serbia and Montenegro and in June 2006 the two countries became independent after the referendum on independence in Montenegro. The referendum was envisaged in the Belgrade Agreement which redefined the relations between the two republics and was signed with the support of the EU.

²³ FYROM –Former Yugoslav Republic of Macedonia

²⁴ “Road Map to Europe: Stabilization and Association Process” 26 March 2001 available at: http://www.europa.eu.int/comm/external_relations/see/region/road_map_to%20_europe.pdf

of the southeastern European region, which was adopted on 29 April 1997.²⁵ With the goal to promote peace and stability in the region, the EU decided to start bilateral relations with the SEE countries. In order to make their policy transparent and clear, the EU decided on conditionality that would guide the development of relations between individual countries and the EU. These conditions are very clear, and include general conditions that apply to all countries as well as specific conditions for each country.

There is a range of general conditions as well as some specific conditions for each country. Naturally, some countries' obligations stem from the peace agreements made at the conclusion of the war in the former Yugoslavia. Although it is said that each country will progress at its own pace regardless of the progress in other countries, at all stages of the assessment and development of relations regional co-operation will be especially evaluated. Regional co-operation refers to the readiness of the beneficiary country to engage in cross border cooperation and to extend where possible similar advantages to other countries of the region.²⁶ The Council will monitor and evaluate progress made in meeting conditionality requirements, using all mechanisms at its disposal and taking into account reporting from international organizations/bodies in the region such as the UN, the OSCE and the Office of High Representative (OHR) in Bosnia.²⁷ General conditions included: return of refugees and displaced persons, readmission of the persons of the states concerned who are illegally in the EU member states, *compliance with the obligation under the peace agreement, including those related to cooperation with the International Tribunal in bringing war criminals to justice*, a credible commitment to

²⁵ "Council conclusions on the principle of conditionality governing the development of the European Union's relations with certain countries of south-east Europe", Bulletin EU 4 – 1997: 2.2.1 29 April 2001 available at <http://europa.eu.int/avc/coc/pff/bull/en/9704/p202001.htm>

²⁶ *ibid.*

²⁷ *ibid.*

engaged in democratic reforms and to comply with the generally recognized standards of human and minority rights, holding of free and fair elections at reasonable intervals on the basis of universal and equal suffrage of adult citizens by secret ballot, and full and proper implementation of the results of these elections, absence of generally discriminatory treatment and harassment of minorities by public authorities, absence of discriminatory treatment and harassment of independent media, implementation of first steps of economic reform, proven readiness to enter into a good neighborly and cooperative relations with its neighbors, compatibility of Republika Srpska/FRY and Federation/Croatia²⁸ agreements with the Dayton peace agreements.

In addition, for every country there are specific conditions, which by definition refer to specific policies. These conditions for Croatia include compliance with the obligations under the Basic Agreement on eastern Slavonia, opening of the customs order between Croatia and Republika Srpska, evidence of credible pressure on the Bosnian Croats to co-operate in the establishment and functioning of the Federation as well as evidence that the government of Croatia is using its influence in bringing Bosnian Croat war criminals to justice before the International Tribunal.

The then FRY, and later Serbia (after Montenegro proclaimed its independence in 2006) had to exercise credible pressure on Bosnian government in making federal institutions functional as well as in bringing Bosnian Serb war criminals before the ICTY. In addition, it had to start a true dialogue with the Kosovo Albanians on the status of Kosovo within the borders of the FRY.

²⁸ Republika Srpska is a part of Bosnia and Herzegovina, while Federation refers to Federation of Croats and Bosniaks within Bosnia and Herzegovina.

Although in specific requirements, it is stated that Croatia and Serbia should influence Bosnian Croats and Serbs respectively to cooperate with the ICTY; this by no means cancels the obligation of these two countries to cooperate with the Tribunal themselves. Out of all mentioned conditions, this research will focus only on the cooperation with the ICTY as the most important political condition for the two countries set by the EU and on which all EU members have insisted since the start of the SAP and later about the negotiations for EU membership.

1.3 Review of literature

Thus, it became very clear what EU considers conditionality for former Yugoslav countries. However, studying this became much more unclear task for the scholars of EU enlargement. Conditionality broadly defined as political or economic terms set by international organizations or powerful states for multilateral or bilateral mutually beneficial agreements have been applied widely in the post-war world.²⁹ Karen Smith defines political conditionality used in the EU framework as a way to link benefits of membership in the organization to the fulfillment of certain conditions related to protection of human rights and democracy.³⁰ This is actually, what SAP envisaged when it was introduced. However, studying this in a way to explain the process that this created in a country fulfilling these conditions for membership has led to some varying approaches.

Hans Peter Schmitz and Katrin Sell divided literature on democratization and conditionality into structuralist and agent-centered. According to them “research should

²⁹ Olav Stokke (ed.), *Aid and Political Conditionality*, (London: Frank Cass, 1995), 12.

³⁰ Smith, “The Use of Political Conditionality in the EU’s Relations with Third Countries”, 6.

identify more precisely linkages between the ‘inside’ and ‘outside’ of domestic political change supplementing existing studies...International influences such as pressures generated from political conditionality, and internationally based norms and models may actually change the course of domestic politics.”³¹ They maintain that it is important to focus on consolidation phase of democracy, i.e. not only creation of institutions, but also the actual participation of citizens in the democratic processes and exercising their rights-substantive democracy. Furthermore, they argue it is more important to focus on the recipient end, i.e. countries complying with conditions and the behavior of main actors. “Agency-based approaches have challenged the structural paradigm by establishing actors, their preferences, behavior and interactions as the most relevant units of analysis.”³²

They point out that such process of internalizing western norms via domestic agents, took place in Central and Eastern Europe during the process of their EU membership. They view this process as institutionalization that happened through diffusion of democratic norms and values, adaptation in a recipient country and integration of newly democratic countries in international institutions. “However, international factors should not be understood as determining domestic change. The challenge for scholars is to identify the mix in particular case studies.”³³

Geoffrey Pridham agrees with their analysis and adds that he views the EU as not only attractive for economic opportunities but also as an actor to put pressure for the purpose of democracy and integration in the EU institutions. “The EU possesses an

³¹ Schmitz and Sell, “International factors in processes of political democratization: towards a theoretical integration” in Jean Grugel (ed.): *Democracy without borders: transnationalization and conditionality in new democracies*, (London: Routledge, 1999), 24.

³² *Ibid.*, 32.

³³ *Ibid.*, 39.

institutionalized regional framework which readily transmits the kind of influences and pressures that may affect the course of democratization, deliberately or otherwise. It is now seen as the most important external actor in Europe.”³⁴ Conditionality is used by many European and international organizations to specify conditions or pre-conditions for membership or other opportunities but EU membership seems to be the most powerful incentive for new democracies. As Pridham notes the international influence of the EU is enormous, but domestic forces interact with these external pressure, and it is this interaction, which ultimately decides on the outcome of conditionality.

Domestic adaptation to European integration for those who strive to become members of the EU has been done through fulfillment of membership conditions set by the EU. Thus, the recent literature on new members, as Frank Schimmelfennig and Ulrich Sedelmeier have pointed out, “has made ‘conditionality’ the central focus of studying the impact of the EU on domestic change in the CEECs.”³⁵ According to them, the literature can be subdivided, with respect to the focus as follows: focusing on the political or democratic conditionality, focusing on effects and the adoption of the specific EU policy rules and Europeanization of state structures, executives and administrations of CEEC.³⁶ Therefore, this study will be focusing only on political conditionality for EU candidate countries or those aspiring to become EU members.

³⁴ Geoffrey Pridham, “The European Union, democratic conditionality and transnational party linkages: The case of Eastern Europe”, in Grugel Jean (ed.), *Democracy without borders: transnationalization and conditionality in new democracies*, (London: Routledge, 1999), 60.

³⁵ Frank Schimmelfennig and Ulrich Sedelmeier, “Candidate countries and conditionality” in Paolo Graziano and Maarten P.Vink (eds.), *Europeanisation: New research Agendas*, (Palgrave Macmillan, 2007), 88.

³⁶ *Ibid.*, 89.

Here is where general literature on conditionality intersects with Europeanization, broadly understood as “the domestic adaptation to European regional integration.”³⁷ Some scholars maintain that the promise of the EU membership is the single most important factor in domestic change, while others contend that domestic politics is more decisive. Similarly, the research is divided into institutionalist and agent-based, though most of the literature is based on the neo-institutionalist thinking.³⁸ International relations literature offers institutionalist explanation of Europeanization in member states as two different mechanisms: rationalist and constructivist. One stresses individual utility calculations - the 'logic of consequentiality' in understanding Europeanization effect. The other refers to the 'logic of appropriateness' in explaining patterns of national reaction to European integration.³⁹ Below some of the approaches to the study of EU conditionality will be briefly outlined.

This research will mostly focus on utility calculation in analyzing EU conditionality. Different authors have various conclusions as to whether the EU succeeded in pushing through certain reforms in candidate and potential candidate countries using membership as an incentive. Heather Grabbe, analyzing Europeanization through conditionality in the CEEC, concluded that the EU did not use potentials effectively to shape the public policy in the candidate countries due to “the inconsistency and lack of precision in the Union’s membership criteria.”⁴⁰ However, she concludes that the accession process had a long term impact because it embedded ‘Europeanization’

³⁷ Paolo Graziano and Maarten P. Vink (eds), *Europeanisation: New research Agendas*, (Palgrave Macmillan, 2007), 7.

³⁸ Klaus H. Goetz and Simon Hix, “Europeanized Politics? European integration and National Political System”, *West European Politics*, Special Issue, 23, no. 4, (October 2000): 15.

³⁹ Tanja A. Borzel and Thomas Risse, “When Europe Hits Home: Europeanization and Domestic Change”, *European Integration online Papers* (EIoP), 4, no. 15, (2000), 2.

⁴⁰ Heather Grabbe, *The EU’s Transformative Power. Europeanization Through Conditionality in Central and Eastern Europe*, (Palgrave Macmillan, 2006), xi

processes in the candidate countries.”⁴¹ Grabbe, identifies three phases of the relationship between the EU and the applicants from the Central and Eastern Europe: firstly, the post 1989 trade and aid programs, secondly, the Copenhagen criteria culminating in the Opinion (avis) of the commission in 1997, and finally the Accession Partnership from 1998-2002.⁴²

She claims that the content of the Accession Partnerships was in line with three interest spheres of the member states: the shape of political and economic system desired by the EU, avoiding long transition periods on the CEE side and acceleration of activities related to nuclear safety and border controls.⁴³

What was the novelty in the relations between the EU and the candidates was “the addition of the suspension clause to all Europe Agreements concluded after May 1992 that linked trade and cooperation agreements to five conditions: rule of law human rights, a multi party system, free and fair elections, and a market economy”.⁴⁴ The Copenhagen criteria further focused on these conditions attempting to minimize the possibility of new entrants being unstable or unfit to take on the pressures from the EU market forces. In 1997 when the Commission issued the first opinion on the progress of integration, the first country to which this suspension clause was applied was Slovakia. Moreover, it was suspended on political grounds.⁴⁵ Although Grabbe points out that it is more difficult to stop the process of integration once the country started it, it is easier for the EU to prevent

⁴¹ Ibid.

⁴² Ibid., 7.

⁴³ Ibid, 30,31.

⁴⁴ Ibid., 9.

⁴⁵ Ibid., 14.

a country from joining the process, as it did to Croatia and Yugoslavia during the 1990s.⁴⁶

Grabbe criticizes the ‘moving target conditionality’ stating that there was no clear and definite conditionality followed by a certain benefit but it was a process that continuously evolved. She especially criticizes the insistence on the CEEC to fully implement the *acquis* when “a senior Commission official, was widely reported to have commented in 1993, that no member-state had implemented more than 80% of the *acquis*.”⁴⁷ In conclusion of her analysis, Grabbe underlines several factors on the part of both EU and CEE that influenced the EU impact on accessing countries. Diffuseness of influence, and uncertainty were the problems on the part of the EU, and institutional capacity, political salience of the issue, and macro strategy of adaptation to the EU on the part of the CEE.⁴⁸

James Hughes, Gwendolyn Sasse and Claire Gordon challenge the widely accepted view of conditionality as being “a powerful incentive and disciplining structure for the CEECs.”⁴⁹ They advocate that if this is true, then it should be possible to trace causal relationships between conditionality and the outcomes in target countries by looking at policies, institutional adjustment or normative change. If this is not possible to establish, then they claim conditionality could be just a myth. Their main argument is that conditionality is not completely understood because it is seen as “a narrowly positivist framework whereby EU conditionality is seen as a formal instrument of the transposition

⁴⁶ Ibid., 88.

⁴⁷ Ibid., 33.

⁴⁸ Ibid., 90.

⁴⁹ James Hughes, Gwendolyn Sasse and Claire Gordon, *Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe, The Myth of conditionality*, (Palgrave, 2004),2.

of the EU's rules, norms and institutional templates to the CEECs."⁵⁰ According to the authors, there should be a wider definition of EU conditionality which, seen as a process and including formal requirements set by the EU as well as "the informal pressures arising from the behavior and perceptions of actors engaged in the political process, offers a deeper understanding of the enlargement process as a dynamic interaction between international incentives and rules and domestic transition factors."⁵¹ Their analysis showed that conditionality was not clearly defined and that there were inconsistencies in its application by the Commission; thus, they were unable to make clear causal links between conditionality and outcomes of the CEEC. Moreover, they conclude "domestic institutional choices made during the early transition period outweigh and actually constrain the importance of external factor during enlargement."⁵²

On the contrary, Judith G. Kelly, in her analysis of the role of the EU for the aspiring EU members' adoption of policies on ethnic issues, argues that European institutions significantly influenced these policies. In her analysis, she identifies two methods international institutions use to influence state behavior: one is straight membership conditionality and the other is normative pressure.⁵³ The first refers to the states as maximizing their preferences in response to incentives of sanctions by the international actors. The second refers to the socialization processes whereby "external actors do not link any concrete incentives of behavior but rely solely on the use of norms

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid., 8.

⁵³ Judith G. Kelly, *Ethnic Politics In Europe: The power of Norms and Incentives*, (Princeton: Princeton University Press, 2004), 7.

to persuade, shame or praise actors into changing their policies.”⁵⁴ The tools related to these two international mechanisms are as follows: as for the normative pressure, direct official statements and declarations, guidance and argumentation in written reports, missions in the field/ad hoc visits, legal experts teams, providing treaties and recommendations, twinning, and as for conditionality, gate-keeping, benchmarking and monitoring, opening of negotiations.

Kelly lists numerous studies on sanctions, aid conditionality that produce different results, some criticize approach for moral hazard, lack of ownership ineffectiveness, and slowness, while others conclude the success of conditionality and sanctions.⁵⁵ Although, aid conditionality is different from membership conditionality, the effects can vary and a lot of criticism can be similar. There is specific criticism of EU conditionality. The aspects of the practical domestic implications of conditionality are under-researched; as well, she points out that “detailed understanding of how the domestic politics interacts with other factors is therefore important.”⁵⁶

She claims that treating these two outcomes as comparable would be methodologically incorrect, and thus she only focuses on behavior. Therefore, her dependent variable is behavior and in her analysis she makes hypotheses “about when and how institutions can influence domestic policies on ethnic minorities by selectively deploying techniques such as normative pressure, and conditionality, that is, which approaches result in compliance and when.”⁵⁷

⁵⁴ *ibid.*

⁵⁵ *ibid.*, 9

⁵⁶ *Ibid.*, 6.

⁵⁷ *Ibid.*, 31.

In her analysis, Kelly argues that normative pressure alone does not work because even if there is a change in policy preference, change as an outcome of the pressure does not always materialize into policy change, i.e. change of behavior. She claims that in order to change the policy “conditionality is in most cases not only effective but also necessary.”⁵⁸ She defines conditionality as enticement, i.e. the purpose is to make government do something it would not have done otherwise without securing some gain.

She derives three groups of hypotheses⁵⁹. Firstly, the engagement hypotheses: institutional engagement improves policy outcomes. Secondly, the strategy hypotheses: alone, normative pressure tends to fail; conditionality combined with normative pressure enhances the likelihood of success; the effectiveness of conditionality depends on its credibility; gradual incentives and mechanism for admission build credibility, add levers, and subsequently increase the effectiveness of membership incentives. Thirdly, the domestic hypotheses: increased domestic opposition decreases the probability of compatible outcomes and may even hinder institutional efforts. This happens when a political group in the parliament increases opposition, the parliament has strong nationalist preferences or firm position on an issue; corruption and personal gain are more important for domestic leadership than democratic norms.

Her qualitative and quantitative analysis concluded that conditionality, as she put it, ‘did most of the heavy lifting’, though the results are not conclusive whether conditionality would have worked in isolation from normative pressures.⁶⁰ With regards to the domestic aspect, her evidence shows that “while domestic opposition clearly did decrease the effectiveness of institutional involvement as hypothesized, the international

⁵⁸ Ibid., 39.

⁵⁹ Ibid., 52.

⁶⁰ Ibid, 182.

institutions could, to a surprisingly great extent, use membership incentives to override strong domestic constraints.⁶¹ Another relevant factor that she identifies is presence or absence of a strong authoritarian leader. In addition, she argues that the ideal situation is when a target country has assurances, i.e. believes that membership is a credible promise but likewise does not take it for granted. She argues that socialization worked only when opposition was weak and when no major domestic adjustments were necessary. Probably the most important conclusion she draws is that “while domestic opposition does impede the effect of positive incentives, when membership conditionality is very attractive, as in the European case, politicians are willing to compromise on even quite controversial issues.”⁶² Thus, unlike Hughes, Sasse and Gordon, Kelley shows that conditionality outweighs the domestic factors.

Similar to Kelley’s factors and questions, Frank Schimmelfennig uses the rationalist approach to explain international socialization of Central and Eastern Europe towards liberal human rights and democracy norms.⁶³ Socialization is seen in a process of reinforcement, and depends on the balance between the international and domestic costs and benefits of compliance over time. Socialization, according to this approach, varies according to party constellations in target countries. The article concludes that conditionality has been successful in countries with liberal and mixed party constellations and has failed in anti-liberal regimes. Moreover, it asserts that EU and NATO conditionality was necessary condition for sustained compliance in those CEE countries

⁶¹ Ibid., 183.

⁶² Ibid., 189.

⁶³ Frank Schimmelfennig, “Strategic Calculation and International Socialization: Membership Incentives, Party Constellations and Sustained Compliance in Central and Eastern Europe”, *International Organization* 59, (Fall 2005): 827-860.

that initially violated liberal norms. Thus, again the weight goes to EU conditionality rather than domestic factors.

Schimmelfennig expanded his research in a joint project with Stefan Engert and Heiko Knobel. They ask questions such as: how and when western organizations had an impact on the transformation of Europe, why they were successful in some and unsuccessful in other countries. They use ‘international socialization’ to try to answer these questions and they define it as “a process in which states are induced to adopt the constitutive rules of an international community.”⁶⁴ They see Western organizations as socializing factors and they analyze them in light of rationalist – socialist institutionalist debate. They sum up their position as follows “...international socialization in Europe is a formally institutionalized process carried out by international organizations and aimed at expanding the liberal core values and norms of the Western international community.”⁶⁵ In this sense, they hold that this is in line with the sociological institutionalist approach to international socialization. However, they underscore that all actors “...both socialization agencies and their target states- act strategically on the basis of individual political cost-benefit calculations.”⁶⁶

Their central socialization mechanism is reinforcement where a state is rewarded if it adopts certain community norms or punished if it does not. Here all organizations use the capabilities they have to implement these. They claim that EU and NATO choose reinforcement by reward, i.e. conditionality. This means that there is an incentive to fulfill the conditions in order to become a member of the organization, which is the

⁶⁴ Frank Schimmelfennig, Stefan Engert and Heiko Knobel, *International Socialisation in Europe: European Organizations, Political Conditionality and Democratic change* (Palgrave, 2006), 2.

⁶⁵ *Ibid.*, 6.

⁶⁶ *Ibid.*

reward. If there is no fulfillment, there is no reward, but no punishment either. They distinguish two other mechanisms, reinforcement by punishment and reinforcement by support, the former including punishing non-compliance and the later additional assistance to help target state fulfill conditions. For the authors, reinforcement by reward is the main mechanism and because “the Western international community’s constitutive rules mainly consist in liberal *political* norms, the corresponding strategy was *political conditionality*.”⁶⁷

Therefore, the main question they are answering in their work is under which conditions international socialization is effective and their analysis shows that “*credible* EU (and for some countries, NATO) *membership incentives* and *low domestic political adaptation costs* are individually necessary and jointly sufficient conditions of compliance.”⁶⁸

In terms of adaptation costs, they identify party constellation as the crucial factor in forming a government, taking into account electoral volatility. They divide party constellation into three kinds: liberal, anti-liberal and mixed. In the first case, the socialization process is quick and relatively easy as the party constellation already endorses the norms that are required. In the anti-liberal party constellation, there is no socialization as the party constellation favors nationalist ideologies and authoritarian practices. The one they find most interesting is the mixed party constellation, where there is a conflict in the party constellation; thereby, sometimes the pro- reform forces win, and at other times the conservatives win, leading a country in a stop-and-go cycle in terms of political conditionality. They claim that political conditionality has had the highest

⁶⁷ Ibid., 7.

⁶⁸ Ibid., 10.

impact in such countries. In short, they try to explain “the variation in the constellation of major parties among the target states that produces the uneven socialization process.”⁶⁹

Similar to Schimmelfennig’s approach is that of Milada Anna Vachudova who, in her study of the EU influence on national political systems of the new members, asks why ruling elites in liberal and illiberal countries in the CEE reacted differently to the EU incentives for membership. She describes liberal democracy as “a political system where state institutions and democratically elected rulers respected juridical limits on their powers and the political liberties of all citizens. They uphold the rule of law, a separation of power and boundaries between the state and the economy. They also uphold basic liberties, such as speech, assembly, religion, and property.”⁷⁰

Her main argument in the analysis of six CEEC in the post 1989 period is that the quality of political competition at the time of the regime change determines whether a country initiates liberal or illiberal model of political change. She tries to show “how the absence of political competition creates opportunities for ruling elites to concentrate political power and extract rents over time and across countries.”⁷¹ She claims that the single most important variable was the existence of the opposition to the communist regime, which determined the quality of the political competition. “The development of liberal democracy is not simply a function of having liberal democrats on hand in 1989- it is a function of an open competitive political arena.”⁷² Vachudova prefers political elite explanation to institutional explanation for the post communist transition, i.e. it is agent-based. Her analysis shows that Polish and Hungarian communists transformed because

⁶⁹ Ibid.

⁷⁰ Milada Anna Vachudova, *Europe Undivided: Democracy, Leverage and Integration After Communism*, (Oxford: Oxford University Press, 2005), p. 3.

⁷¹ Ibid., 5

⁷² Ibid., 21.

they were challenged by the strong opposition and thus they started internal reforms while becoming open to talk to society already during 1980s. On the contrary, Romania, Bulgaria and Slovakia followed what she calls illiberal pattern of political change. “They warped democratic institutions, sabotaged economic reform and fostered intolerance in their efforts to concentrate and prolong their power.”⁷³

Looking at the EU’s part of the process, she distinguishes two types of EU leverage. One is passive, i.e. incentive of potential membership as such, and the other is active EU leverage concrete conditionality used in the accession process.⁷⁴ Her answer to the posed question as to why ruling elites responded differently to EU incentives for membership is that for some elites the costs of compliance were much higher than for others. The costs to the elites were different depending on “their use of restricted political competition, economic corruption and ethnic nationalism to win and keep power.”⁷⁵

In terms of active leverage of the EU, Vachudova claims that what caused the changes in the CEEC was the quality of political competition and the EU’s active leverage, i.e. conditionality in the accession process.⁷⁶ In her analysis, she tries to show that EU used asymmetric interdependence enforcement and meritocracy to mediate the costs and benefits of membership, and to make compliance desirable, while noncompliance costly. She asserts that active EU leverage was not so effective to change domestic policies of illiberal governments in a direct way but it “did help to create a more competitive political system by working through society to change the information environment and the institutional environment to the advantage of more liberal political

⁷³ Ibid., 38.

⁷⁴ Ibid., 64.

⁷⁵ Ibid., 72.

⁷⁶ Ibid., 106.

forces.”⁷⁷ Thus she contends that the asymmetric interdependence gave more credibility to the EU when it used threat of exclusion either against illiberal states as not to allow them to start accession process or against liberal states as not to allow them to proceed further with the accession if they were lagging behind with implementing reforms in certain policies.

In short, she argues that EU membership incentive was crucial for the target states to make more difficult changes, which was also in line with the domestic situation in target countries where ‘the benefits of joining outweigh the costs.’⁷⁸ However, she does point out several potentially negative effects of the accession process. These are imposition of the foreign rules, undermining political competition in the domestic context and giving more power to the executive apparatus over the parliaments in the domestic arena. She warns that this might have some repercussions for the development of democracy in Eastern Europe.

Thus, we can derive several points from the above summary of the literature on EU conditionality. Firstly, mentioned authors identify EU conditionality and domestic factors as important for meeting the criteria for membership. Secondly, the literature could be divided into constructivist and rationalist but most of the approaches are rationalist. Thirdly, institutionalist and agent-centered approaches can be distinguished. Fourthly, though most of the studies try to cover both the EU side and the domestic side of the target countries literature can be divided into one that focuses on EU rules and setting conditions, and the other that is more focused on domestic processes in target countries as a response to the conditionality. The main questions are behavior of the

⁷⁷ Ibid., 107.

⁷⁸ Ibid., 225.

target states, compliance or reasons for the difference as to why some countries respond better to the EU incentives than others. The main factors identified by the authors in their analysis are summarized in Table 1 below.

Table 1: factors that influence compliance

EU	Target countries
-diffuseness of influence	-institutional capabilities
-uncertainty	-political salience
-inconsistency	-macro strategy of adaptation
-moving target conditionality	-strict policy preferences
-credibility	-nationalist/liberal influence
-(un)clear benefits	-authoritarian/democratic government
-incentives	-corruption/personal gains/costs
-legitimacy	-identification
	-resonance
	-Party constellation
	-electoral volatility
	-quality of political competition at a time of regime change

Note: Summary of the reviewed literature

In short, the above review of the literature showed that there are a growing number of studies on the EU influence on domestic politics of new members and applicant states. This is even more interesting to explore in the cases of potential EU member states and especially how domestic factors matter and which ones. Therefore, this research tries to combine some elements of the above mentioned literature and attempts to contribute by expanding its scope “beyond the existing EU member states [and thus help better understanding of] “the process of transformation in Eastern Europe and the ongoing accessions.”⁷⁹

⁷⁹ Dimitris. G. Papadimitrou, “Exporting Europeanization: EU enlargement, the twinning exercise and administrative reform in Eastern Europe”, Paper for the ECPR Joint Sessions of Workshops, Turin, 22-27 March 2002, 2.

The thesis will argue that, unlike the mentioned criticism above, for the remaining potential EU candidates, i.e. countries of the former Yugoslavia, the conditions were made very clearly and precisely and the benefit of membership was stated very early on, leaving the domestic actors in no doubt on what they should do and what the gain would be. Thus, the thesis will argue that the EU conditionality was a crucial incentive for certain policy moves of the target countries, which is in accordance with the analyses by Kelley, Schimmelfennig, and Vachudova. However, the thesis will challenge the dichotomy of liberal/illiberal governments as a crucial factor for responding to EU incentives. As Nicole Lindstrom rightly points out the focus on compliance in such studies marginalizes the issues such as “the diversity of the domestic contexts, the legitimacy of the EU accession process and the sustainability of reforms.”⁸⁰ Similarly, discussing regionalization in new members Slovakia and Czech Republic, Martin Brusis argues that regionalization may have been driven by EU conditionality in a sense that it altered the opportunity structure faced by domestic actors, but that its role was complementary rather than decisive.⁸¹

That is why this research, in addition to the explanatory factors mentioned above, will use some other factors mentioned in literature that focused more on domestic dynamics and political process within a state. Hussein Kassim, B. G. Peters and Vincent Wright, developed a set of factors, i.e. variables that influence the way in which a country co-operates with the EU, or amends, modifies or changes its existing administrative and

⁸⁰ Nicole Lindstrom, “Europeanisation Travels East: Five Conceptual Challenges and Responses”, paper presented at the Central and East European International Studies Association Meeting, Wroclaw Poland, May 2007, 2.

⁸¹ Martin Brusis, “The Instrumental Use of European Union Conditionality Regionalization in the Czech Republic and Slovakia”, *East European Politics and Societies*, vol.19, no.2: 297-316.

government structures.⁸² These factors include the policy style, the conception of co-operation, the political opportunity structure and the administrative opportunity structure. For the purpose of this study, political opportunity structure and administrative opportunity structure are regarded as the most relevant. The former refers to the distribution of power among different parties in terms of the policy preferences, i.e. it refers to party system and interest groups. The latter refers to the inertia within administrative and bureaucratic processes, i.e. how the things are done through the political system.

Another useful theory for explaining the internal dynamics within a target country is Tsebelis' theory on veto players within political institutions.⁸³ The main question here is who controls political power, i.e. where status quo is. Actors that have political power interplay in a way that leads to change of policy or not.

1.4 Explanatory framework

As the SAP was being implemented, these conditions were followed very strictly by the EU and especially the cooperation with the International Criminal Tribunal for the Former Yugoslavia (the ICTY) became the single most important condition for these countries in order to be able to sign accession treaties with the EU. Naturally, this does not mean that other conditions related to democratic principles and economic requirements are not important it just means that even if all other conditions are met and this one is not the progress towards EU membership would be difficult if not impossible.

⁸² Hussein Kassim, B. Guy Peters, Vincent Wright, *The National Coordination of EU Policy: The Domestic Level*, (Oxford University Press, 2000).

⁸³ George Tsebelis, *Veto Players: How Political Institutions Work*, (New York: Russel Sage foundations, 2002).

As mentioned above, the dependent variable is defined as the compliance with EU conditionality, and more specifically cooperation with the ICTY. When there is cooperation with the ICTY and upgrading of the level of institutional relations between the EU and the country in question, the outcome of cooperation will be defined as *full*. When there is no initiation of institutional relations with the country in question, the outcome will be defined as *no cooperation*. The process of moving from one type of cooperation to another is not evolutionary but could be reversible. That is why cooperation is not constant but is changing between these two extreme positions on the continuum.

Roughly, the variation of the variable can be defined as follows. *Full cooperation* is unconditional co-operation with all the ICTY demands including transfer of the indicted, access to witnesses and documentation, regular communication with the ICTY, as well as creating opportunities for domestic courts to impartially process war crimes cases. *No cooperation* of the ICTY means complete lack of co-operation, no formal or any other communication with the tribunal and disregard of any requests made by the Tribunal. The consequence of this would of course be lack of compliance with the EU and stagnation in the institutional relationship.

Thus, the main independent variable is EU adjustment pressure, operationalised as EU conditionality in specific issue area, i.e. cooperation with International Criminal Tribunal for former Yugoslavia -the ICTY.

EU approach on conditionality is not based on sanctions but is more of a gradual 'ladder climbing' approach, whereby the country is promoted into a higher level of institutional relationship with the EU if it meets certain criteria. Each level of

institutionalization of relations leads to political and financial rewards, which increase with each level of institutional relations. The speed is dependent on the determination of the country in question to fulfill the conditions. EU can encourage the progress from one level of relations to another by favorably assessing the fulfillment of conditions, if the country in question is showing genuine efforts to meet the criteria set. This approval by the EU and prospect of moving a level up the ladder can be very powerful incentive in the process of the fulfillment of the criteria.

In case of non-fulfillment, there is no promotion of relationship, but there are no sanctions either. Only in cases of directly indicted war criminals, the EU imposed sanctions in the form of ban on entering the EU, and freezing financial assets of these individuals in banks of EU member countries. In this sense, the role of external pressures and rewards by the EU is crucial. The *size of rewards* needs to be taken into account, i.e. whether the fulfillment of conditions is directly linked to the reward of membership. Similarly, on the side of potential candidate countries, the *timing of the rewards*, i.e. between the fulfilling of the condition and getting the reward is crucial. The incumbent government will not cooperate fully if the rewards are not seen during its own time in office. Thus, the size of rewards is marked as *negative* if there is no clear connection between fulfillment of the conditions and the reward of membership, and *positive* if there is close connection between fulfillment of condition and the reward of membership. Likewise, if the time between the fulfillment of the condition and the materialization of the reward is long the value of the factor is marked negative, and in the opposite case, it is *positive*. In addition, for both of these external pressures the (dis)agreement on the part of the EU, among the members, is sometimes crucial, as well as between EU and the

ICTY. Giving mixed signals to a government which is trying to meet the conditions can sometimes influence its efficiency in compliance.

Hypotheses: the stronger the connection between fulfilling conditions and the reward of membership, the higher likelihood for the government to cooperate fully; the greater the reward the higher likelihood for the government to cooperate fully; the closer the reward the higher likelihood for the government to cooperate fully.

The above pressures and incentives of the EU are in constant interplay with the domestic mediating factors. The explanatory factors that are identified as relevant for the cooperation are as follows: threat of incumbent government losing power, government attitudes to EU/the ICTY, institutional obstacles and partisan veto players. The number of veto players is determined by the way in which the power is controlled, i.e. who controls the power and what status quo (current policy).

No threat of incumbent government losing power, i.e. possibility of losing elections is also very important factor in terms of cooperation. The value is defined as *negative* if there is possibility to lose power to another party/coalition that supports non-cooperation with the ICTY. The value of this factor is seen as *positive* if there is no threat that the government would lose power to another party/coalition based on their positive view on cooperation with the ICTY.

Hypotheses: the lower the public support for cooperation with the ICTY the lower the likelihood to cooperate fully; the lower the public support for the EU membership the lower the likelihood to cooperate fully; the stronger the Euro skeptic bloc and/or anti-the ICTY bloc in the parliament the lower likelihood to cooperate fully.

Attitudes towards the ICTY/EU refers to the position of the government if it is unified, or of the strongest fraction of the government or state apparatus usually personified in the person of the prime minister or the president. It can be ideological position of the party leading the government or the leader, based on the party program or other positions embedded in the party values. Thus, when there are no negative attitudes towards the ICTY/EU in the government the value is marked as *positive*. It is *negative* in situations when there are negative attitudes towards the ICTY/EU.

Hypotheses: the stronger the negative attitudes of the government towards the ICTY the lower likelihood to cooperate fully; the stronger the negative attitudes of the government towards the EU the lower likelihood to cooperate fully.

Partisan veto players refer to the partisan positions in the government or parliament or other activities of the parties in mobilizing the electorate, which are against the cooperation with the ICTY, which are related to the attitudes mentioned above. It is especially important to note that they can be within the same coalition government and are not necessarily exclusive only to opposition parties. Partisan veto players refer to the partisan positions and actions in the parliament and government but also to the positions of all individuals within the state apparatus that are especially in a position to influence cooperation such as: personnel in ministries, courts, special agencies and bodies within the whole national administration from top to local level which have part in cooperation with the ICTY. The values of this factor are also described as low or high. *Negative*, describing situation where there are multiple veto players that either completely bloc or slow down compliance; and *positive* when there are no veto players or insignificant veto players that cannot bloc the implementation. Here it is important to note that there are

differences in the veto players according to the situation in the domestic politics, i.e. whether there is coalition government or a strong one party government, who holds the most important ministerial position and whether there is centralization of the system or fragmentation of the system. This means that if there is coalition government and some government members have differing opinion on the cooperation, then partisan veto points could come from the government itself and

Lack of institutional obstacles: parliaments, government, individual offices such as Prime Ministers, Presidents, and influential ministers directly interested in a certain policy change, in this case compliance with the ICTY institutional obstacles are seen as constitutional obstacles or non-existence of legislation that influences co-operation directly or indirectly, or non-existence of operational bodies necessary for cooperation. If there are constitutional provisions, legislation or necessary operational bodies for cooperation the value of this factor is defined as *positive* and in a situation where there are institutional obstacles the value of the factor is described as *negative*. Institutional obstacles also refer to the fragmentation of power between different ministries involved in the process of cooperation (e.g. Ministry of Justice Ministry of Foreign Affairs, Ministry of Interior including police forces, secret services) due to their different procedures of operation. Fragmentation of the system allows for shifting the blame to different departments, or just less efficiency in fulfilling the obligations. Naturally, in order to change certain operational procedures, constitution or to pass a new law partisan veto players are important, thus making these two factors interrelated.

Hypotheses: the higher the number of institutional obstacles, the lower the likelihood to cooperate fully; the higher number of the crucial positions in cooperation

with the ICTY is held by anti-the ICTY parties, the lower the likelihood to change institutional obstacles and therefore to cooperate fully; the more fragmented the decision making process on the ICTY cooperation, the lower likelihood to cooperate fully.

Hypothesized outcome of cooperation for the mentioned factors can be summarized as follows:

- the stronger the connection between fulfilling conditions and the reward of membership, the higher likelihood for the government to cooperate fully;
- the greater the reward the higher likelihood for the government to cooperate fully;
- the closer the reward the higher likelihood for the government to cooperate fully
- the lower the public support for cooperation with the ICTY the lower the likelihood to cooperate fully;
- the lower the public support for the EU membership the lower the likelihood to cooperate fully;
- the stronger the Euro skeptic bloc and/or anti-the ICTY bloc in the parliament the lower likelihood to cooperate fully
- the stronger the negative attitudes of the government towards the ICTY the lower likelihood to cooperate fully;
- the stronger the negative attitudes towards the EU the lower likelihood to cooperate fully
- the higher the number of institutional obstacles, the lower the likelihood to cooperate fully;
- the higher number of the crucial positions in cooperation with the ICTY is held by anti-the ICTY parties, the lower the likelihood to change institutional obstacles and therefore to cooperate fully;

-the more fragmented the decision making process on the ICTY cooperation, the lower likelihood to cooperate fully.

1.5 Case selection and methodology

As the work is focusing on the specific program EU offered in 1999, the Stabilization and Association Program (SAP), the conditions for all the countries eligible for the program (the former Yugoslav republics, except for Slovenia and Albania) were the same, and were applied consistently. Nevertheless, since the launching of the process, Croatia signed the SAA, applied for the membership and began negotiations in October 2005. On the other hand, despite being offered the same conditions, Serbia lagged behind, and at the moment has still not applied for membership. Why some countries respond to EU incentives while others do not to the same extent seems to be a very interesting question. Therefore, the two countries were chosen to try to explain variation in progress with institutional relations with the EU. Croatia made more accelerated progress towards the EU than Serbia⁸⁴ and thus the cases are trying to address this variation by focusing on domestic factors. Both countries under consideration were given the same conditions, in 1999 when the program was offered to them; both had authoritarian and nationalist regimes and seemed to have followed similar patterns of government change; both countries experienced democratic change in 2000, and had early elections in 2003. It is puzzling that the compliance record is different in different time periods under the seemingly similar constellation of power in domestic politics of the two countries. Why

⁸⁴ During the period that is analyzed here 1993-2008, Serbia was within Federal Republic of Yugoslavia (1992-2003), then Union of Serbia and Montenegro (2003-2006) before it became Republic of Serbia after Montenegro decided to leave the union. For the sake of clarity I use only term Serbia because the research focuses only on Serbian government, but the analysis will cover factors and issues within the federation and Union which when they are relevant for the ICTY cooperation.

this is so, and what domestic factors can be accounted for the difference in the speed of the accession processes in the two countries will be explained.

As mentioned above the conditionality used for the purposes of this research will be the conditionality set especially for the countries of the former Yugoslavia in the *Council conclusions on the principle of conditionality governing the development of the European Union's relations with certain countries of southeast Europe* in 1997.⁸⁵ As the emphasis will be on the domestic processes and debates around the fulfillment of the conditions for the membership, the special focus will be put on the ICTY cooperation because the EU made it the most important condition to be fulfilled; as well, it was the most sensitive issue domestically in both countries. Thus, this condition enables tracing domestic processes through national systems of the two countries in the most fruitful way. Moreover, it is one of the most important conditions that the EU has put forth in order to start any negotiations on institutional agreements with these states, which justifies the narrowing down of the research to this specific condition.

The research is comparing Serbia and Croatia between 1993 and 2008 divided in several periods. The beginning year is chosen as the year of the creation of the ICTY in view of the fact that cooperation with the ICTY is the main membership condition under consideration. Each period is marked by the elections, which changed the constellation of power among political actors, which is used to examine if and how this affected cooperation with the ICTY, and EU integration processes in each country. Thus, the periods are divided according to variation in the domestic political constellation of powers. Namely, the first period was characterized by authoritarian governments of

⁸⁵ "Council conclusions on the principle of conditionality governing the development of the European Union's relations with certain countries of southeast Europe", Bulletin EU 4 -1997: 2.2.1 29 April 2001, available at: <http://europa.eu.int/avc.coc/pff/bull/en/9704/p202002.htm>

Franjo Tudjman and Slobodan Milosevic in Croatia and Serbia, respectively. In 2000, both countries had elections that ended these regimes and installed what was termed new democratic governments. In 2003, both had early elections, in 2007 they both had regular elections and in 2008 Serbia had another early election. Therefore, there are seven cases-three periods for both countries plus additional period for Serbia between early elections in 2008 and present. Although Serbia had early elections in 2007, there was no major shift within domestic political constellation of power so that is why the third period for Serbia is 2003-2008. In early elections in 2008 there was a change in government and that is why from 2008 a new period is marked. Croatia however is researched only until end of 2005 because by that time the cooperation with the ICTY was largely finished and the country started negotiations for EU membership.

Each period is marked by one strong personality within the regime either presidents such as for the first period, or prime ministers such as for the following two periods. For the last period for Serbia, Boris Tadic as the president of Serbia is much more influential than the prime minister is. Table 2 gives a list of all the leaders.

Table 2: heads of state/government in Serbia and Croatia 1993-2000

Country/ period	1993-2000	2000-2003	2003-2008	2008-
<i>Croatia</i>	Tudjman	Racan	Sanader	
<i>Serbia</i>	Milosevic	Djindjic	Kostunica	Tadic

Within each period compliance is assessed. Measuring it is not an easy task, especially in terms of this very sensitive condition of cooperation with the ICTY. Thus, the indicator of compliance with EU conditions will be the upgrading of institutional relations between the EU and the country in questions. The reason for upgrading institutional relations in this analysis will be positive assessment of compliance with the

ICTY. Hence, not only EU sources will be used for assessment of compliance but primarily the ICTY reports and reports of other organizations, which followed these issues. In this way it is attempted to show independently the compliance record of the two countries.

It is obvious that these conditions are specific for the countries mentioned, but in all negotiations with respect to the last EU enlargement, there were specific sensitive issues related to each candidate country, such as minority right in the Baltic States to name one example. Choosing highly sensitive issue or 'hard case' for compliance enables better understanding of domestic politics. In this case, the ICTY cooperation will be used to trace domestic processes around the fulfillment of the conditions. The main focus is how a government deals with a potentially sensitive national issue in order to fulfill the EU criteria and become a full member. Therefore, the research is specifically targeting the context of EU membership negotiations and the related conditionality. The research will not deal with conditionality as such, taken in general terms, i.e. aid conditionality, international sanctions and other forms of international institutional pressures. These, although relevant, will not be investigated and emphasis will be put on the EU membership conditionality only.

In order to evaluate compliance and see what factors influence it, the most Tsebelis' veto players theory has been used as an inspiration to identify different types of political organization within the two countries during the mentioned periods. By applying the number of veto players in each given period, we could categorize the periods of time in the two countries as in the Table 3 below.

Table 3: number of veto players based on the system of government

Country/ period	1993-2000	2000-2003	2003-2008	2008-
<i>Croatia</i>	One	Mixed	Mixed	
<i>Serbia</i>	One	Mixed	Many	Many

Note: this is based on the Tsebelis' theory on veto players, see table 4

This was derived from the theory whereby the number of veto players corresponds to the following government constellation of power, and each situation with certain number of veto players leads to a certain outcome in terms of policy change:

Table 4: Types of governments, veto players and how it influences decision-making process⁸⁶

	Veto players	Decisions
One man rule	One	Ad hoc (unstable policy)
United government supported by parliament	Few	Ad hoc (unstable policy)
United government weak support by the parliament	Mixed	Possibly, but not necessarily, incremental change
Fragmented government with comfortable support	Mixed	Possibly, but not necessarily, incremental change
Fragmented government weak support	Many	Status quo/no change/stability

For the cases examined here, because they all start from the policy of no cooperation within both countries, therefore, the change of policy would mean starting cooperation.

It seems much more accurate to divide the political system in this way rather than by means of liberal/illiberal dichotomy used by Schimmelfennig or Vachudova because being liberal does not necessary mean being pro-EU, or supporting all recommendations, or the manner in which the EU suggests implementing certain policies. The outcome of the policy change is dependent on the interplay between the political actors and the constant change of balance of power among them.

⁸⁶ Summarized theory presented in George Tsebelis, *Veto Players: How Political Institutions Work*, (New York: Russel Sage foundations, 2002).

The research is done through a process tracing of the cases of cooperation and non-cooperation with the ICTY. Empirical materials were collected by reviewing newspapers and magazines, government documents, official reports of other national and international organizations, political party manifestos, statements of party leaders and government officials either in hard copies or in electronic sources via the internet. Interviews were conducted with party members, government officials in charge of certain offices relevant for cooperation with the ICTY, EU diplomats, the ICTY representatives as well as representatives of some NGOs that are dealing with monitoring the process of cooperation with the ICTY.

The following issues were specifically addressed. Firstly, which political actors in the government and parliament were for/against a certain decision leading to compliance/non-compliance. Secondly, which party or individuals were holding offices or crucial relevance for the compliance (the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Interior, the Prime Minister's office). Thirdly, what the collective position of a government was. Fourthly, how big parliamentary support was and what implications would there had been if there had been dissenting majority. Finally, what the preferences of the public opinion were. By looking at these specific issues, a decision-making process will be explained in cases of both compliance and non-compliance in particular instances.

In order to assess the existence of institutional obstacles, constitution and relevant laws were reviewed as well as implementation of these through official documents, results of parliamentary votes, statements and interviews, reports of the government and its bodies on the cooperation with the ICTY, reports of international organizations in the

capacity of administration, including EU reports on the progress with the SAP as well as the ICTY reports. Reports of the NGOs working on human rights and conflict regions, such as the ICG, have also been used. In order to assess position of government and parliament i.e. existence of partisan veto players, official sites and documents of these two bodies were used. This also applies for relevant ministries (the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Interior as well as the Prime Minister's office). In addition, the actions of judiciary, i.e. relevant courts, were used where necessary. Statements and media appearances of the actors from all these bodies, involved in the decision-making process, were also used. Party positions were mainly taken from the party manifestos but also from the statements of the leaders and main party officials.

In terms of external influences similar methods of gathering evidence were applied: annual reports of the EU Commission on the progress of the countries in question in the framework of the SAP, and other background documents, decisions of the Council, as well as the debates in the European parliament where relevant. Moreover, when necessary domestic debates in member states were analyzed if they directly influenced the position of the member state in the wider context of the EU external policy. Statements of the officials of the EU were analyzed, as well as academic analyses on the topic, where relevant.

In terms of cost to power, preferences of national electoral bodies were reviewed through the election results but also were assessed according to the public opinion polls on specific questions relating to compliance. Expert analyses were used as well as newspapers statements of international actors, the ICTY reports and indictments that

were directly accusing individuals, and were referring to potential international action in case of non fulfillment of the conditions.

Finally, even though process tracing has been mainly used as a method of analysis, it has not always been possible to show causality. When it is not possible to show causality, comparison of factors and constellation of power among domestic actors before and after certain condition or external incentive will be used to show at least the correlation of some factors with the outcomes.

1.6 Brief overview of chapters

Chapters go along the time periods mentioned above. The first four chapters track Serbia during named period, and the following three chapters do the same in case of Croatia. In general, all chapters identify the main political actors and their relative power on the political stage and especially their positions towards EU and the ICTY. Then, each chapter isolates cases of cooperation and non-cooperation with the ICTY and tries to trace the processes within domestic political structures. The main aim is to explain which factors facilitate or prevent cooperation with the ICTY and thus EU integration process.

The first chapter starts with brief historical note on the disintegration of Yugoslavia, including the creation of the ICTY and evolution of EU policy towards the new countries that emerged from Yugoslavia. This is followed by political and administrative structure in Serbia of Milosevic, i.e. categorization of actors and their positions towards EU/the ICTY. In short, the power grip of Milosevic controlled most of the political and public life leaving not much space for alternative positions while the official stance was one of enmity towards the ICTY as an artificial creation, and consequently not very friendly relations with the EU for its insistence on cooperating

with the tribunal. The chapter also introduces opposition parties and leaders and pinpoints the positions towards EU/the ICTY, despite their limited room to maneuver. The chapter concludes with opinion polls, which are a reflection of a society isolated from the rest of the world, impoverished in economic terms and restricted due to controlled media and ruling regime propaganda. This period saw the lowest level of cooperation with the EU no cooperation with the ICTY.

The second chapter follows Serbia from the 2000 presidential and federal elections, which marked the end of Milosevic and the beginning of democratic government in Serbia. It outlines the problems to overcome institutional obstacles in cooperation with the ICTY due to the complex federal structure and numerous partisan veto players that prevented changing of the rigid laws and regulations. From the international perspective this period saw enormous support from the EU and other international actors towards the new democratic regime in Serbia, which meant that the set conditions were still present but that the rewards were tangible once the conditions were met. The chapter primarily deals with the most important issues related to the ICTY cooperation, the arrest of Milosevic and the issues surrounding the preparation and passing of the law on cooperation with the ICTY. In addition, the chapter mentions other arrest related to the ICTY prosecution. The protest of the Unit for special operations is explained as it is in direct connection with the ICTY cooperation, namely the fear of the members of this Unit that they would be prosecuted before the ICTY. The assassination of the prime minister in 2003 is another turning point in the relations with the EU and the ICTY as it echoes the mood and atmosphere within the society and state structures.

The third chapter follows developments after early elections of 2003 until 2008. There were regular elections in 2007, but the majority of the government ministers were the same as well as the prime minister so, in essence, the constellation of power did not change throughout the period. The balance shifted in 2003 after the assassination of the Prime Minister. The new government, headed by Vojislav Kostunica (DSS) had different position towards the ICTY cooperation and the cooperation with this institution decreased leading also to slower progress towards the EU. The new position meant that they supported only voluntary surrender. On the other hand, the new president of the country was Boris Tadic (DS) from the party of the late Prime Minister, which led to a difficult cohabitation and created lot of obstacles to a coherent policy towards the EU. Due to the fact that there were considerable voluntary surrenders the ICTY did not have major problems with Serbia resulting in a positive assessment of cooperation and Serbia started negotiations with the EU on Stabilization and Association agreement in October 2005. However, this was pending on the cooperation with the ICTY. In May 2006 the EU discontinued negotiations due to the lack of cooperation with the ICTY. After the elections in 2007, and entrance to the government of some DS members, the EU renewed negotiations with Serbia with expectation that it meant changed position towards the EU and the ICTY. This did not eventuate, and as the government coalition became very unstable it led to the new elections in 2008.

The final chapter on Serbia follows the events after the 2008 elections. The balance of power shifted, there was a new prime minister and the government bodies were staffed with a new cadre, which seemed to have led to the arrest of one of the most wanted the ICTY indictees, Radovan Karadzic. This left only two indictees at large,

giving indication that the cooperation with the ICTY is drawing to an end. Still, it is not clear when or if at all these indictees would be brought to justice. This almost froze relations between the EU and Serbia because the Dutch government is refusing to ratify SAA though the Agreement is unilaterally applied by Serbia. The Dutch government is determined that only the arrest of general Mladic, who is indicted for the killing of about 8,000 Muslims in Srebrenica in 1995, will be regarded as full cooperation with the ICTY.

The fifth chapter is the first chapter on Croatia and it starts with a brief look at the war in Croatia in the beginning of 1990s that left a legacy in Croatian politics and on the later position towards the ICTY. Croatia welcomed the creation of the ICTY as a forum to try those who exercised aggression against Croatia, however, when after 1995 the Croats began to be indicted by the Tribunal the cooperation with it became very uneasy. During the repressive regime of Tudjman the position was that there could be no crimes on the side in the war, which was the victim of an aggression. This stance did not change until the death of Tudjman in 1999. Despite its criticism of the ICTY Croatia had debate about it and passed a law on cooperation with it. Tudjman's government always used opportunity to criticize the ICTY for not being efficient in bringing to justice those responsible for aggression against Croatia.

The sixth chapter deals with the post Tudjman period and the first democratic government of Croatia. The new Racan government did not have an easy task to overcome such positions towards the ICTY but the new Croatian Parliament in 2000 passed a declaration that stated that all committed crimes had to be punished regardless of the nationality of the perpetrators. The support of the EU and other international organizations of Croatia was increasing but the new government had to strike a careful

balance between the EU integration aspirations that included cooperation with the ICTY, and not to criminalize the Homeland war which majority of the population regarded very highly. As the pressures from the ICTY increased the opposition in Croatia used it to gain points against the Racan government. Despite significant progress towards institutional relations with the EU, Racan government was losing points with the domestic opposition and the legislation allowing access to documents of the ICTY cases even before the indictees were arrested was seen as a harmful decision by EU diplomats. Croatian government could not push through the ICTY demands to arrest Gotovina and appease domestic opposition. This in addition to growing economic problems led to early elections.

The seventh chapter deals with Croatia after 2003 elections, which saw the return of the reformed HDZ, party of the former president Tudjman. Ripping the benefits of the previous government good work on setting the path towards EU integration, and having no opposition to the right of their political spectrum, the new HDZ headed by Ivo Sanader succeeded in persuading the EU that Croatia was fully cooperating which led to the opening of the negotiations for membership in October 2005. This was confirmed in December 2005 with the arrest of the most wanted Croatian indictee, General Ante Gotovina, who was indicted for the Croatian actions Storm and Flash that saw couple of hundred thousand Serbs leaving Croatia.

1.7 Summary of findings

In the first period 1993-2000 the values for all factors in Serbia were low. There were institutional obstacles, partisan veto players and personal costs for Milosevic's regime. He and some of the top SPS personnel were indicted by the tribunal. There were no

incentives for cooperation with EU and thus hypotheses are confirmed. Even in 1999 when the EU created SAP and offered Serbia to join, ideological position of the Serbian government was not pro-EU and thus did not materialize on these potential rewards. Thus, domestic factors seemed to have been more decisive in terms of cooperation with the ICTY and thus with the EU.

The period 2000-2003 was much more ambiguous. There were numerous institutional obstacles due to the legacy of Milosevic's regime. There were partisan veto players in terms of differences among the coalition government members on how to handle cooperation with the ICTY. There were no personal costs for the individuals but there were potential costs to losing power as Radical party offered alternative, together with SPS, which still had numerous supporters among the public.

Although EU rewards seen through SAA were very clear and the timing was potentially good for the incumbent government, as the fruits of the cooperation would have been seen within their mandate. Institutional and partisan veto points were numerous. There was clear pro-EU policy but cooperation on the ICTY proved to be a bone of contention. President and prime minister had opposing views in how to handle the issue. Despite prime ministers pragmatic views and actions taken towards the cooperation with the ICTY, the position of the ICTY profoundly divided politics and society creating an atmosphere where members of some special military units were manipulated into assassinating the prime minister because they were afraid they would be sent to the tribunal.

During this period cooperation shifted from full to none as the balance of power changed within domestic arena. When the prime minister managed to use special

provision of Serbian constitution to extradite Milosevic, cooperation was full. When other political forces outvoted prime minister and his supporters, cooperation was halfhearted, leading to complete non-cooperation after the assassination. This demonstrates that the positions of the governments shift and they are a mirror of individual and party interests led by different personal gains and also different visions of what is acceptable sacrifice to join the EU. Therefore, institutional obstacles were negative and partisan veto points numerous leading to non-cooperation, which confirms the hypothesis.

Position towards EU and the ICTY were positive but many veto players interfered with the cooperation. The high likelihood of losing power, as the opposition (SRS) was strong limited space for action of the government. In addition, some individuals from the former regime were still in the government bodies and were threatened directly or indirectly by the ICTY indictments. Hence, there was no support for cooperation due to personal and political cost to power, which confirms the hypothesis. The last hypothesis was not confirmed. High incentives by the EU and good timing were supposed to encourage cooperation but it did not happen. Domestic constellation of power tipped the balance towards non-cooperation.

The period 2003-2008, was similar in terms of strong EU incentives, but the positions of the parties in the government were decisive. There was no opposition to the EU but the conditions of the ICTY cooperation were always difficult to fulfill. The position of the government was that only surrenders were acceptable and it demanded equal treatment and reciprocity between Serbia and the ICTY. Thus there were no institutional obstacles but partisan positions were such that there was no real activity in

trying to fulfill the ICTY requirements. This position of trying to bypass the cooperation with the ICTY was openly supported by SPS and SRS, which were vociferous against the ICTY. Though there is still a threat of SRS taking over the power, as they always win the highest number of seats in the parliament, it cannot be said that the position of the government was influenced by this. DSS led by Kostunica has always had uneasy relations with the ICTY and attempted to avoid cooperation with this institution

Therefore, there were no institutional obstacles but within the bodies of the government clear partisan position against the ICTY prevented full cooperation with the ICTY. The army and secret services were still not under civilian control. Hypothesis was again confirmed- because as expected numerous veto players led to no cooperation. Negative position of DSS led government towards the ICTY, and fear of losing support in the parliament enhances by strong position of Radical party, which was also against cooperation, led to non-cooperation, which is again, what was hypothesized.

The last hypothesis was not confirmed because EU incentives did not prevail over domestic positions and distribution of power among domestic political players. The highest reward for the government was in October 2005 when the EU opened the negotiations for SAA, however, that was not enough to overcome domestic resentment towards the ICTY cooperation. This led to discontinuation of the negotiations for SAA. Even after the elections in 2007 when the DS joined government the negotiations for SAA continued it did not prove decisive factor to hold the government together. The new government inherited difficult political veto players and the cooperation with the ICTY did not significantly improve. Many veto players made it impossible for the policy to

change. The stalemate in the domestic political condition led the EU integration process is on a standstill.

The period in Serbia after 2008 seems to have positive values of all mentioned factors. Despite the narrow majority in the parliament the government does not have imminent threat of losing power, except if there is any major conflict with the SPS in the coalition. So far it has not happened but due to the fact that the SPS has not directly supported the extraditions it remains to be seen if the continuation of cooperation with the ICTY creates new problems. Taking into account that Dacia (SPS) as Minister of Interior did not directly object to the extradition of Karadzic, just distanced himself and his ministry as having to do anything with the arrest, it could be concluded that the SPS would offer tacit consent. Public opinion and the majority in the government is for the EU accession, there are no institutional obstacles and the partisan veto players are minimal because the DS controls all ministries relevant for the cooperation, except for the Ministry of Interior. Thus, all, of the hypothesis have been confirmed, at least in the first few months of the government and it remained to be seen if this would lead to the completion of the cooperation with the ICTY.

In Croatia, the analysis of the period between 1993 and 2000 showed quite a fluctuation – from full and enthusiastic cooperation to non-cooperation. Croatia very early created all necessary institutional bodies for cooperation with the ICTY and welcomed its work. However, once it became clear that the Croats would also be tried, the position changed. Though there was clear pro-EU rhetoric, once SAP was introduced Croatia was displeased at it seemed SAP was only created as a substituted for Yugoslavia. Therefore, until 1995 there was clear cooperation with the ICTY, even

before SAP promised membership for successful candidates. However, once in 1997 conditions demanded cooperation with the ICTY in terms of sending Croats to it as well and including return of refugees, the position shifted. In addition, regime of Tudjman was not favored by the EU either. Hence, in this case as well we see shifting positions within the same government and within the same period regardless of the potential EU rewards.

In terms of the first hypothesis, there were constitutional obstacles which were overcome in 1996 with the Law on cooperation but the institutional obstacles persisted through the position of the important institutions and bodies that were supposed to cooperate with the ICTY. There were no partisan veto players as the opposition was suppressed but as the position within the government changed after 1995 when operations Storm and Flash were investigated by the tribunal, veto players were found within the government.

The third set of hypotheses was not confirmed. At the time EU rewards and timing were supposed to be providing incentive for cooperation but protection of the legacy of Homeland war prevailed over EU rewards.

The period 2000-2003 was difficult as the new government struggled to balance between cooperation with the ICTY, which would lead to EU, and public opinion, which was against sending heroes to The Hague, which was supported by the opposition parties to the right of the governing coalition. There were no institutional obstacles as law for cooperation with the ICTY had earlier been passed, and the new government accepted jurisdiction of the ICTY over operations Storm and Flash. However, there was threat to power from HDZ, which used every opportunity to accuse the government of not respecting homeland war. There were clear incentives from the EU. Croatia signed SAA

in 2001 and applied for membership in February 2003. However, positions the ICTY cooperation were dividing the coalition, fuelled by constant attacks from the opposition and growing dissatisfaction of the public leading to a new elections in 2003. Hypothesis was confirmed, as there was no agreement to cooperate the fact that there were no institutional obstacles did not help cooperation.

Position on the ICTY was changing as the coalition parties had different views on cooperation. Opposition used all opportunities to criticize cooperation with the ICTY by claiming that it disregards the importance and dignity of Homeland war – electorate was supporting opposition view and there was clear threat of losing power. Therefore, high cost of losing elections, led to lower cooperation, which confirms hypothesis. The value of EU rewards and timing was high but domestic factors were more important, thus again showing that external incentive was not enough

The last period analyzed here, demonstrates how external incentives can work when domestic political balance of power is right. Having inherited no institutional obstacles for the cooperation with the ICTY and being the strongest right wing party, HDZ had to fear no one to its right. While as an opposition party it criticized the government for cooperation, in the government it could push through cooperation with the ICTY because there were no strong enough political actors to oppose it. Once Croatia applied for membership, clear gains of EU accession were seen and HDZ led government capitalized on it by fulfilling condition on the ICTY cooperation.

The first hypothesis was confirmed no institutional veto points led to cooperation. Institutional and partisan veto players removed as all laws and institutions for cooperation with the ICTY were in place. HDZ government, although minority government, had

support in the parliament and did not have vociferous opposition to the right to criticize its moves with regards to the ICTY. The second hypothesis was also confirmed. Position of the government was clearly for full cooperation with the ICTY and getting closer to EU. No fear of losing power as elections has just been won and no opposition that disagrees with the policies. Hypothesis confirmed. The third hypothesis that high rewards and good timing led to cooperation hypothesis was confirmed in this case but only in conjunction with favorable domestic conditions, i.e. it was easier for the government to make difficult decisions, as there were no domestic obstacles

In conclusion, analysis of these seven cases shows that very rarely we have all factors in place. Only in the last case on Croatia were the values of all factors positive, leading to cooperation. However, in all other cases situation was not as clear. Situations where there are shifts in positions and changes in domestic constellation of power are much more of a rule, rather than exception. What this research tried to show is that there is much more to the fulfillment of the EU conditionality than just expecting the rewards of the membership, and it is much more complex issue than dividing the countries between liberal/democratic and illiberal/undemocratic when it comes to the fulfillment of conditionality.

Most importantly, this analysis demonstrated that actors behaved in terms of their short term political gains according to their political positions on certain issues. In this sense, EU conditionality should not be looked at as something so different from any other decision that governments make in domestic political processes, the outcome of which is decided by the constellation of power of the main actors.

All cases showed that external incentives were not enough if the domestic balance of power was not allowing certain conditions in return for the potential rewards. That does not show that a government is less democratic or illiberal it just shows interests of certain political actors. HDZ did not cooperate with the ICTY in the late 1990s and then the same government in 2003 led Croatia to the candidate status by cooperating with the ICTY. In addition, the same party, and its leader Ivo Sanader were against cooperation while they were in opposition. Thus, it is more a case of changing strategies to win political gains rather than it is the question of a country sliding from liberal to illiberal positions.

To sum up, EU rewards are necessary but not sufficient to tip off the balance in favor of fulfillment of the conditions for membership. As both Croatia and Serbia demonstrated there are certain issues related to national sovereignty that are not easily sidelined. Therefore, when domestic conditions are ripe and if they do not endanger government position and are not against fundamental principles on which the party makes its policy, then the conditions are fulfilled.

Chapter 2-Serbia 1993-2000

2.1 Introduction

This chapter will start with a brief historical note as to introduce the actors and issues related to the ICTY. Next, the domestic political structure will be presented, i.e. the main actors and their general positions and power costs, which will be followed by institutional obstacles for the cooperation with the ICTY, and partisan veto players. The final section will look at external pressures and incentives and domestic reactions to them.

During the 1960s and 1970s, the Socialist Federal Republic of Yugoslavia began slowly to be eroded due to rising nationalism and calls for self-determination by the leadership of each of its republics. This became even more pronounced after the death of the only president of SFRY, Josip Broz, and, furthermore, in the 1980s differences between republican leaderships became more and more apparent. In Serbia, the infamous Memorandum by the Serbian Academy of Sciences criticized Yugoslavia as the solution for the Serbian welfare. Slobodan Milosevic took advantage of this situation to gain power within the League of Communists in Serbia. With the rising economic problems and ethnic tension in Kosovo, he used the opportunity to organize demonstrations that were the beginning of the so-called 'anti-bureaucratic revolution'.⁸⁷

At the same time, at the federal level, with its strategy of using ethno-nationalism and refusing all proposals from the liberal, pro-Western and secessionist Slovenian leadership, at the last federal congress of the LCY (League of Communists of Yugoslavia), the Serbian delegation caused the Slovenians to leave the congress. This was followed by the elections in Slovenia and Croatia, won by nationalists. The Serbian

⁸⁷ Sinisa Malesevic, *Ideology, Legitimacy and the New State: Yugoslavia, Serbia and Croatia*, (London: Frank Cass, 2002), 173.

branch of the League of Communists of Yugoslavia (LCY) changed the name into Socialist Party of Serbia (SPS) and won the elections. Serbian insistence on centralization prompted the leadership of Slovenia and Croatia to ask for ‘asymmetric federation’, but the solution was not reached, which led to the referendums in Slovenia and Croatia and eventually to the proclamation of independence.⁸⁸ This, in turn, resulted in the outbreak of war in Croatia and Bosnia and Herzegovina. Macedonia, likewise, opted for independence while Serbia and Montenegro created a new federation – the Federal Republic of Yugoslavia – in 1992.

In 1991, the Serb population in the part of Croatia around Knin proclaimed its independence, calling itself Republika Srpska Krajina, which paved the way to war. After a few military clashes, international presence was established in the area and *de facto* Croatia was not in the control of that part of its territory until 1995 when, during military operations ‘Storm’ and ‘Flash’, Croatia regained full control of its own territory. These actions forced some 200.000 Serbs to leave Croatia and the problem of the return of these refugees is still ongoing.

In 1992, a war broke out in Bosnia and Herzegovina. There Bosnian Serbs proclaimed Republika Srpska also leading to military conflict with Croatian and Bosnian (Muslim) population. The Dayton Peace Agreement in 1995 ended the war and created Bosnia and Herzegovina as an internationally recognized country with two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. The division of the country has been contested as inadequate for the future development of the country, and a complex structure of government with three ethnic groups is an impediment to democratic institutions. The problem is exacerbated by the violent civil war that left

⁸⁸ Ibid., 174.

200.000 dead and millions displaced. The question of war crimes has been one of the most paramount and is still more than ten years after the end of war one of the most sensitive issue in diplomatic relations of these countries and their bilateral co-operation. The ICTY created to punish war criminals had an increasingly important role although all the countries, subject to its jurisdiction, have had uneasy relations with it, and co-operation has always been difficult and involuntary.

The Tribunal also has jurisdiction over the events that happened in Kosovo during the clashes between Serbian police and Kosovo Albanians in 1997 and 1998 as well as during the period of NATO bombing in 1999, when more than a million Albanians fled to neighboring Albania and Macedonia. During this period Serbia was under strong economic and diplomatic sanctions, which culminated in military sanctions, i.e. bombing of the country. That completed full isolation of Serbia from the international community until the government change in 2000.

The main issues related to the ICTY in Serbia were firstly ignoring its existence, which was the main position of Milosevic's government and then later for subsequent government finding an acceptable legal way to cooperate with it. The second most important issue was extradition of indictees. The top ones were Slobodan Milosevic for involvement in the wars in Bosnia and for the war in Kosovo. These indictments were confirmed in 1999. Milan Milutinovic, also from Milosevic's Socialist party of Serbia SPS was also indicted for Kosovo because he was president of Serbia during the period. President of Serbian Radical party (SRS), Vojislav Seselj was indicted for indirect involvement in war in Croatia and Bosnia. The most wanted indictees are Radovan Karadzic for involvement in crimes in Bosnia because he was the president of Republika

Srpska, and General Ratko Mladic who carried out actions based on Karadzic's politics. There were also other indictees from military personnel but some of the most controversial cases in Croatia were Veselin Sljivancanin, Mile Mrksic and Miroslav Radic, or the Vukovar three for Ovcara. They were accused of being involved in taking out the patients from Vukovar hospital to a nearby hill Ovcara and killing them in 1991. According to the EU political conditionality Serbia did not only had obligation to extradite those indictees who were Serbian citizens but also to put pressure on Republika Srpska in Bosnia to fulfill its responsibilities towards the ICTY. These issues will be followed in the chapters below, along with some other cases of indictments. Needless to say, not all instances of indictments and extraditions could be mentioned, therefore, only the biggest and most important cases will be reviewed in order to assess the instances of cooperation and non-cooperation with the ICTY.

2.2 Actors: general positions and power costs

During the period from the breakup of Yugoslavia to the fall of Milosevic's regime in 2000, Socialist party of Serbia held all key positions within the government, state apparatus and the media. After a brief period of good relations with the West when Milosevic in 1995 was seen as a peacemaker and key figure in securing peace agreement in Dayton that ended the war in Bosnia, relations between Serbia and international community deteriorated and reached its peak during NATO bombing of Serbia from March to June 1999. That marked complete end of all diplomatic relations.

Moreover, Milosevic was indicted by the ICTY in 1999 and costs for him if he lost power would have been high. That is why during the period he was putting stronger grip over the media and all political life in Serbia. From the very beginning of the work

of the ICTY in 1993, Milosevic's government took the position that the Tribunal was political creation, had no jurisdiction over Serbia and the policy towards the Tribunal was denial and refusing all contacts with it. The position towards the EU was not favorable either, as it was blamed for what had happened in Yugoslavia and foreign policy was more turned towards Russia and China rather than Western Europe.

Milosevic and SPS enjoyed quite high support during the 1990s. SPS had unified government and always strong support in the parliament. This stemmed from several sources: real supporters of SPS, the misconceptions spread by the controlled media that presented Milosevic as a factor of stability and peace in the region, and some gerrymandering of the elections results. Surveys and opinion polls in the period are a good indication of this.

In May 1993, the public opinion polls in Serbia showed increased signs of xenophobia and narcissism towards the own country.⁸⁹ The results of the opinion polls done by the Institute for Social Research in Belgrade showed that most of the citizens were aware that there was a crisis but were not willing to do anything to change it.

There was low trust in the government bodies, 32% distrusted the government and parliament of Serbia; but the Yugoslav army enjoyed trust of 28% of the surveyed and the police 20%. 24% believed that foreign countries, foreign politicians and international organizations were to blame for the attitude that Serbia was the most responsible for the war in Bosnia and Herzegovina. 55% believed that foreign media were biased in covering events in Bosnia and Herzegovina. The survey concluded that there were enormous contradictions in replies to the survey questions and that it showed that citizens accepted sanctions as difficult but did not link them to the current politics. Only 10% of the

⁸⁹ "Spite Barometar" (Barometar inata), *Vreme*, 21 June 1993, 26.

surveyed thought SPS and Slobodan Milosevic were responsible for the war in Bosnia. 33% rated him as ‘very favorable’ while 25% rated him as ‘fairly favorable’.

This shows that there was no strong movement in opposition, as these ratings of Milosevic were taken in 1993. At that point, SPS had 40% or 101 MPs in the parliament, which has 250 members.⁹⁰ Milosevic used this to increase his power and organized early elections in 1993, which changed the situation in SPS favor which won 123 seats. At the elections in 1997, the number dropped to 110 but many opposition parties boycotted the elections due to unfair conditions they believed would follow the elections.

However, situation slowly changed towards the end of the 1990s. In a survey done in September 1999, 57% of those surveyed were politically undecided, but only 8% said they would not vote, which was low in comparison to 40% abstinence rate.⁹¹ According to the survey, only 13% would vote for SPS-JUL-SRS and 22% would vote for one of the opposition parties. Sill, 43% of the surveyed felt close to the SPS-JUL-SRS group with the distribution 16-8-10. JUL was party of Milosevic’s wife Mirjana Markovic. In terms of closeness with opposition parties, 16 % opted for the SPO, 15% for the DSS and 3% for the New Democracy. The DS, GSS and Social Democratic Party would get 11%. In general, the survey showed that coalitions would be more successful in the opposition than in the governing parties. All these opposition parties will be mentioned below in more detail.

In January 2000, the public opinion polls showed that the support for leaders of the opposition was between 4 and 5% between 1993 and 1999, with small oscillations per

⁹⁰ Chronology of parliamentary elections (Hronologija parlamentarnih izbora), Beta news agency, 21 January 2007

Available at:

http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=01&dd=21&nav_id=228593&nav_category=418

⁹¹ *Vreme*, 25 September 1999, 4.

year.⁹² Support for Milosevic was very high in the first half of 1990s, the highest in 1995 at 31% and then fell to 13% in 1999 but was still higher to any of the opposition leaders.

As mentioned above the surveys only confirm the support for SPS and Milosevic. However, despite his orientation towards the east, the attitudes towards Europe among the population were increasingly positive. In January 2000 56% was in favor of integration with European countries, while only 11% favored isolationism.⁹³ As high as 48% expressed full support for FRY membership in the EU, 29% generally agreed and only 6% was against it. Most of those who supported membership did so out of expectations for a better economic situation and improvement of living conditions once the country was out of isolation. Below the institutional framework of the country and capacity to cooperate with the ICTY will be reviewed, followed by partisan veto players and the chapter will end with international pressures and incentives against these domestic factors.

2.3 Institutional veto points

As mentioned above, disintegration of Yugoslavia led to the creation of the Federal Republic of Yugoslavia consisting of Serbia and Montenegro. The constitution of the new country was enacted in April 1992, replacing the constitution of SFRY. “The federal Constitution was a result of an arrangement between the ruling parties of Serbia (the Socialist Party of Serbia, SPS) and Montenegro (the Democratic Party of Socialists, DPS).”⁹⁴ The Constitution was drafted by few people close to the regime, allowing no

⁹² “Situation in Serbia” (U Srbiji prilike su tak’e), *Vreme*, 8 January 2000, 12.

⁹³ “Support for Europe, after all” (U Evropu, ipak) *Vreme*, 29 January 2000, 18.

⁹⁴ Petar Teofilovic, “Crisis in Yugoslav Public Law”, *Annual Survey of International and Comparative Law*, Golden Gate University School of Law, San Francisco, vol. VI, spring 2000, 73.

public debate. As Petar Teofilovic points out, the constitutional order created a weak federation and strong member-republics.

According to the federal constitution, the role of president is ceremonial one, the highest body is the Federal Assembly but federal government and federal prime minister had significant power.⁹⁵ The assembly had two chambers - Chamber of Citizens and Chamber of republics. The first one had representatives according to the size of electorate where deputies are directly elected by secret ballot with one deputy per 65 000 voters. The chamber of republics had fixed 20 deputies appointed by the republics. The system was envisioned by the FRY Constitution could have worked only if there was consensus. Thus, in the absence of consensus the system would lead to stalemate and eventually new elections.

However within Serbia which had semi-presidential system, “the real centre of power is highly personalized, personified in Slobodan Milosevic, and shifts according to the position Milosevic occupies at any given moment.”⁹⁶ During his term as a president of Serbia he overstepped constitutional powers and once he was appointed president to FRY, by the federal assembly the role of the president of Serbia became less significant and he used his position of FRY president again beyond allowed constitutional powers. All state bodies were only a screen and a simulation of state functions while the real power came from political centers of power that lied in political parties of Slobodan Milosevic and his wife Mirjana Markovic. “All important decisions are made in parallel

⁹⁵ Constitution of Federal Republic of Yugoslavia available at: <http://www.montenet.org/law/fryconst.htm> last accessed on 26 January 2006

⁹⁶ Teofilovic, 75.

centers of power and are transmitted to relevant institutions through mechanism within the ruling parties.”⁹⁷

Thus, having all axes of power under his control and using divided opposition, Milosevic was able to stay in power. The main actors in opposition parties failed to unite throughout 1990s. The election results clearly show the 1990s as the years of struggle within democratic opposition to unite and give a final blow to the regime of Slobodan Milosevic and his SPS. The first coalition of Vojislav Kostunica’s Democratic party of Serbia (DSS) and Vuk Draskovic’s Serbian renewal movement (SPO) called DEPOS did relatively badly at the December 1992 elections for the Federal Assembly winning only 17% compared to SPS 31.5%.⁹⁸ In the next federal elections another coalition of opposition parties, this time without DSS but including Democratic party (DS) of Zoran Djindjic and Civic Alliance of Serbia (GSS) of Vesna Pesic called ‘Together’ (Zajedno), scored only 22% compared to 42.6% of the ruling SPS/JUL.⁹⁹ JUL, the party of Milosevic’s wife Mirjana Markovic, which had little support in the electorate but nonetheless had significant ministerial and other official positions in the government.

Having control of all political institutions SPS and Milosevic did not have institutional obstacles to cooperate with the ICTY. It was more of an ideological position and conviction that the country should not cooperate with the Tribunal. Thus, there were no mechanisms, procedures or bodies for cooperating with it. The policy was to ignore it and use every opportunity to criticize its existence and work. Below will these positions be explained in more detail.

⁹⁷ Ibid. 76

⁹⁸ Vladimir Goati (ed.), *Elections to the Federal and Republican parliaments of Yugoslavia (Serbia and Montenegro) 1990-1996: Analyses, Documents and Data*, (Berlin: Sigma, 1997) 193.

⁹⁹ Ibid., 194.

2.4 Partisan Veto Players

Despite the fact that the ICTY was created in 1993, the government of Milosevic refused to cooperate with it and as late as 1999 when Milosevic was indicted by it, the regime was still not taking it seriously. On May 27th 1999, when the indictment against Milosevic was brought, the representative of FRY in the UN in Geneva said that the tribunal did not exist and the so-called indictment was an attempt of NATO countries to reverse their failed policy of aggression against FRY.¹⁰⁰

In February 2000, for its 4th Congress, the SPS published a document 'Reconstruction-Development-Reforms' which had a section entitled Response to international challenges.¹⁰¹ Serbia was portrayed as a victim of the NATO aggression, which was described as genocidal and barbaric. The NATO was described as having conquering and enslaving ambitions towards Yugoslavia. The USA is labeled imperialist and disappointment is expressed towards Europe, which followed the course of actions of the USA administration. At the same time, Slobodan Milosevic is depicted as extraordinary leader who saved the country "Yugoslav army, police and all defense forces under the leadership of the president Slobodan Milosevic showed unified and determined resistance to the aggressor and defended freedom dignity and independence of the country."¹⁰²

Improving relations with 'friendly countries' such as Russia and China as well as 'active participation' in Non-alignment Movement is put as the main aim of foreign

¹⁰⁰ Pierre Hazan, *Justice in a time of war*, (Texas A&M Univeristy Press, College Station:2004), 45.

¹⁰¹ Document taken from B92 special election coverage, available at: <http://www.b92.net/izbori2000/index-pre.phtml> last accessed 28 January 2006

¹⁰² Ibid., 28.

policy. The document does acknowledge that the FRY respects all international and legal duties vested in the UN Charter, but the ICTY was not mentioned as a body of this institution. The document, however, demands that the responsible NATO officials be prosecuted for crimes committed during NATO bombing of Serbia. Thus, the orientation towards the West, Europe in general and the EU in particular was not very favorable in the SPS program and there is no mention of the ICTY because the tribunal was never recognized by the regime.

In 1994, during the visit of the ICTY president Richard Goldstone to Belgrade, the Ministry of Justice put arguments against the ICTY for being ad hoc, political, and exclusive, having jurisdiction only for the war in Yugoslavia and thus not an independent tribunal. Another argument by the Ministry of Justice was the objection that the court was not permanent, i.e. the objection was that there were no trials for other war crimes committed before Yugoslavia.¹⁰³

This negative attitude to the ICTY was shared by other parties as well. Latent nationalism and concern for the Serbian question was part of Vojislav Kostunica's Democratic Party of Serbia (DSS). A dissident and an opponent of the 1974 constitution, Kostunica was expelled from the university where he had taught constitutional law. He was a co-founder of the Democratic Party (DS) together with Zoran Djindjic and others, but left it, as he thought it was "too soft on national issues"¹⁰⁴ and created his own DSS. Despite the more pronounced nationalist stance, it was Djindjic's DS that was trying to score political points by keeping contacts with Bosnian Serb leaders while Kostunica

¹⁰³ "The Hague cadets" (Haski pitomci), *Vreme*, 17 October 1994, 8.

¹⁰⁴ Dejan Anastasijevic and Anthony Borden, *Out of Time: Draskovic, Djindjic and Serbian Opposition against Milosevic*, (London: Institute for War and Peace Reporting, 2000), 7.

although supporting the right to self-determination of Bosnian Serbs kept his distance from Republika Srpska during the war.¹⁰⁵

In 1992, the DSS joined the Serbian Renewal Movement (SPO) led by Vuk Draskovic, to create the DEPOS coalition but it did not do well at the elections and since then the DSS refused to join any coalition, while always managing to win enough seats at every poll. The DSS as well refused to join the Zajedno (Together) coalition in 1996 when mass protests were threatening to overthrow Milosevic. Eventually, the coalition of Draskovic, Djindjic and Vesna Pesic, the leader of the Civic Alliance of Serbia (GSS) collapsed. During the NATO campaign in 1999, Draskovic accepted a ministerial position in Milosevic's war-cabinet. While Djindjic spent most of the time in Montenegro, Kostunica who stayed in Serbia started receiving support from the disillusioned supporters of other opposition leaders as well as those who until then were neither supporters of the regime nor the opposition.¹⁰⁶ His moderate nationalism allowed him to appeal to both more liberal and more radical voters. In addition, and probably most importantly, he gained support because of his negative attitude towards the West, which he saw as contributing to the problems of Serbia.

Vuk Draskovic, the leader of the Serbian Renewal Movement-SPO started his political career as a hard-line nationalist but over the years turned into a moderate one. The 1993 program of the SPO, one of the main opposition parties that did not participate in the DOS coalition, was characterized by some nationalist stance. Although it stressed in 1990, as in 1993 that socialism was not the winning option and that democracy was the only way forward towards keeping up with economic, political and technological

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., 8.

movements in the world, the program stresses the price that the Serbian people could face if Yugoslavia breaks up. The reason being the loss of the “unifying state room over all our lands, regions, churches and graves... for which we died terribly on two occasions in this century”.¹⁰⁷ Even though the program emphasized necessity to maintain good relations with the former Yugoslav republics and condemns genocide, killing, forceful change of faith, language and place of settlement, it demands the clear demarcation of the borders with the Croats, while it underlines that demarcations with the Muslims is impossible due to the intertwined roots and shared settlements. Unambiguously, however, the SPO program advances renewal of the traditionally friendly relations between Serbia and EU, NATO, Russia and Japan, and expresses special interest in cooperation with neighboring countries.

Reportedly, in 1990, Draskovic said he was just lending himself to politics because he felt that Serbian nation was threatened by genocide and that Yugoslavia was not beneficial for the Serbian nation.¹⁰⁸ SPO was created in 1990, and one of the founding members was Vojislav Seselj, who later left the party and created his own Serbian Radical Party -SRS. Draskovic took more moderate nationalism but in the late 1980s he thought that Yugoslavia was a disaster for the Serbian nation. Despite the calls for peace, in June 1991, the presidency of the SPO passed a decision to form a paramilitary unit, the Serbian Guard, which was supposed to be under the supreme command of Crown Prince Aleksandar II Karadjordjevic.¹⁰⁹ Draskovic later said that the creation of the Serbian Guard was a response to the formation of the Zbor National Guard

¹⁰⁷ ‘Serbian Renewal Movement program’ document taken from B92 special election coverage, available at: <http://www.b92.net/izbori2000/index-pre.phtml> last accessed 28 January 2006, 1.

¹⁰⁸ Ibid., 20.

¹⁰⁹ Anastasijevic and Borden, 26.

in Croatia, adding that, after the formation of the Serbian Guard, tens of thousands of men approached the SPO as volunteers. Finally, in early 1992, the leaders of the Guard issued statement that they did not want to be in any way linked to the SPO. Eventually, this monarchism of the SPO turned out to be only a way of gaining power. When, in 2000, at the meeting with diaspora and the opposition, it was proposed to create a body headed by the crown prince and the head of the Serbian Orthodox Church, Draskovic refused it, as it would potentially endanger his position as the only leader of the opposition, which was always his ambition.

The SPO and Draskovic claimed that they were in favor of ‘absolute’ cooperation with the ICTY. In early 1996, the SPO submitted to the federal parliament a bill calling for full cooperation of the FRY with the ICTY. During the same year, Draskovic wrote a letter to the president of the ICTY urging that responsibility for crimes had to be individual: “Favoring absolute cooperation with the Hague Tribunal, my party defends the Serb people from collective responsibility for many horrible crimes that were committed during the war in the former Yugoslavia by, or on orders from certain Serbs. Croat and Muslim crimes must be punished in the same way”.¹¹⁰ Moreover, he advised Milosevic to ignore indictment against himself in May 1999 because he thought they were political provocation and pressure. This was a surprise because Draskovic called for Milosevic to be indicted by the ICTY for not accepting results of the 1996 elections. Draskovic was also negative to the ICTY investigations in Kosovo as he thought that in order to investigate crimes in 1999, the crimes against the Serbs in the previous 60 years had to be investigated first.

¹¹⁰ Ibid., 58.

Zoran Djindjic, the leader of the Democratic Party-DS was a pragmatic leader; and as well as Draskovic had secret meetings with Milosevic, but unlike Draskovic never shared power in Milosevic's regime. The co-founder of the DS in 1990, he became its president in 1994. The party appealed to the urban, better educated and entrepreneurial part of the population. He strived to create a modern, large, centrist party.

His position on the concept of Greater Serbia was ambiguous. He did say that Serbs had a problem as they were scattered in different territories but at the same time he thought Milosevic's means of solving the question were wrong.¹¹¹ He thought that to resolve the Serbian question was for majority or all Serbs to live in one state. He and his party were thus accused by the Croats as accepting the war option propagated by Milosevic. Even though he was always against Milosevic, he recognized that due to the regime propaganda, the opposition had to play the safe, nationalist, card.

He stated, "Milosevic is the cause of our problem and on the other their consequence. The problem is the Milosevic within us not Milosevic himself."¹¹² Out of fear of civil war, Djindjic and other opposition leaders were in favor of a kind of compromise with Milosevic as to make him let go off power peacefully. Consequently, they were in favor of compromise first to be reached within Serbia and then with regard to the international community on the issue of Milosevic's the ICTY indictment.

As for Bosnia, in 1993, Djindjic firstly stated that he had no sympathy for the radicals among the Bosnian Serbs but later he thought that international community's plans to keep Bosnia together were a "hypocritical illogical and temporary solution".¹¹³ In 1994, the DS proposed to the Serbian parliament the 'Declaration on a FRY-Republika

¹¹¹ Ibid., 77.

¹¹² Ibid., 90.

¹¹³ Ibid., 98.

Srpska confederation'. At the time when Bosnian Serb leadership was refusing the peace plan and Milosevic was setting up sanctions against Republika Srpska, Djindjic visited Radovan Karadzic to discuss this confederation. The DS and Djindjic saw the Dayton peace plan as acceptable if Republika Srpska was independent. After Croatian military actions in 1995 that finally allowed the Croatian government to fully control its territory that was under control of Serb minority and international forces for several years, Djindjic said that it was Milosevic's fault that this was lost as he imposed the blockade on Bosnian Serbs and that it was "high time to define the Serbs national goals, so they will stop getting killed because of the ignorance of the Belgrade-based authorities."¹¹⁴

The leaders of the Serbian Radical Party (SRS), DSS and DS were supporting Bosnian Serbs not to accept the peace plan of the contact group and were visiting leadership of Republika Srpska in a demonstration of solidarity.¹¹⁵ The SRS was always uncompromising when it came to the position on uniting territories inhabited by Serbs, and having strong representation in the Serbian and federal parliament actually fulfilled expectations of its voters. Moreover, the SRS has an active branch in Republika Srpska, so the interest in supporting Karadzic was clear.

The SPS accused these new relations between opposition and RS as focusing on political interest, stating that this support was lacking when the decisive battle for the survival of the Serbian people was fought; thus, opposition leaders are accused of instigating war again. The SPS was concerned that, by becoming more independent, the leadership of the RS could have endangered the position of Milosevic as the only able negotiator to solve the Yugoslav crises. This interest of SPS in Republika Srpska showed

¹¹⁴ Ibid., 100.

¹¹⁵ "Our man in Pale" (Nas covjek na Palama), *Vreme*, 16 January 1995, 22.

that the regime was not completely detached from the war in the former Yugoslav republics despite its rhetoric. The leader of the SRS, Vojislav Seselj, said on many occasions that Slobodan Milosevic led to war but later wanted to escape responsibility.¹¹⁶ Seselj blamed Milosevic for wanting to show his influence on the Serbs in Bosnia and that is what caused war and sanctions. Milosevic took a nationalist stance, gained followers, and later avoided responsibility. Seselj said he participated together with Milosevic in planning some operations and strategies and that his volunteers worked together with Milosevic's special units. Seselj blamed Milosevic for refusing to invade Dubrovnik and Osijek, and for striking deals with Tudjman instead of fighting him. Still, he said that he knew about some war crimes ordered by Milosevic but did not want to talk about details. He stressed that his party was not acting either in favor of Karadzic or against Milosevic but it fought against crime and for protection of national interests.

The SRS held a press conference after the end of NATO intervention and Seselj said that the plan was completely unacceptable for the SRS because it did not allow the Serbian military forces to stay and the SRS was against the troops of the aggressors in any part of Serbia.¹¹⁷ Although in the beginning of 2000, the public opinion was increasingly supporting European integration, at its Fifth Patriotic congress, the SRS called for the integration with Russia and Belarus against the new world order that would "destroy the world".¹¹⁸

Despite the NATO campaign, as late as December 1999, the regime was still appearing strong. The opposition parties were trying to persuade the regime to organize

¹¹⁶ "My volunteers with his special forces" (Moj dobrovoljci sa njegovim specijalcima), *Vreme*, 8 August 1994, 29.

¹¹⁷ "What I said to Milosevic" (Sta sam rekao Milosevicu), *Vreme*, 5 June 1999.

¹¹⁸ "The Radicals against America" (Radikali protiv Amerike), *Vreme*, 29 January 2000, 19.

early elections at all levels, but the regime was not threatened due to its support from the JUL and SRS.¹¹⁹ In the beginning of 2000, the US government printed public arrest warrants for Slobodan Milosevic, Radovan Karadzic and Ratko Mladic, which was not very favorable for the opposition in Serbia, as it was believed that it would deter Milosevic from organizing early elections.¹²⁰ Kostunica was reported saying that the international community adopted an approach of a ‘vulgar Marxism’ with the motto ‘the worse the situation the better’ – namely as the situation is worse, the chance for democratic change will be higher.¹²¹ The leader of the Democratic Alternative, Nebojsa Covic stated that this warrant gives the regime two options either to stay in power or to lose their positions and in some cases freedom which puts the opposition in a very difficult situation while trying to influence the current regime to make some concessions regarding early elections.

Hence, it appears the opposition was more concerned with the prospects of gaining power than of addressing the issue of Milosevic’s responsibility for war crimes. The program of the Democratic Opposition of Serbia, united in 2000, to fight Milosevic at the early elections, also did not mention the question of the ICTY. Still, the orientation towards Europe was clear and unambiguous. It mentioned reforms in all aspects of political organization of the state with an aim to placing Serbia again on an equal footing with the “community of European states.”¹²²

The next section will address the policies that the EU and international community used in their relations with Serbia during the second part of the 1990s.

¹¹⁹ “The time is running out” (Rok istice, ponavljac), *Vreme*, 11 December 1999.

¹²⁰ “The lowest league politicians” (Politicari iz beton lige), *Vreme*, 11 March 2000, 7.

¹²¹ *Ibid.*, 9.

¹²² ‘Election program of the Democratic Opposition of Serbia’ document taken from B92 special election coverage available at: <http://www.b92.net/izbori2000/index-pre.phtml>, last accessed 28 January 2006, 1.

2.5 External pressures and incentives

In the beginning of the 1990s, the main focus of international community was helping end the war in the former Yugoslavia. One way of dealing with the war in Yugoslavia was the creation of the International Criminal Tribunal for Yugoslavia-the ICTY. As mentioned in the introduction, the EU started only in the mid 1990s to develop its framework for the cooperation with these countries, but EU members participated in the creation of the ICTY.

The ICTY, although officially created in 1993, did not have a clearly influential role in putting pressure on the countries it had jurisdiction over, until early 1999. In February 1993, the United Nations Security Council voted unanimously for the resolution 808 creating the ICTY.¹²³ Its creation was more to appease the public of the Western countries as the news of the war crimes were presented on a daily basis in the media.¹²⁴ When the Tribunal commenced its work in 1993 it was without offices, statute, prison, accused, logistics or even a prosecutor.¹²⁵ In the beginning of 1994, the US realized that the ICTY can be helpful to diffuse pressure that was mounting as the media was covering wars in the Balkans, they decided to “place twenty-two high-level functionaries at the tribunal’s disposal for an initial period of two years, paid for by Washington, the American personnel - at no charge to the United Nations.”¹²⁶ Although the impartiality of the tribunal had been compromised, there was no other solution for the tribunal to start

¹²³ Hazan, 7.

¹²⁴ Pierre Hazan’s book documents this in more depth but for the purpose here only some aspects of the problems with which the ICTY was faced in its initial working phases will be mentioned

¹²⁵ Hazan, 44.

¹²⁶ *Ibid.*, 52.

working. European governments did not offer to do anything similar while they were criticizing the ICTY for accepting US help.

Finally, in July 1994, the UN appointed Richard Goldstone as the first prosecutor of the tribunal and the ICTY started to work. The first indictments came in November 1994 and February 1995 but the judges were disappointed as Goldstone failed to indict important high officials. The first report of the ICTY in 1994 does not mention question of cooperation with the countries under its jurisdiction as the main problems were related to setting up the tribunal and its functioning.¹²⁷

As the tribunal was given a lip service by the countries, which created it, and as the work of the trials had not even commenced by beginning of 1995, the leaders of the conflict were almost assured that they would not be prosecuted. However, after Srebrenica, when several thousands Muslims were killed by Bosnian Serbs, Goldstone indicted Ratko Mladic, the general of the army of Republika Srpska, and Radovan Karadzic, the president of Republika Srpska, on 25 July 1995 for events that had taken place prior to Srebrenica.¹²⁸ Although the judges of the ICTY managed to put pressure on the governments of the West not to allow Karadzic and Mladic to participate in Dayton peace negotiations, the tribunal itself was not included in the process, thus again sidelined. Moreover, at an International conference on Yugoslavia in December 1992 Milosevic came out of the process as a peacemaker and a partner of the West by striking the deal despite the fact that he, along with Karadzic and Mladic, was accused of

¹²⁷ Annual ICTY report 1994, available at: <http://www.un.org/icty/rappannu-e/1994/index.htm> last accessed 2 February 2006

¹²⁸ Hazan, 66.

crimes.¹²⁹ Similarly, in 1996, in draft indictments against Karadzic and Mladic, Milosevic had been mentioned but in the final version his name disappeared.

The negative attitude towards the ICTY continued on the part of the countries which created it, and thus it was even more sidelined, marginalized and unrecognized by those over which it was supposed to have jurisdiction. In the 1995 annual report, it is mentioned that “Regrettably, some States have withheld any cooperation: reference should be made in particular to the Federal Republic of Yugoslavia (Serbia and Montenegro), as well as some de facto authorities such as the self-styled Republics of Krajina and Srpska.”¹³⁰

On October 1st, 1995, Louise Arbour succeeded Richard Goldstone as the chief prosecutor but she faced the same problems. EU countries did not agree to give mandate to soldiers of IFOR to arrest the indicted persons; as well, at the London conference after Dayton in December 1996, the British Prime Minister did not invite representatives of the ICTY and there was no reference to the obligation of the States to cooperate with the tribunal.¹³¹ Except for the US, no other government shared information with the tribunal and the prison of the ICTY was empty. The Europeans maintained that it was easy for Americans to cooperate as they did not have troops in former Yugoslavia while, the EU countries which had their troops there were afraid of reprisals and the repetition of the scenario of the Dutch troops being taken hostage as in the case of Srebrenica.

The new prosecutor started with the secret indictments so that the indicted could be arrested before they could learn about it and before they could create systems to evade

¹²⁹ Ibid., 30.

¹³⁰ Annual ICTY report 1995, paragraph 191. available <http://www.un.org/icty/rappannu-e/1995/index.htm> last accessed 2 February 2006

¹³¹ Hazan, 93.

being arrested; as well, in this way the international forces are protected while attempting arrests. Likewise, the change of government in Britain led to a positive approach to the tribunal, while only France remained isolated, with its negative attitude towards tribunal. Only in 1998 were the French officers allowed to testify before the tribunal.¹³² In the 1996 report, the ICTY was more vociferous about the lack of cooperation of Federal Republic Yugoslavia, which failed to pass necessary legislation for cooperation, and filed to influence Republika Srpska to cooperate according to obligations taken under the Dayton Peace Agreement. Although the government agreed to have office of the ICTY in Belgrade due to some procedural questions it was not set up.¹³³

The ICTY 1997 annual report stated that FRY failed to ensure that Republika Srpska complies with the Dayton Peace Agreement, and it failed to pass legislation to enable her to cooperate with the ICTY, and made it clear that it did not intend to make such legislation in the future. The Report says Serbia made no action to arrest any indictees on its territory and especially Ratko Mladic who was allowed to freely move on Serbian territory.”¹³⁴

Despite the appeals by the new president of the ICTY Gabrielle Kirk McDonald to the fifty heads of states and government in the follow up to Dayton in December 1998, there was no measure taken against Yugoslavia for non-cooperation with the tribunal.¹³⁵ Louise Arbour took proactive role as the developments in Kosovo unfolded and indicted president Milosevic on May 25th, 1999 just as the negotiation for ending NATO bombing was drawing to a closure. This crucial event in the tribunal’s work came as the West

¹³² Ibid., 102.

¹³³ annual ICTY report 1996 paragraph 169 available at: <http://www.un.org/icty/rappannu-e/1996/index.htm> las accessed 2 February 2006

¹³⁴ annual ICTY report 1997, paragraph 188, available at: <http://www.un.org/icty/rappannu-e/1997/index.htm>, last accessed 2 February 2006

¹³⁵ Hazan, 111.

realized that Milosevic could not stay as the only negotiator in the region and as the reports of atrocities were coming from Kosovo. On January 15th, 1999, a massacre occurred in the village of Racak when the head of the OSCE observer mission, William Walker, invited the ICTY representatives to come and investigate the crime. Immediately, he was proclaimed persona non-grata by the regime of Milosevic and was asked to leave the country within 48 hours. However, at the same time the ICTY prosecutor was refused entry to Yugoslavia, which was widely covered by the media. Eventually, as a compromise, Walker was allowed to stay and, although the ICTY was ignored again, this media coverage made the ICTY become a real actor.

Western governments started cooperating with the tribunal and sharing information. The new prosecutor, Carla Del Ponte, came to office in September 1999 after the NATO intervention. Since Western governments realize that negotiations were not possible with Milosevic any longer, the ICTY from then on assumed a new, more proactive role.

During the 1990s, the EU used various forms of pressure on FRY and other former Yugoslav countries. As the above section shows, the attitude towards the issue of human rights was also one that evolved in EU policy towards former Yugoslavia. In addition to sanctions, since mid 1990s the Community approach encompassed positive conditionality and positive measures in South Eastern Europe in order to bring peace and stability to the region.¹³⁶ The first refers to the promise of benefits if the recipient country

¹³⁶ Elena Fierro, *The EU's Approach to Human Rights Conditionality in Practice*, (The Hague: Martinus Nijhoff, 2003), 133.

meets the conditions; and positive measures refer to “awarding of funds for the promotion of human rights.”¹³⁷

After the signing of the Dayton Peace Agreement, the EU implemented several policies and programs in the South East European region.¹³⁸ These included the Royaumont Process (1996), the Regional Approach (1997), the Stabilization and Association Process - SAP (1999) and the Stability Pact (1999). As mentioned in the introduction, to start negotiations for the SAP, eligible countries had to fulfill some general conditions. The conditions were based on the conclusions on the application of conditionality with a view to developing a coherent strategy for relations with the countries of the southeastern European region, adopted by the council on April 29th, 1997.¹³⁹

One of the main conditions mentioned in this Council conclusion was cooperation with the ICTY. However, prior to the formulation of SAP program, there was no systematic way in which the EU controlled this, nor was there an incentive for the countries to meet these conditions, as there was no clear reward. Before EU specified its policy with SAP that clearly focused on human rights clause and on positive conditionality, i.e. rewarding progress in that area, the EU used negative measures, i.e. sanctions. Nevertheless, that was not always efficient. In February 1998, when the EU

¹³⁷ Ibid., 100-103.

¹³⁸ “Building on the Model of European Integration” 26 March 2001
Available at: http://www.europa.eu.int/comm/external_relations/see/region/europe_integration.pdf last accessed February 2006

¹³⁹ “Council conclusions on the principle of conditionality governing the development of the European Union’s relations with certain countries of south-east Europe”, Bulletin EU 4 – 1997: 2.2.1 29 April 2001, available at: <http://europa.eu.int/avc/coc/pff/bull/en/9704/p202001.htm> last accessed February 2006

Council of Ministers introduced a ban on flights by Yugoslav airlines to the EU, it was not clear whether it was directly influencing the regime of Slobodan Milosevic.¹⁴⁰

In 1999, along with the NATO air campaign, the Council of Ministers of the EU adopted new measures of sanctions according to which more than 300 officials of the FRY and Serbia had a ban on entry to EU member states including president Slobodan Milosevic and his family, the president of Serbia Milan Milutinovic, the prime minister of Yugoslavia Momir Bulatovic and the prime minister of Serbia Mirko Marjanovic as well as a list of ministers in both governments.¹⁴¹ The ban on travel, as well, included the persons close to the regime such as those who worked in the media or company directors close to the regime. In addition, the assets of the FRY and Serbia abroad have been frozen as well as assets of individuals who were close to Milosevic and companies under control of or those that worked for the government.

Another ban was imposed on the private sector to finance exports for the profit of the governments of Serbia and the FRY. All private or commercial flights between FRY and EU were banned. Moreover, the ban covered export to the FRY of the goods, services, technology and equipment that could be used to repair the damage made by NATO air strikes to the infrastructure, and, finally, a ban on export of equipment that could be used by Milosevic for his repressive measures.

Thus, during the 1990s, the EU used a range of measures against FRY and Serbia, from military sanctions, economic and political sanctions to positive measures and positive conditionality leading to the SAP process that clarified specific conditions for the beginning of negotiations for institutional relations with the ICTY. This indicates that

¹⁴⁰ “Not a single flight” (Ni muva da poleti), *Vreme*, 12 September 1998, 10.

¹⁴¹ “The list of unwanted is getting longer “ (Siri se spisak nepozeljnih), *Vreme*, 15 May 1999, 16.

there were no rewards from the EU clearly formulated before 1999; similarly, as the first part of the 1990s was focusing on achieving peace and thus negotiating with the actors who were later accused of war crimes, the role of the ICTY was not as strong, nor was cooperation enforced in any way. Only after the escalation of conflict in Kosovo, NATO bombing and formulation of EU policy under SAP framework did the role of EU rewards and their timing become more attractive to domestic political actors in Serbia.

2.6 Conclusion

As the public opinion polls and elections results show, during the 1990s nationalism was the winning strategy for the parties and the parties played along. Milosevic used his repressive measures to keep at the top, and was assisted by the divided opposition that, at the time, seemed to be preoccupied with bickering about who should be leading the opposition. Though European orientation was shared by all opposition leaders except for the SRS, the problems of facing war crimes persisted.

In terms of the factors that were analyzed in this chapter, power cost and resistance to the ICTY/EU, institutional obstacles and partisan veto player this chapter demonstrated the following. The governing regime of Milosevic was feeling very secure in its position and was not feeling threatened by the opposition. The hold on power and control of all aspects of political life, all structures of the government and the media, made Milosevic confident in his position that he called for an early elections in October 2000 that eventually proved him wrong, as he had to accept his defeat in the end.

The position to the EU and the ICTY was openly negative and hostile, which was shown through every contact with the representatives of these institutions. Personal costs were high for Milosevic as well as members of his regime because they were indicted by

the tribunal. Thus, it is no surprise that there were many institutional obstacles that prevented cooperation with the ICTY. Officially, the government of Milosevic never recognized the existence of this institution. As all institutional positions were occupied by SPS party members and their supporters, the partisan veto players were numerous, thus preventing any change in the institutional structure that would enable initiation of the cooperation with the ICTY and thus with the EU. At the same time, the EU rewards had not very clear before 1999 and launching of the SAP program; however, by that time Milosevic had been indicted and the official position of the government was regarding the countries of EU as enemies for participating in the NATO strikes against Serbia. Therefore, all values of the factors outlined in the introduction and analyzed in this article were negative, thus proving the expected outcome - no cooperation.

Regarding hypotheses we can summarize the following. Hypotheses relating to the support for the EU and the ICTY cooperation were proved, as low support naturally did not lead to cooperation. Therefore, the connection between fulfillment of conditions and reward of EU membership did not play a role, as the regime did not want an EU membership. The hypothesis that the lower the public support for the EU the lower likelihood to cooperate fully was not confirmed. There was public support for the EU but it did not influence the regime, which was against cooperation with the EU and was focusing on alliance with Russia and China. The hypothesis on high institutional obstacles was confirmed, there were institutional obstacles to cooperation. However, this was a consequence of government preferences because with the anti-EU and anti-ICTY attitudes, there was no political will to create mechanisms for cooperation with the ICTY, which confirms the hypothesis that the higher anti EU/ICTY attitudes the lower

likelihood for cooperation. This was also related to the fact that all relevant positions in the government were occupied by SPS loyal cadre which meant that individuals in crucial positions relevant for the ICTY cooperation would not act independently to attempt to change the policy. Thus, the likelihood of cooperation hypothesis when the crucial positions in cooperation with the ICTY are held by anti the ICTY parties was proved. The final hypotheses that the more fragmented the decision making process on the ICTY cooperation, the lower likelihood to cooperate fully was not relevant, as the situation was quite the opposite. The decision making process was centralized because there was one man rule, and the central position was against the cooperation which resulted in no cooperation.

Chapter 3 -Serbia 2000-2003

3.1 Introduction

The chapter follows developments in Federal Republic of Yugoslavia (Serbia and Montenegro) that have taken place since the federal presidential elections in September 2000 and especially parliamentary elections in December of the same year. The striking difference between this period that started in October 2000, and the previous period under Slobodan Milosevic is the beginning of open cooperation between the new government and the ICTY, having in mind the conditions of the EU criteria for establishing institutional relations between Federal Republic of Yugoslavia and European Union.

The government in power was the Democratic Opposition of Serbia- DOS, which consisted of eighteen parties. Although it had majority in the parliament, the difficulties arose within the coalition partners as it was difficult for all parties who were united against Milosevic, to always have the same positions on different issues. In principle cooperation with the ICTY was supported by all coalition partners, but the ways in which to implement it, was not always viewed in the same way.

During this period the EU, the US, international organizations put a lot of pressure on the new government to cooperate with the ICTY. The change of government was seen by international community as a major step and they expected to see quick results. Support of international community was visible, as Yugoslavia regained full membership in the UN and other international organizations. However, financial assistance from various international organizations and individual governments, and further institutional relations with the EU were conditioned by the meeting the political conditions for EU membership, and especially cooperation with the ICTY.

The period was marked by domestic political struggle over passing the law on cooperation with the ICTY, as well as first arrests and extraditions. The most significant arrest was that of Milosevic in March 2001 and his extradition in June 2001, which happened on the eve of the donor conference, which was supposed to raise money for the reconstruction of Serbia's economy. This was the single most important the ICTY related event during the mandate of the government. The second was the assassination of the prime minister in March 2003, which arguably was the consequence of the beginning of the cooperation with the ICTY.

The chapter is divided into several sections. The first is dealing with the general positions of actors and power costs, followed by institutional framework for cooperation with the ICTY and the veto points within it and section on partisan veto players. The final section focuses on external incentives and pressures. This section traces the main the ICTY related events as mentioned above, in light of the external influences.

3.2 Actors: general positions and power costs

Federal elections and presidential elections of 2000 marked the end of the Milosevic era. The Democratic Opposition of Serbia -DOS- united and won the presidential and federal parliament elections in September 2000, and Serbian parliamentary elections in December 2000. The main candidates for the president of the then Federal Republic of Yugoslavia (FRY) were Slobodan Milosevic leading the SPS (Socialist Party of Serbia) and the JUL (Yugoslav United Left), the party of his wife. Vojislav Kostunica, president of Democratic party of Serbia (DSS) was a candidate from the united opposition. Although the united opposition claimed victory in the first round, Milosevic's regime claimed there should be another round. This provoked protests in Belgrade that

culminated on 5th October 2000 when the Federal Parliament building was set on fire and when two protesters lost their lives. Milosevic finally accepted the victory of Kostunica and this date is marked as the beginning of democratic transition in Serbia.

The DOS candidate for the president of the FRY, Kostunica won 2,470,305 votes or 50.23% according to the final results of the federal electoral commission. As for the Serbian parliamentary elections, likewise, about two and a half million voters gave their vote to the DOS. Zoran Djindjic from Democratic Party (DS) became the Serbian Prime Minister but never managed to win the same support the voters showed for Kostunica. This, sometimes open sometimes concealed, rivalry between the two political leaders, was in the background of most of the important events during the mandate of the government.

However, this was only one of the problems in the smooth functioning of the new Serbian government. Although the DOS coalition, with 176 MPs in the Serbian parliament out of the overall 250, had a clear majority, it was sometimes difficult for the coalition partners to agree as how to achieve the goals set as they had promised to the voters before the elections. As soon as the new government was formed, differences among its coalition partners began to be visible. The main goal of ousting Milosevic, which was a goal everybody could agree on, was achieved, and then the differences on other issues began to emerge. Another threat to the government was strong opposition in Milosevic's Socialists and the Serbian Radical Party SRS led by Vojislav Seselj. Even though more than two million citizens voted for the DOS, the election results showed that more than a million votes went to the SPS, SRS, the Serbian Unity Party (SSJ), and the Serbian Renewal Movement (SPO), all of which shared nationalist sentiments. It was

difficult to predict whether the public opinion would support or resist direct cooperation with the ICTY, as there were strong nationalist parties that opposed the cooperation.

Hence, the position of the new government was strongly in favor of co-operation with the EU and the western countries but open cooperation with the ICTY was not widely advertised. This practice as well was a consequence of the power shared at the federal level. Although the DOS won 58 seats, the SPS/JUL, the SRS and the Socialist Peoples Party (SNP) from Montenegro could always outvote the DOS coalition by combining their votes. SPS, and SRS were parties whose leaders Milosevic and Seselj were indicted by the ICTY, thus these parties were directly affected by the ICTY activities and were explicitly against any cooperation. Therefore for DOS, any cooperation with the Tribunal was represented as the necessary evil that was crucial for financial assistance from abroad and for reintegrating the country into the international community and the EU, having been a pariah state during Milosevic's regime. Almost never were the politicians addressing the problem of facing the past and taking responsibility for what had been done in the name of Serbia.

After the initial euphoria of ousting Milosevic when the DOS coalition enjoyed enormous support of the voters, as the years passed and the people did not feel any improvement in their living standards, the support began to decrease. According to a survey in December 2000, 3% believed Milosevic should be tried for war crimes, 32% thought he should be tried for corruption, abuse of power, cheating at the election, etc., 41% believed he should be tried for both of the above but 13% voiced feelings against

him standing trial, and 11% did not know.¹⁴² That makes 45% against him being tried for war crimes and 44% in favor, which is evenly distributed. What is interesting is that despite the fact that the support for him fell from 49% in 1994 to 23% in 1999, there were 45% against him being tried for war crimes. This could mean that there were those who did not support the extraditions to the ICTY even though they were not supporters of the policies of the indicted individuals.

In March 2001, as the arrest of Milosevic was being planned, in northern Vojvodina, 29% could not earn enough for basic living costs.¹⁴³ Majority of those included in the survey thought that the prime responsibility of the government should have been to revive economy, the second to deal with the ICTY, and the third to offer a peaceful solution to the conflict in the south of Serbia. Thus, the government had to take into account that its popularity was on the decline. Still, in April of the same year, the Center for Civil- Military Relations carried out a survey revealing that 75% supported gradual participation in the European integration process, and foremost Partnership for Peace.¹⁴⁴ It similarly indicated that citizens of Serbia were occupied with social and economic problems. The most important event of the century for the citizens was the election victory of October 2000, and the most popular politician was Vojislav Kostunica.¹⁴⁵ Despite the genuine support for democratic reforms, the majority was supporting the more conservative Kostunica than the actual prime minister.

¹⁴² Srdjan Darmanovic, Peculiarities of Transition in Serbia and Montenegro, in Dragica Vujadinovic *Between Authoritarianism and Democracy: Serbia, Montenegro, Croatia, (Belgrade: CEDET, 2003)*, 152.

¹⁴³ 30 March 2001, B92 news agency available at: <http://www.b92.net/news/indexs.php?order=priority&dd=30&mm=3&yyyy=2001> last accessed January 2006

¹⁴⁴ 12 April 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=40&order=priority&dd=12&mm=4&yyyy=2001> last accessed January 2006

¹⁴⁵ 14 April 2001, B92 news agency, available at:

During June 2001, when the question of extradition of Milosevic was at its peak, the Center for Political Research and the Institute of Social Science conducted a survey, according to which 45% of participants were against the extradition, 37% were for and 18% undecided.¹⁴⁶ However, the trend of support for the extradition was on the increase. Similarly, 70% of the participants in the survey supported the DOS, pointing out that patience was necessary as to give a chance to the new government. An opinion poll conducted just before the adoption of the decree that make Milosevic's extradition possible in late June 2001, concluded that half of the citizens supported the extradition of Milosevic, while 1/3 was against it.¹⁴⁷ That he should be tried for the war crimes but also for corruption, abuse of political position and rigging the elections believed 48%, and that he should be extradited only after trial at home.

As the numbers show, the society was split on the issue. There were still loyal supporters of Milosevic and the SPS. Those who opposed the ICTY had another political option in the SRS. Consequently, the new government was cautious and had to balance between cooperating with the ICTY in order to reintegrate country into international community and secure necessary financial assistance on the one hand, and on the other not to lose voters to more right wing parties by cooperating with the ICTY.

3.3 Institutional veto points

Institutional veto points for fulfillment of EU conditionality, and thus cooperation with the ICTY were numerous. In the FRY and Serbia, there was no constitutional and legal

<http://www.b92.net/news/indexs.php?start=40&order=priority&dd=13&mm=4&yyyy=2001> last accessed January 2006

¹⁴⁶ 14 June 2001, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?order=priority&dd=14&mm=6&yyyy=2001> last accessed January 2006

¹⁴⁷ 25 June 2001, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?start=20&order=priority&dd=25&mm=6&yyyy=2001> last accessed January 2006

procedure for such cooperation. Constitution of the FRY did not allow extradition of the FRY nationals. In spite of the ICTY and other international actors' belief that there was no need to create any special legal procedures and that cooperation could have been realized on the basis of the UN Charter and the statute of the tribunal, there were different opinions of the parties in the coalitions at both federal and republican level.

Firstly, eighteen DOS members could not reach consensus on the issue of cooperation. The common denominator was to start working on passing a law on cooperation with the ICTY. Second, obstacle was the fact that the president of Serbia at the time was Milan Milutinovic, a member of the SPS, who had the right as the President not to sign certain laws and return them back to the parliament. Thirdly, at the federal level, there were institutional obstacles in terms of government decisions as well as majorities in the federal parliament. As indicated above, the DOS could be outvoted by the votes of the SPS/JUL, the SRS and the SNP. Under such circumstances, with so many institutional veto points, finding a legal remedy for the fact that constitution did not allow extraditions was a serious institutional obstacle to the cooperation with the ICTY, and thus the EU.

Moreover, the relations between the two federal units became progressively worse as the negotiations for redefinition of the future of the federation continued. On 14 March 2002, Serbia and Montenegro signed an agreement, so called Belgrade Agreement for Redefinition of the Status of the Future Federation, which was done in the presence of the EU High representative for the CFSP, Javier Solana. From then on, the state changed the name from the Federal Republic of Yugoslavia into the State Union of Serbia and Montenegro. This created an institutional void as the ministries, bodies and officials of

the FRY were not sure of their jurisdictions and were not willing to take responsibilities on many issues because these jurisdictions were in the process of being changed. Thus, redefinition of the future of the state was an additional obstacle to the proper organization of cooperation with both the ICTY and EU.

In August 2002, governments of Serbia and Montenegro adopted the text of the Constitutional Charter, which was a legal foundation of the new state.¹⁴⁸ On 4 March 2003, “the State Union of Serbia and Montenegro, based on equality of its two member states - the state of Serbia and the state of Montenegro - was formed.”¹⁴⁹ However, differences in the views on the future federation between Serbian and Montenegrin politicians, as well as the Montenegrin attempt to avoid any responsibility of cooperating with the ICTY because it was seen as a solely Serbian question, were some of the institutional obstacles.

Additional institutional obstacle was the position of army and police leadership. Before the law on cooperation was passed, these structures were not involved in the process of cooperation with the ICTY. However, once the law was passed in 2002, the army and the police were supposed to help in arresting the indictees. However, the Yugoslav National Army (JNA) that changed its name into the Army of Yugoslavia (VJ), and members of the Ministry of Interior Forces (MUP) were in principle against cooperation with the Tribunal. General position was that, if there were any crimes, they should be prosecuted in the domestic courts. The main reason for this was that these police and military structures were filled with the personnel that were loyal to the former

¹⁴⁸ 26 August 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=26&mm=8&yyyy=2002> last accessed January 2006

¹⁴⁹ Official site of the government of Serbia and Montenegro, available at: <http://www.gov.yu/start.php?je=e&id=38> last accessed 18 January 2006

regime or were convinced that what they did was protecting their own country and just obeyed the orders.

3.4 Partisan veto players

During this period partisan veto players were expressed in two ways. This first was before the law on cooperation with the ICTY was passed. Partisan veto players were personified in the representatives of certain parties that were against the cooperation with the ICTY and which were preventing the law from being drafted and passed. These were not only opposition parties in Serbia but also some Montenegrin parties in the federal government. The second manner in which partisan veto players were shown was after the law on cooperation was passed. They are mostly seen in the actions of certain individuals holding the public office relevant for the cooperation with the ICTY, who disregarded the provision of the law on cooperation and were not performing duties that were prescribed by the law.

As cooperation of Serbia and Montenegro with the ICTY depended on the Ministry of Foreign Affairs to receive and transmit indictment to the relevant court; Ministry of Interior (MUP) to issue arrest warrants and perform the arrests, the court to make a final decision and the Federal Minister of Human and Minority Rights to sign the decision, there were many points where a decision could be postponed, delayed, or not performed.¹⁵⁰ Although all of the ministerial positions were held by the DOS coalition members at the level of Serbian government, this was not so at the federal level. In addition, even among DOS coalition partners, leaders of different parties had different views on how to deal with the ICTY. Similarly, the positions of ministries, especially

¹⁵⁰ Law on co-operation with the ICTY, available at: http://www.humanrights.gov.yu/files/doc/Zakon_Saradnja-MKT_Srpski_lat.doc last accessed January 2006

ministries of interior and justice, were still held by those loyal to the former regime. In order to meet EU membership criteria and consequently cooperate with the ICTY all government officials and political parties holding important governing positions had to agree on the issues, which was not always the case, and fragmentation within the government was visible throughout its mandate.

One of the biggest conflicts on the issue of cooperation with the ICTY was the one between the president of the FRY Kostunica and the prime minister of Serbia Djindjic. “On October 6, 2000 the ICTY prosecutor Cara Del Ponte sent ‘a message to the elected president’, Vojislav Kostunica, in which she affirms ‘that The Hague court is ready for Milosevic at any time ... if there is to be a true and lasting peace in the Balkans and if the people of Yugoslavia are to be fully accepted back into the international community’. She obtained a dry public response from Kostunica: The ICTY, he said, was a tool of political pressure of the U.S. administration. “Every time I am asked the question over the Milosevic issue, I resolutely say no”, he told the Serbian state television.¹⁵¹ This position of Kostunica, who became the president of the FRY few months after that, remained a bone of contention between him and the prime minister Djindjic until Djindjic’s assassination in March 2003.

Djindjic stated on many occasions that the question of co-operation with the ICTY had to be solved during the month of June 2001, regardless of the level it was done at, federal or some other level. He claimed that if there were no solution it would have surely meant the ruin of the country.¹⁵² He was referring to the donors’ conference

¹⁵¹ Pierre Hazan, *Justice in a time of war*, (Texas A&M University Press, College Station:2004), 151

¹⁵² 14 June 2001, B92 News agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=14&mm=6&yyyy=2001> last accessed January 2006

scheduled for end of June 2001, which was supposed to raise money for the reconstruction of ruined economy and infrastructure of Serbia after the years of economic sanctions and NATO bombing of 1999. Therefore, this was pragmatic way of looking at a necessity to meet the EU membership criteria including the ICTY cooperation. Djindjic also on occasions underlined that as a member of the UN, FRY had obligations towards international community and could not choose which obligations preferred.

The DSS position on extradition was always generally against cooperation. Kostunica said that arrest of Milosevic was in no connection with US help of \$50m and that it was clear that the US would have approved the help without Milosevic's arrest.¹⁵³ He thought it was important that state be protected, civil war prevented and SPS preserved. Kostunica held more legal and procedural position that a country had to protect its legal system and sovereignty and make sure that any extradition was done in line with the constitution and legal system. That is why he and his party insisted on passing a law on cooperation before any extradition would be possible.

Once Milosevic was arrested in March 2001 on the domestic indictment related to fraud and abuse of power and his extradition became the most important issue, Kostunica was changing his promise given during the election that Milosevic would not be extradited. He tried to do that by putting the extradition lower on the agenda of political priorities, finally arriving to the position that he would use his political authority to do his best so that the law could be adopted in the federal government.¹⁵⁴

¹⁵³ 3 April 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=10&order=priority&dd=03&mm=4&yyyy=2001> lasta accessed January 2006

¹⁵⁴Magazine [Time] *Vreme*, 546, 21 June 2001, available at: <http://www.vreme.com/cms/view.php?id=290470> last accessed January 2006

Therefore, two different currents formed in Serbia. One that advocated complete isolation and even facing existential crises until the world accepted the defeat. The other current advocated cooperation with the ICTY in order for the country to regain credibility and join European and world international institutions. Kostunica was somewhere in-between, fighting for legal framework. Thus, he proved to be the biggest veto player in the coalition. Kostunica's insistence on legalism meant following the laws set by the Milosevic's regime and allowing the members of the former regime to keep some of their political and public functions. Djindjic, on the other hand, advocated a clear cut with the past, purging all public offices from the remaining Milosevic's supporters or sympathizers and starting from a clean slate. However, that was not possible, and the prime minister was forced to balance between these opposing ends in an attempt to push through his agenda, which had two main goals: quick accession to the EU and economic reform of the country.

3.5 External pressure and incentives

This section will describe several instances of cooperation with the EU membership conditionality pushed through by the prime minister that coincided with external incentives and pressures and were thus justifiable at home. These were arrest and extradition of Milosevic and adoption of the law on cooperation with the ICTY. Arguably, the assassination of the prime minister could mean that not all of the dissenting voices in domestic politics of Serbia were convinced that the measures taken by the prime minister were unavoidable.

3.5.1 Arrest and extradition of Milosevic and the law on cooperation with the ICTY

As mentioned above the EU implemented several policies and programs in the South East European region.¹⁵⁵ These included the Royaumont Process (1996), the Regional Approach (1997), the Stabilization and Association Process (SAP) and the Stability Pact (1999). The SAP conditions that included cooperation with the ICTY as the most important. The EU adopted supportive strategy without setting deadlines or using sanctions but only rewarding positives steps. If there were no steps towards fulfilling the conditionality set, there was no upgrading of institutional relationships, though there were no sanctions.

The US government, on the other hand, used forms of punishment, such as termination of financial help if there was lack of co-operation with the ICTY. Throughout that period, the ICTY prosecutor, Carla Del Ponte, was looking for allies in the US government and elsewhere. She advocated a tougher use of conditionality by all western governments dealing with the governments of the countries of the Western Balkans. The NGOs as well called for a more decisive use of conditionality. One of the main activities exercised as a form of pressure by the international community towards the Federal Republic of Yugoslavia in 2001 was the donors' conference. The aim was to raise money for the economic recovery of the new and democratic FRY, but many influential countries conditioned their participation at the conference by fulfillment of certain criteria, which always included cooperation with the ICTY.

In March 2001, just a few months after the democratic coalition of DOS took power in Serbia, the US government set three conditions in order to continue providing

¹⁵⁵“Building on the Model of European Integration” 26 March 2001, available at: http://www.europa.eu.int/comm/external_relations/see/region/europe_integration.pdf last accessed January 2006

the FRY with help worth about \$100m.¹⁵⁶ These were unconditional co-operation with the ICTY; full implementation of Dayton agreement; rule of law and release of all political prisoners, especially the Albanian ones. Minister of the republic of Serbia for International Economic Relations, Goran Pitic, said that if the deadline of Slobodan Milosevic's extradition was not renegotiated with the US administration, they might close financial channels crucial for the reforms and development and not agree on the rescheduling of debt.

As the deadline for the prolongation of the US help was coming closer in March 2001, the circle around Milosevic was closing and the arrest seemed in sight. Kostunica warned that Milosevic was not worth civil conflict and bloodshed, but that everybody was equal before the law and must co-operate with the authorities.¹⁵⁷ Milosevic was arrested on 31 March 2001 on the charges of abuse of power and corruption; still, the government was clearly stating he was not going to be sent to The Hague. The action of the police had been delayed, as there were 30 members of Milosevic's security guard inside with about 400 people in front of the residence. Some clashes occurred between the protestors and the football hooligans who were attacking the SPS supporters. As the police tried to enter the premises fire was opened against them. Two police officers were wounded, in the incident and during the whole action of arrest seven people were injured, one police officer seriously.¹⁵⁸

¹⁵⁶ 23rd March 2001, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?start=10&order=priority&dd=23&mm=3&yyyy=2001> last accessed January 2006

¹⁵⁷ 31 March 2001, B92 News agency, available at:

<http://www.b92.net/news/indexs.php?order=priority&dd=31&mm=3&yyyy=2001> last accessed January 2006

¹⁵⁸ 1 April 2001, B92 news agency available at:

<http://www.b92.net/news/indexs.php?order=priority&dd=01&mm=4&yyyy=2001> last accessed January 2006

Although US financial assistance and EU integration were very strong incentives, the arrest of Milosevic always presented a threat, as the government could not predict the reaction of the public. After he was arrested there were couple of thousands protesters every in front of the central prison in Belgrade asking for his release, but the protest did not turn out to be massive and violent as some of the politicians feared they could have been. Thus, the government took a very risky step, which in the end turned out without major disruption of public order, but that could have not been predicted prior to the arrest.

Del Ponte, the ICTY prosecutor, believed that US conditioning of economic help ‘softened’ the position in Belgrade concerning the ICTY, but that was not the only reason.¹⁵⁹ She said that the EU also informed the government in Belgrade that co-operation would influence EU decision on economic help as well. She commented that this might diminish differences between federal and Serbian levels of government in their attempts to fulfill these conditions. During the attempt to arrest Slobodan Milosevic, the US followed developments in Belgrade and offered help to Belgrade if needed. They postponed decision on certifying help for the FRY until 2 April 2001. The FRY ambassador to the US said Milosevic was the main news of the day in the US, but that the certification should not be connected with the arrest.¹⁶⁰ After the arrest, the Human Rights Watch (HRW) made a plea to the US government not to allow help for the FRY

¹⁵⁹ 30 March 2001, B92 News agency available at: <http://www.b92.net/news/indexs.php?order=priority&dd=30&mm=3&yyyy=2001> last accessed January 2006

¹⁶⁰ 31 March 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=31&mm=3&yyyy=2001> last accessed January 2006

until Milosevic was in The Hague.¹⁶¹ However, the government of the US officially approved financial help one day after Milosevic was arrested.

Javier Solana, the EU representative for the CFSP, said the EU had confidence in the FRY government and would not put pressure on extradition. The US only gave 5 out of 50m help, and wanted Serbian authorities to allow the general secretary of the ICTY to hand in indictment to Milosevic in order for the rest of help to be processed. The EU was also deciding on financial help for the FRY. While Great Britain and Germany were in favor of conditions relating to extradition, France was against it. An unofficial source from the French government said France had great sympathy for Kostunica.¹⁶² President of the EU Commission, Romano Prodi stated that Serbia ‘became real democratic country’ and could be seriously taken into account as a potential candidate for membership. He said there was no difference between the conditions set by the US and the EU; in fact, the only difference was that the EU did not put deadlines.¹⁶³ Of all the international organizations, the ICTY was the most active in lobbying governments to put pressure on the FRY. Del Ponte said she would ask the UN to set sanctions against the FRY if Milosevic was not extradited, but she added that co-operation between the ICTY and the FRY was increasingly positive and expected to see Milosevic in The Hague by the end of the year¹⁶⁴.

¹⁶¹ 1 April 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=01&mm=4&yyyy=2001> last accessed January 2006

¹⁶² 6 April 2001, B92, news agency, available at: <http://www.b92.net/news/indexs.php?start=10&order=priority&dd=06&mm=4&yyyy=2001> last accessed January 2006

¹⁶³ 8 April 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=10&order=priority&dd=08&mm=4&yyyy=2001> last accessed January 2006

¹⁶⁴ 11 April 2001, B92 news agency available at: <http://www.b92.net/news/indexs.php?order=priority&dd=11&mm=4&yyyy=2001> last accessed January 2006

As the conference for raising money for economic reforms was being scheduled, the Human Rights Watch asked Colin Powell to condition the help for the FRY on the extradition of Milosevic, and that the date for the donors' conference should be conditioned on extradition of the FRY citizens to the ICTY.¹⁶⁵ The spokesperson of the French minister of foreign affairs said France was supporting Serbia's concrete co-operation with the ICTY but thought that the FRY should not be conditioned by extradition of Milosevic.¹⁶⁶ Carla Del Ponte went to the US to demand concrete pressure on the FRY to fulfill its obligation to the ICTY and extradition of all the indicted.¹⁶⁷ The spokesperson for the state department said Powell and Del Ponte agreed it was important to put a time frame for Milosevic's extradition and that the EU should put more concrete pressure on the FRY especially because no visible progress had been made since the certification of the US help at the end of March 2001. The spokesperson for the White House said that the president of the US was determined that no help would be given to the FRY unless there was co-operation with the ICTY, stating that at that moment the US was not planning to participate at the donors' conference.

The prime minister of Serbia pointed out that there were three conditions of the US to participate at the conference, two of which seemed unrealistic for him.¹⁶⁸ The first was adoption of the law on co-operation with the ICTY; the second was extradition of the

¹⁶⁵ 1 May 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=01&mm=5&yyyy=2001> last accessed January 2006

¹⁶⁶ 3 May 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=03&mm=5&yyyy=2001> last accessed January 2006

¹⁶⁷ 9 May 2001 B92. news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=09&mm=5&yyyy=2001> last accessed January 2006

¹⁶⁸ 29 May 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=29&mm=5&yyyy=2001> last accessed January 2006

indicted, and the third was clear steps towards the procedure of Milosevic's extradition. He said that the last two were not realistic because it was not a matter of sending a package as well as that the members of the government could not just decide to do it. The country had laws and institutions which had to be respected and which at that moment did not give options for such an action.

The International Crisis Group (ICG) maintained that international financial institutions as well as the governments of the countries participating in the donors' conference should make financial and other help to the FRY conditioned upon the cooperation with the ICTY.¹⁶⁹ Co-operation with the ICTY should include arrest and extradition of FRY citizens as well as Bosnian Serbs on the territory of the FRY, assisting the ICTY with witnesses and getting access to documentation. Additionally, the new law on the ICTY should only help the co-operation rather than hinder it in any way.

The process of drafting the law on co-operation with the ICTY that started in February 2001 was on a standstill, due to the inability of Serbian and Montenegrin parties to agree. The Council of Europe top officials called on the FRY authorities to cooperate with the ICTY regardless of the deadlock between DOS and SNP.¹⁷⁰ They reminded that the ICTY was an institution of the UN and as such did not need ratification. The European Commission stated that the connection between the extradition of Milosevic and the donors' conference had never been made.¹⁷¹ They, nevertheless, claimed that the extradition would ensure that all invited donors showed up and had concrete proposals.

¹⁶⁹ 18 June 2001, B92 news agency available at: <http://www.b92.net/news/indexs.php?order=priority&dd=18&mm=6&yyyy=2001> last accessed January 2006

¹⁷⁰ 22 June 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=22&mm=6&yyyy=2001> last accessed January 2006

¹⁷¹ 22 June 2001, B92 news agency, available at:

The negotiations for the law on the federal level were on a standstill. There were speculations on what could be done. The law at the level of the republic would mean overcoming obstacles in the republican parliament during the adoption of the law and finally possibility that Milan Milutinovic could refuse to sign the law. Although the co-operation could have been done with direct application of the ICTY Statue, it would not have been ideal in a country, which wants to protect its rule of law. The SNP, DOS partners at the federal level, refused to vote for the ICTY law that envisioned extradition of ‘patriots that defended the country from aggression’.¹⁷² The SNP suggested new law provisions: the federal law would lay down framework for co-operation while the republics would decide on the concrete ways of implementing this law.

The FRY government, by the majority of the ministers in a secret ballot adopted the draft law on cooperation with the ICTY.¹⁷³ The SNP, however, confirmed they would not vote for the law in the federal parliament and that they request public session of the parliament, so that there are no speculations afterwards. As the federal parliament did not wish to have negative vote on this important piece of legislation, the law was removed from the parliamentary procedure. Thus, the veto points at the federal level were parliamentary majority held by the SPS, SRS and SNP as well as a decisive position of the SNP in the Chamber of the Republics.¹⁷⁴

<http://www.b92.net/news/indexs.php?start=10&order=priority&dd=22&mm=6&yyyy=2001> last accessed January 2006

¹⁷² 13 April 2001, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?start=10&order=priority&dd=13&mm=4&yyyy=2001> last accessed January 2006

¹⁷³ 14 June 2001, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?order=priority&dd=14&mm=6&yyyy=2001> last accessed January 2006

¹⁷⁴ magazine [time]*Vreme* 546, 21 June 2001 available at:

<http://www.vreme.com/cms/view.php?id=290470> last accessed January 2006

As it became clear that the law would not be passed, the DOS resorted to another solution i.e. passing a government decree on co-operation with the ICTY because it was easier to pass a decree as it did not have to go to the parliaments. The decree on cooperation with the ICTY was adopted by the federal government on 23 June 2001, only with the majority of the DOS, i.e. Serbian part of the federal government.¹⁷⁵ The SPS stated the decree introduced the state of emergency, thus filing a request to Constitutional Court to decide on the constitutionality of the decree and suspension of its application. To avoid this institutional deadlock, the Serbian government took unilateral actions.

The donors' conference organized by the European Commission and the World Bank was scheduled for 29 June 2001. Extradition of Milosevic was not a specific requirement but any step by Belgrade authorities in co-operation would be welcomed. Reconstruction needs in Serbia were estimated at about \$3.9 billion and the organizers hoped to raise about 2.1 of that sum. The US administration had not yet confirmed the participation at the donors' conference. On the day of the beginning of the action to extradite Milosevic, 27 June 2001, the US administration officially confirmed the participation at the donors' conference.¹⁷⁶ The Secretary of State, Colin Powell made that decision after consulting the US ambassador in Belgrade and after talking with Djindjic on the phone, who assured him that the government would fulfill its obligation, extradition of Milosevic and other indicted individuals, as well as other legal requirements for the complete co-operation with the ICTY. Within hours from the confirmation of US participation, Milosevic was extradited. In July, just two weeks after

¹⁷⁵ 23 June 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=23&mm=6&yyyy=2001> last accessed January 2006

¹⁷⁶ 27 June 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=27&mm=6&yyyy=2001> last accessed January 2006

the extradition, the EU Council of ministers approved 300 million euros of financial help for the FRY.¹⁷⁷

As the constitutional court was going to proclaim the federal Decree unconstitutional, on 28 June 2001, the government of Serbia confirmed that Milosevic had been extradited to The Hague. The Prime Minister, Djindjic, stated that the Serbian Government, in co-operation with the ICTY, brought a decision to act according to the Statute of the ICTY and that the action was taken within three hours of making that decision.¹⁷⁸ The government applied article 135 of the Constitution of Serbia, which read that in cases when federal organs were not functioning or were not able to make decisions of interest for both federal units, the bodies of the Government of Serbia temporary, and in individual cases could take over those authorities.

There were three motives according to Djindjic. First was the decision of the Federal Constitutional Court to suspend the Decree. The Judges of the Court were people from Milosevic's regime, and the new government of Serbia decided not to be bound by their decision. Secondly, Djindjic mentioned the organization of the donors' conference, for which many countries decided to attend based on the decision of the Federal Government to pass a decree for the co-operation with the ICTY. The possibility of this decree being suspended and the fact that, for the infinite period of time, co-operation with the ICTY was postponed, led to the risk of unprecedented disgrace and humiliation of the country. Thirdly, and most importantly, suspension of the Decree postponed the question of the co-operation with the ICTY indefinitely, in which case the country was at the risk

¹⁷⁷ 16 July 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=16&mm=7&yyyy=2001> last accessed January 2006

¹⁷⁸ magazine [voice of the people] *Glas Javnosti* 28 June 2001 available at: <http://arhiva.glas-javnosti.co.yu/arhiva/srpski/arhiva-index.html> last accessed January 2006

of becoming internationally isolated. Not only would the country be exposed to humiliation, but this would also endanger the rescheduling of debt, writing off debt, stand-by arrangements, and a place in the IMF and full membership in international economic and financial organizations, including the EU.

Kostunica assessed this as unlawful and unconstitutional as well as a threat to rule of law and the future of the federation. He argued that the citizens of the FRY deserved more protection from the state and that all efforts that had been done for the legal means of co-operation were then ruined with this hurried decision. The SPS and SRS organized protest and wanted criminal proceeding against the DOS leadership.¹⁷⁹ About 10,000 people agreed with the SPS official, who suggested that Milutinovic should dismiss the parliament and call new elections.

In an interview after the extradition, Vojislav Kostunica stated that all the work on looking for a legal solution was annulled by extradition that broke all legal rules and led to complete 'legal abyss'.¹⁸⁰ He added that the court was American and not international, thus selective but co-operation or non-co-operation with it would be choosing between isolation and return to the world. He insisted on co-operation that included dealing with crimes against the Serbs as well, not comprehending why Serbian judiciary would not be able to try war crimes. With regard to the rift between the DOS and his own party, the DSS, he discussed that there was no difference in the DOS when it came to the necessity of the co-operation with the international community and the return of the FRY to it. This

¹⁷⁹ 2 July 2001, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?start=20&order=priority&dd=02&mm=7&yyyy=2001> last accessed January 2006

¹⁸⁰ magazine [Time] Vreme, 548, 5 July 2001, available at:

<http://www.vreme.com/cms/view.php?id=291433> last accessed January 2006

return to the world, the world where the rule of law is supreme could not be done by destroying the principles of one's own rule of law.

After the extradition of Milosevic efforts towards passing the law on co-operation with the ICTY continued. One member of the DOS expert team for the creation of the law on co-operation with the ICTY, Vesna Rakic Vodinelic, explained that the law itself was relatively easy to write, and the problem was political because there was no political will for the law to be passed.¹⁸¹ Finally, in April 2002, republican and federal governments' representatives adopted the draft of the law on co-operation.¹⁸² The SNP was against it, but, since the international standing of the country was in question, they agreed to compromise. The DSS accepted the law as long as it referred to those already accused. The Chamber of Citizens of the federal parliament adopted the law on co-operation with the ICTY.¹⁸³ The SPS, SRS and JUL were vehemently against, warning that somebody would take legal responsibilities about this unconstitutional act. The day after the law had been adopted, Vljako Stojiljkovic, the former Minister of Interior, accused of war crimes by the ICTY, committed suicide; in the letter he left behind, he had accused the republican government for his death.¹⁸⁴ About 200 supporters of the SPS protested against the decisions of the government as they thought directly led to his suicide.

¹⁸¹ 23 February 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=10&order=priority&dd=23&mm=2&yyyy=2002> last accessed January 2006

¹⁸² 8 April 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=08&mm=4&yyyy=2002> last accessed January 2006

¹⁸³ Ibid.

¹⁸⁴ 11 April 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=11&mm=4&yyyy=2002> last accessed January 2006

This section showed difficulties of the Serbian government to pass a law on the cooperation with the ICTY and further actions taken by the government to meet the criteria and ensure donors conference. In addition to political opponents, the government also had to face such instances of suicides and individual actions of those directly threatened by the indictments. The next part of this section will outline some other instances where government was directly attacked by those who were afraid to end up in the ICTY.

3.5.2 New indictments, the protests of the Special Forces and assassination of the Prime Minister

Main source of monitoring compliance of Serbia with the ICTY for the foreign governments was especially the annual reports that the prosecutor of the ICTY was submitting. The ICTY Report of 2001 read that new government of the FRY was cooperating, and the ICTY especially praised the arrest of Milosevic.¹⁸⁵ However, the ICTY did not approve of the FRY position that the law on co-operation with the ICTY was necessary for the actual co-operation to start, and the ICTY was waiting for more arrests, and thus improvement of co-operation.

Just a week before Del Ponte submitted a report to the UN later that year, Kostunica, while in London gave an interview to the Sunday Times in which he said that the FRY had the right to protect its state secrets and the ICTY would not get arbitrary access to the FRY military and state archives.¹⁸⁶ He claimed that country was still

¹⁸⁵ Annual ICTY Report 2001, paragraph 196, available at: <http://www.un.org/icty/rappannu-e/2001/index.htm> last accessed January 2006

¹⁸⁶ 25 November 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=25&mm=11&yyyy=2001> last accessed January 2006

unstable and arbitrary extradition might endanger institutions, rights of citizens and integrity of the state.

In December 2001, the US Congress reminded that although \$115 m was allocated to the FRY, if there was no clear co-operation after 31st of March, there would be no continuation of this help.¹⁸⁷ In January 2002, the EU approved another financial package of help to the FRY.¹⁸⁸ Djindjic pointed out that the EU was not satisfied with the FRY co-operation with the ICTY. It was not a question of conditions but of credibility and the FRY should not be hostage of several individuals.¹⁸⁹ The EU and the US increased diplomatic activity aimed at Montenegro concerning the future of the federation.¹⁹⁰ During February, with regard to the increased diplomatic activity in promoting this view of EU activity, Solana was again in Belgrade, on which occasion he suggested that the best way for the FRY towards the EU.¹⁹¹ The OSCE representatives said referendum of Montenegro on independence should be postponed. Much discussion followed Solana's suggestions on the form of the future state union of Serbia and Montenegro.

Before the US administration decided on the certification of help for Serbia by the end of the March 2002, Serbia was forced to take some clear actions in terms of co-

¹⁸⁷ 21 December 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=21&mm=12&yyyy=2001> last accessed January 2006

¹⁸⁸ 1 April 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=10&order=priority&dd=04&mm=1&yyyy=2002> last accessed January 2006

¹⁸⁹ 28 January 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=28&mm=1&yyyy=2002> last accessed January 2002

¹⁹⁰ 7 February 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=10&order=priority&dd=07&mm=2&yyyy=2002> last accessed January 2006

¹⁹¹ 21 February 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=21&mm=2&yyyy=2002> last accessed January 2006

operation with the ICTY.¹⁹² The EU continued assistance to the FRY regardless of US decision, by giving 1.5 million euros of help to the FRY.¹⁹³ As in April 2001 the law on the co-operation was adopted and several generals and former politicians surrendered, Powell certified the help and unblocked assistance to the FRY¹⁹⁴

Del Ponte continued pressure on the EU and international community against Serbia to co-operate with the ICTY. The Commissioner for external relations, Chris Patten in Belgrade said the EU would increase help to the FRY by one third.¹⁹⁵ In September again, prosecution of the ICTY was dissatisfied with the level of co-operation.¹⁹⁶ Del Ponte threatened to inform the UN about that. Especially lack of extradition and article 39 of the law did not allow for co-operation in case of new indictments.¹⁹⁷ The UN was considering the ICTY negative report on the FRY. The FRY ambassador to the UN informed that the FRY responded to 33 requests made by the ICTY and extradited 14 persons so far.¹⁹⁸ The EU officials accused the authorities of the FRY of the lack of will to adopt the Constitutional Charter, and warned that credibility of

¹⁹² 21 March 2002, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?order=priority&dd=21&mm=3&yyyy=2002> last accessed January 2006

¹⁹³ 26 April 2002, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?start=10&order=priority&dd=26&mm=4&yyyy=2002> Last accessed January 2006

¹⁹⁴ 21 May 2002, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?order=priority&dd=21&mm=5&yyyy=2002> Last accessed January 2006

¹⁹⁵ 3 July 2002, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?order=priority&dd=03&mm=7&yyyy=2002> last accessed January 2006

¹⁹⁶ 12 September 2002, B92 news agency, available at:

http://www.b92.net/news/indexs.php?order=priority&nav_category=64&dd=12&mm=9&yyyy=2002 last accessed January 2006

¹⁹⁷ 21 October 2002, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?order=priority&dd=21&mm=10&yyyy=2002> last accessed January 2006

¹⁹⁸ 29 October 2002, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?order=priority&dd=29&mm=10&yyyy=2002> last accessed January 2006

authorities in Belgrade was in question.¹⁹⁹ After Del Ponte's visit to the EU, the European parliament asked the EU not to continue negotiations for association agreements with the Balkan countries unless they co-operated with the ICTY.

Even though the law on cooperation was passed in April 2002, the ICTY reports were still negative. The 2002 Report assessed co-operation as complicated, varied and affected by the political instability within the coalition government and very little co-operation with the federal level, though more co-operation was experienced at the level of republic in selected areas and on a case-by-case basis. "The overall assessment is that co-operation is far from being full and proactive."²⁰⁰ During the reporting period nine accused were surrendered to the ICTY, six voluntarily. The Federal Parliament passed a law on co-operation with the ICTY and the National Council for co-operation was created, which was responsible for co-ordination with the ICTY. However, Article 39 of the law prohibited the extradition to the Tribunal of any accused indicted after the law came into force. This was inconsistent with the FRY obligations to co-operate fully with the ICTY. The ICTY report accused the FRY authorities to hold or have access to important information that would assist the Prosecutor in her investigations and prosecutions but were withholding them.

The government in Serbia and especially the opposition could not understand the constant pressure of the ICTY, especially after Milosevic was extradited. The inability of the Office of Prosecutor to see that the government was balancing between its

¹⁹⁹ 29 October 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=10&order=priority&dd=29&mm=10&yyyy=2002> last accessed January 2006

²⁰⁰ Annual ICTY Report 2002, paragraph 227 available at <http://www.un.org/icty/rappannu-e/2002/index.htm> last accessed January 2006

international obligations and domestic opposition was a source of frustration for Djindjic's government.

A clear example of this opposition was a protest of the Unit for Special Operations –JSO. In November 2001, brothers Banovic were arrested based on indictment by the ICTY.²⁰¹ The JSO of the State Security Forces of Serbia that performed the arrest started protesting because they disagreed with the arrest.²⁰² They said they were not informed whom they were arresting, and they refused to be part of any activity in relation to the ICTY before the law on co-operation with this institution was passed.²⁰³ The chief of the Security Forces of Serbia stated that the members of the unit were manipulated and reassured them that none of them was wanted by the ICTY, insisting they should stop the protest. At a press conference, they asked for the resignation of the Minister of Interior.

The members of the JSO had reasons to fear the ICTY because some of them were members of the paramilitary formations active in conflicts in the former Yugoslavia and probably committed crimes against the civilian population. On the third day of the protest, members of the JSO blocked the highway in the centre of Belgrade using armored vehicles.²⁰⁴ They repeated their demands, denying that they did not recognize the ICTY or were afraid of it. They just requested legal framework for co-operation with

²⁰¹ 8 November 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=10&order=priority&dd=08&mm=11&yyyy=2001> last accessed January 2006

²⁰² 9 November 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=09&mm=11&yyyy=2001> last accessed January 2006

²⁰³ 10 November 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=10&mm=11&yyyy=2001> last accessed, January 2006

²⁰⁴ 12 November 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=12&mm=11&yyyy=2001> last accessed January 2006

it. They denied that any political organization was behind their protest, though the Minister of Interior doubted that the JSO suddenly became legalist, and indirectly accused the DSS, the party of Kostunica. At the same time, the DSS accused the government and argued that in the absence of law on co-operation, even existing laws were broken, and people were arbitrarily arrested and extradited without any legal basis.

This form of protest was very dangerous because, if any police or military unit can win changes in the government by using their access to arms, then democracy of such country in question. On the fifth day of the protest, Djindjic did not accept resignation, of the Minister of Interior warning that no group of people dissatisfied with their position would be able to change ministers in the government²⁰⁵. The JSO was removed from the control of the State Security and placed under the Public Security Control. The Minister of Interior stressed again that no active member of the MUP would be extradited to the ICTY because there was no need for that because the MUP was also carrying internal investigations.²⁰⁶

Finally, on the eight day, the JSO finished the protest.²⁰⁷ The unit was to be transformed into an anti-terrorist unit and used only by direct order of the minister and under the control of the government. There were no criminal proceedings against those who participated in the 'strike', as Kostunica described this action of the JSO. Kostunica claimed that he had no influence on the JSO, as they were under the government of

²⁰⁵ 14 November 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=14&mm=11&yyyy=2001> last accessed January 2006

²⁰⁶ 17 December 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=10&order=priority&dd=17&mm=12&yyyy=2001> Last accessed January 2006

²⁰⁷ 17 November 2001, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=17&mm=11&yyyy=2001> last accessed January 2006

Serbia; as well, he stated that they did not endanger security of the country, except for the functioning of traffic. They attended the protest in their own professional uniforms, the uniforms they wear on duty and nothing else, which made it only a labor action.

In addition to the JSO protest, in November 2001, the VJ top official became concerned about the investigation in the ICTY that was done about general Pavkovic, former chief of staff in the VJ.²⁰⁸ The Federal Minister of Interior explained that there were different investigations but that did not mean that those people would be indicted or that they were accused, which was why there should be no speculations and that no actions would be taken before any official request was received from the ICTY. The Commander of the Third Army, General Vladimir Lazarevic, argued the reports about investigations about the generals who participated in defending their country in 1999 negatively influenced the morale.²⁰⁹ He was ready to appear before the domestic court at any time to defend himself. Although he said co-operations with the ICTY was state responsibility and a political question; likewise, he was asking why nobody raised questions of responsibility of the NATO and KLA (Kosovo Liberation Army) commanders. The VJ would cooperate with the ICTY exclusively through the law on the ICTY.

Despite the fact that the parliament adopted the law on war crimes and their prosecution in Serbia;²¹⁰ as well as the fact that Kostunica dismissed General Pavkovic

²⁰⁸ 29 November 2001, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?order=priority&dd=29&mm=11&yyyy=2001>, last accessed January 2006

²⁰⁹ 5 December 2001, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?start=10&order=priority&dd=05&mm=12&yyyy=2001> last accessed January 2006

²¹⁰ 1 July 2003, B92 news agency, available at:

<http://www.b92.net/news/indexs.php?start=30&order=priority&dd=01&mm=7&yyyy=2003>, last accessed January 2003

from his position of the commander of the VJ²¹¹, the government has not done enough to deal with the past. The Humanitarian Law Centre in Belgrade observed that, with the view that the extradition of the four generals (Pavkovic, Lazarevic and two police generals) to the ICTY would endanger national security of Serbia and survival of democratic authority, the government took the side of the accused.

After the law on co-operation with the ICTY was adopted in April 2002, the federal government asked 23 indicted persons to surrender within three days, thus ensuring government support and guarantees.²¹² Several former generals surrendered, and some of them were disappointed the public did not defend them. For those who responded to government call for surrender, guarantees were issued. These included Dragoljub Ojdanic, the former general, Nikola Sainovic, the former vice president of the federal government, Mile Mrksic, the former JNA officer, Milan Martic, the former leader of Bosnian Serbs, Momcilo Gruban accused of crimes in Bosnia.²¹³ The Former Serbian president Milan Milutinovic also surrendered and later pleaded not guilty. In February 2003, Vojislav Seselj, the leader of the Radical Party (SRS) was indicted, surrendered voluntarily and pleaded not guilty.²¹⁴

²¹¹ 25 June 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=25&mm=6&yyyy=2002> last accessed, January 2006

²¹² 20 April 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=20&mm=4&yyyy=2002> last accessed January 2006

²¹³ 17 May 2002, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=17&mm=5&yyyy=2002> last accessed January 2006

²¹⁴ 25 March 2003, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=20&order=priority&dd=25&mm=3&yyyy=2003> last accessed January 2006

Jovica Stanisic, the former chief of State security services and Frank Simatovic, the creator of the Unit for Special Operations were accused.²¹⁵ They were immediately extradited and pleaded not guilty.²¹⁶ Miroslav Radic, a war crimes suspect, a member of the so-called Vukovar group, was also arrested and transferred to The Hague.²¹⁷ He was accused of involvement in the killing of about 200 civilians in the town of Vukovar in eastern Croatia in 1991. The other two members of the group were Mile Mrksic, who had already been extradited and Veselin Sljivancanin, who did not respond to the call of the federal government, and whose arrest proved one of the most difficult.

He was arrested on 12 June 2003.²¹⁸ Some political leaders and about 1,000 supporters of Sljivancanin were obstructing the police action. These supporters and some drunken hooligans attacked the police and set vehicles on fire. The police used tear gas and stun grenades to disperse the crowd. Ten police vehicles and many private vehicles were destroyed as well as windows broken on the building where Sljivancanin was staying; 50 policemen were injured and it is still not known how many demonstrators. The Federal Minister of Interior denied this arrest had anything to do with certification of US help, though the arrest had taken place just before the 15th June, 2003 deadline when the US Congress set up to evaluate the progress in co-operation with the ICTY, on which

²¹⁵ 7 May 2003, B92 news agency, available at:
<http://www.b92.net/news/indexs.php?start=10&order=priority&dd=07&mm=5&yyyy=2003> last accessed January 2006

²¹⁶ 2 June 2003, B92 news agency, available at:
<http://www.b92.net/news/indexs.php?start=10&order=priority&dd=02&mm=6&yyyy=2003> last accessed January 2006

²¹⁷ 17 May 2003, BBC online news available at:
<http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/europe/3035781> last accessed January 2006

²¹⁸ 12 June 2003, B92 news agency, available at:
<http://www.b92.net/news/indexs.php?order=priority&dd=12&mm=6&yyyy=2003> last accessed January 2006

the continuation of the US economic aid worth \$110m depended. Two weeks later Sljivancanin was in the Tribunal.

In the beginning of 2003, the US was losing patience with the Balkan countries over the ICTY. The US ambassador for war crimes paid a visit to Belgrade, Sarajevo and Zagreb to put pressure on the countries to arrest 25 indicted that were on their respective territories.²¹⁹ In a document on the Western Balkans, Greece, as the EU presidency holder, stated that the way for Serbia and Montenegro to enter the EU was adoption of the constitutional Charter and harmonization of the internal market of the two units.²²⁰

US help was to be directly conditioned on the co-operation with the ICTY and especially arrest of Karadzic and Mladic.²²¹ The state department ambassador for war crimes gave a message to Djindjic in the last talks that Mladic had to be arrested before 31 March for the help to be continued to Serbia.²²² He said Mladic was in Serbia and that it had to be done. Djindjic commented that the police forces needed to invest more effort to arrest the indicted by the ICTY but said Western countries needed to give more detailed intelligence if they seriously wanted to help Serbia in catching these fugitives, and not only give some reports of their appearance somewhere. British ambassador insisted that Britain need to see progress in co-operation with the ICTY in order to vote for membership of Serbia and Montenegro in the Council of Europe. The US

²¹⁹ 1 January 2003, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=10&order=priority&dd=01&mm=1&yyyy=2003> last accessed January 2006

²²⁰ 9 January 2003, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=09&mm=1&yyyy=2003> last accessed January 2006

²²¹ 19 January 2003, B92 news agency available at: <http://www.b92.net/news/indexs.php?order=priority&dd=19&mm=1&yyyy=2003> last accessed January 2006

²²² 21 January 2003, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=21&mm=1&yyyy=2003> last accessed January 2006

administration was to decide on the help to Serbia and Montenegro on 15 June rather than 31 March.²²³

Increased pressures from abroad with rising tensions within Serbia, opposition attacks on the government, uneasiness of the military and police forces about the ICTY cooperation that culminated in the protest of the JSO units in 2002 created a very difficult environment for the Serbian government to work. In March 2003, the Serbian Prime Minister was assassinated. Although the assassins, members of the JSO, were arrested, the political background of the assassination is not yet clear. What became obvious during the investigation was that the members of the JSO units were allowed to believe that if they did not kill the prime minister they would end up in the ICTY.

In September 2003, the European Parliament president, Pat Cox, visited Belgrade to show EU support for the country's way towards the EU.²²⁴ However, in her annual address to the UN Security Council in October 2003, Del Ponte accused Serbia and Montenegro of not co-operating enough and that half of the 17 fugitives were on its territory.²²⁵ Powell said Mladic and Karadzic were still a priority.²²⁶ The spokesperson of the European Commission asserted that the evaluation of the Feasibility Study covered several fields including co-operation with the ICTY, which was one of the most important.

²²³ <http://www.b92.net/news/indexs.php?order=priority&dd=16&mm=2&yyyy=2003>

²²⁴ 29 September 2003, B92 news agency, available at: <http://www.b92.net/news/indexs.php?order=priority&dd=29&mm=9&yyyy=2003> last accessed January 2006

²²⁵ 10 October 2003, B92 news agency, available at: http://www.b92.net/news/indexs.php?order=priority&nav_category=64&dd=10&mm=10&yyyy=2003 last accessed January 2006

²²⁶ 11 October 2003, B92 news agency, available at: <http://www.b92.net/news/indexs.php?start=20&order=priority&dd=11&mm=10&yyyy=2003> last accessed January 2006

The 2003 the ICTY report criticized failures to arrest the indicted. Except for assisting in extradition of some voluntary surrender, Serbia and Montenegro failed to act upon most of the outstanding Tribunal arrest warrants. Co-operation on behalf of Serbia and Montenegro was evaluated as improving but still complex, partial and varied. Co-operation was affected by the political uncertainties and dramatic developments especially with the assassination of Prime Minister Djindjic. Minimal co-operation at federal level was still a problem. One good development was seen in the procedure that deleted the controversial article 39 of the Law on co-operation with the ICTY. Overall assessment was that co-operation was neither full nor proactive. Three accused surrendered while there were still 16 fugitives believed to be in the territory of Serbia and Montenegro, including Ratko Mladic. Due to lack of efforts to locate and arrest fugitives in 2002, President of the ICTY reported non-compliance of the FRY with the UN Security Council. "It remains a serious concern that even after ten years of the ICTY's existence and all the democratic changes that have occurred in Serbia and Montenegro and in the region, the authorities of this country still put into question or limit the Prosecutor's right to have full, unimpeded access to the relevant evidence."²²⁷

The failure to cooperate further with the ICTY was because after the assassination the government focused more on preserving public order and finding assassins. As a consequence of the assassination the political constellation of power changed, the already visible cracks in the government became even more apparent and every party prepared for the new elections during which period the ICTY cooperation was not high on the agenda, not only because the most pro the ICTY politician had just been assassinated.

²²⁷ Annual ICTY Report 2002, paragraph 245, available at: <http://www.un.org/icty/rappannu-e/2002/index.htm> last accessed January 2006

The following chapter will deal with the early elections and the new change of government.

3.6 Conclusion

This chapter tried to show the change in the position of the new government and the domestic factors that interfered with the cooperation with the ICTY and thus closer ties with the EU. In terms of external rewards, not only the EU but also the US and other international institutions were offering rewards in exchange for the fulfillment of certain criteria, mainly cooperation with the ICTY. The EU was very clear in its rewards regarding the accession process that included economic assistance. Hence, the factors of the size of EU rewards were big and the timing was relatively favorable as the new government had enough time to fulfill the conditions in order to start enjoying the rewards during its term. Hence, the hypotheses on the size and timing of the rewards were confirmed.

However, the domestic factors were not so favorable. According to the classification set in the introduction, this period was characterized by mixed veto players in a fragmented government with a comfortable support in the parliament. The public support was split on the issue of the ICTY, though it was generally high for the support of EU integration. There were strong Euro skeptic blocs in the parliaments, both federal and Serbian one, leading to lower likelihood of the cooperation. The hypothesis relating to the high number of institutional obstacles was confirmed, the higher the number of obstacles the lower likelihood of full cooperation. The extradition of Milosevic, by unilateral action of Serbian government almost defied this hypothesis, but the assassination of the prime minister, and subsequent lack of cooperation with the ICTY

confirmed the hypothesis in the end. Also, hypotheses were confirmed that the more fragmented decision making process the lower likelihood of cooperation and the higher the number of the crucial positions being held by anti-the ICTY party members the lower likelihood of cooperation.

In short, despite high values of size and timing of the rewards offered by the EU, the values on the domestic factors were low, not allowing the cooperation to proceed further, except for the forced and almost bordering on unconstitutional extradition of Slobodan Milosevic, which was done purely because of the determination of the Prime Minister. The cooperation with the ICTY was thus lacking, and there was minimal progress in the cooperation with the EU. The domestic factors and divisions culminated with the assassination of the prime minister showing that, in spite of external rewards, domestic dynamics prevailed in the process of compliance with the ICTY.

Chapter 4- Serbia 2003-08

4.1 Introduction

This chapter looks at the period from the early elections in December 2003 until another early election in May 2008. Although there were regular elections in 2007, the political constellation of power did not change, i.e. the same parties stayed in the government with some other joining the government and Kostunica remained the prime minister, which is why this period is taken as a whole. The most significant event during the first government of Kostunica was opening up of negotiations for SAA between the EU and Serbia and Montenegro in October 2005. Another important development was referendum on independence of Montenegro in June 2006, following which Montenegro and Serbia continued as two separate independent states. This meant that institutional structure of political organization of the country changed, which had its effect on cooperation with the ICTY and on relations with the EU.

In the aftermath of the assassination of the prime minister in March 2003, a state of emergency was introduced during which vice presidents of the government led the country. Zoran Zivkovic from DS, as a deputy prime minister took over the leading position in the government. Given the circumstances of the state of emergency, political turmoil and instability, most of the decisions related to the ICTY were postponed, especially because the new elections were expected. In October 2003, the ICTY issued indictments against three military and one police general for the conflict in Kosovo (Nebojsa Pavkovic, Vlastimir Djordjevic, Vladimir Lazarevic and Sreten Lukic). Zivkovic's interim government took the stance that potential arrests of acting officers

might have caused more turbulence in the armed forces and potentially be destabilizing for the national security. Hence, there were no arrests based on ICTY indictments.

This situation of no arrests continued through out the period from middle of 2003 until 2008. The new government that took office in the beginning of 2004 after the elections in December 2003 adopted a policy of encouraging voluntary surrenders of the indictees and made no arrests. In addition to those four generals the two most wanted indictees Radovan Karadzic and Ratko Mladic were still at large, which remained a contentious issue between the ICTY and Serbia throughout the period. As the cooperation with the ICTY improved in the middle of 2005, the negotiations for SAA were opened in October of that year but with the caveat that they could be stopped if the cooperation with the ICTY deteriorates. This actually happened in May 2006, as the Prosecutor of ICTY Carla Del Ponte was not satisfied with the cooperation and especially that Mladic was not arrested and extradited. The negotiations were suspended for a year and were only renewed after the elections in Serbia in 2007.

The chapter will follow these issues through several sections. Firstly, general positions and power costs for actors will be outlined, followed by institutional structure for cooperation with the ICTY and partisan veto players. The final section on external pressures and incentives will be done through a process tracing of instances of cooperation and non-cooperation against these external influences.

4.2 Actors: general positions and power costs

Upon the assassination of Prime Minister Zoran Djindjic, the balance of power within the government and between the government and the opposition shifted, making the coalition

even more difficult to work and leading to the early elections, which were held on 28 December 2003. The Serbian Radical Party SRS won 27,6%, the Democratic Party of Serbia DSS 17,7%, the Democratic Party-DS 12,6%, the G 17 Plus 11,5%, the Serbian Renewal Movement -SPO and the Nova Serbia -NS 7,7% and the Socialist Party of Serbia SPS 7,6%.²²⁸ In terms of the number of seats in the parliament that meant 82 for the SRS, 53 for the DSS, 37 for the DS, 34 for the G17 Plus, 22 for the coalition SPO-NS and 22 for the SPS. After more than a month of negotiations, on 19 February 2004, a coalition agreement was signed between DSS, SPO, NS and G-17 plus.

The DSS got nine portfolios, the G 17 plus four, and the SPO-NS got four. The Ministers for Justice and Police were both the DSS members.²²⁹ Furthermore, 130 MPs voted for while 113 were against the minority government. The SPS supported the government.²³⁰ The EU, US and other international actors did not like to see SPS or SRS as part of government and thus SPS support for the minority government in the parliament was very controversial. Despite pressures exerted by the international community to include the DS in the government, DSS–DS rivalries dating back to disagreement over extradition of Milosevic proved irreconcilable. Thus, the DS became opposition party. The situation was additionally complicated when Boris Tadic (DS) became president of Serbia at the elections in June 2004. The relationship between Kostunica as prime minister and Tadic as president of Serbia was again tense, as was the relationship between Djindjic as prime minister and Kostunica as president of the FRY during the previous government.

²²⁸ B92, Special report on Elections 2003 available at: http://www.b92.net/specijal/izbori2003/istorijat.php?nav_id=127265 last accessed March 2006

²²⁹ *Beta*, 1 March 2004, http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=01&nav_id=134054

²³⁰ *SRNA*, 3 March 2004: <http://www.b92.net/info/vesti/index.php?dd=3&mm=3&yyyy=2004>

This coalition was based on the common aim of joining the EU. As soon as the negotiations with the EU were suspended Miroљub Labus from G17plus minister responsible for EU integrations resigned. The coalition survived few more months and by the end of 2006, all parties were campaigning for the new elections, which were held in January 2007. The results showed that SRS got the highest number of votes that translated into 81 seats in the parliament. The DS had 64, the DSS-NS coalition had 47, the G17 plus had 19, the SPS had 16 and the Liberal Democratic Party -LDP had 15 seats.²³¹ After the elections, there were four months of negotiations about the new government. The EU explicitly said that the negotiations on the SAA could be continued even without Mladic's arrest if the new government showed willingness to cooperate further with the ICTY if it was formed from the parties that were willing to carry out the necessary reforms to bring the country closer to the EU.²³² Here it was implied that the EU governments would like to see the DS within the government coalition. In the end after months of negotiations, DS and DSS overcame their differences and agreed to form the government together. The G17plus was in the government coalition as well as the NS as a coalition partner of the DSS. DS got Ministry of Foreign Affairs and the president of the Parliament. Kostunica was the prime minister again and DSS got the positions of Minister of Interior and Justice. This was a very fragile minority government with a strong opposition from SPS, SRS in the parliament. This fragility finally led to the new elections only a year after the government was formed.

²³¹ 22 January 2007 FoNet news agency available at:

<http://www.b92.net/info/vesti/index.php?order=priority&dd=22&mm=1&yyyy=2007>

²³² 15 January 2007, B92:

http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=01&dd=15&nav_id=227709&nav_category=11&order=priority

The position towards the ICTY during both governments was passive cooperation favoring voluntary arrests. This has not changed even after the DS joined government as the DSS had the position of the prime minister and the control of the main positions relevant for cooperation with the ICTY as well as the secret service which was arguably responsible only to the prime minister and was staffed with DSS personnel. In addition, it was minority government, and even if the government had been more proactive in terms of cooperating with the ICTY, the fear of parliamentary majority led by the SRS and SPS was always a threat to the governing party.

In July 2004, the Ministry of Human and Minority Rights carried out a survey in Serbia, excluding Kosovo, about attitudes towards the ICTY.²³³ The main results showed that 76% of Serbian citizens viewed the ICTY as political and only 13% as legal institution. Similarly, 51% believe that Serbia should cooperate with the ICTY. Among DS voters, 75% voted for cooperation with the ICTY and among SRS voters only 23%. Half of the surveyed would choose cooperation with the ICTY even in case of extradition of all outstanding indicted, to new sanctions.

Generally speaking, 62% of all surveyed did not agree that it was in the interest of Serbia to extradite the generals Lukic, Pavkovic, Lazarevic and Djordjevic. Moreover, 40% completely disagreed and 22% did not agree. On the other hand, 18% generally agreed with the position that it was in the interest of Serbia to extradite those four generals. Four percent of the surveyed believed that the generals were guilty, 23% partially guilty and 61% not guilty. Of those, 31% thought they were innocent and 24% saw them as heroes; of those who saw generals as innocent, 38% believed that the

²³³ Ministry of Human and minority rights of Serbia and Montenegro available at: www.gov.yu last accessed March 2006

generals should voluntarily surrender and thus show the whole world that they were not guilty.

Furthermore, 48% of the surveyed did not agree with the position that it was in the interest of Serbia to extradite Ratko Mladic while 25% agreed; 8% believed Mladic was guilty, 30% partially guilty, 23% innocent and 24% that he was a hero and 67% of all surveyed believed that it was possible to convince the international community to transfer all remaining cases to Serbia. That it would be acceptable to extradite Mladic in return for the concession to try the four generals in Serbia believed 38%, 48% disagreed with this position.

In October 2005, the office of Serbian government for cooperation with the EU carried out a survey, which showed that 64% of citizens would vote for EU membership while 12 would be against and 16 refused to vote.²³⁴ In 2004, in a similar survey, 71% was supporting EU accession; this fall in the support percentage was explained by the understanding of the people that joining the EU would not only bring benefits but would equally bring obligations.

Thus, it was not because of the public opinion, but it was the position of the government predominantly holding ministerial positions strategically important for the ICTY cooperation, i.e. the Ministries of Justice and Interior, not to cooperate with the ICTY beyond the voluntary surrenders. The ICTY was accepted as necessary evil but no actions were taken against those indicted. Kostunica saw the Tribunal as a political institution and cooperation was acceptable for Kostunica's government only if it was voluntary, if the cooperation was mutual and based on equal treatment of both sides.

²³⁴ *Beta*, 19 October 2005, http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=10&dd=19&nav_id=178757

4.3 Institutional veto points

In terms of institutional obstacles, there were no constitutional prohibitions for cooperation with the ICTY, which were resolved during previous governments, by passing the law on cooperation with the ICTY in 2002, amended in 2003 and forming the National Council for cooperation with the ICTY in 2003. However, the bodies created to cooperate with the ICTY had complex structure that was intertwined between federal level in the State Union of Serbia and Montenegro and national level of each member of the federation.

The National Council for cooperation with the ICTY was created under Djindjic government and was only an advisory body without any executive role or enforcement mechanisms. After the assassination of the prime minister this body did not meet, nor work until July 2004. At that point Rasim Ljajic, federal Minister for Human and Minority Rights, accepted the position of the president of the Council, which then resumed work. From December 2003 until July 2004 this body was not working, and no official institutional communication was flowing between Serbia and ICTY. Nevertheless, the position of the president does not ensure the smooth functioning of this body as the procedure of the cooperation is relatively complex.

The Council has two main roles; one is cooperation with the ICTY and its requests, and the other is assisting the indictees in their defense before the Tribunal. Here, only the first role will be examined. According to the law on cooperation with the ICTY, all requests from the ICTY were sent to the Federal Ministry of Foreign Affairs of Serbia and Montenegro, which then forwarded these requests to relevant bodies. If it was a request for an arrest it was forwarded to a relevant court, which would then issue an arrest warrant. The Ministry of Interior was then responsible for arresting such

individuals who were then taken to the court, which would make a decision whether all conditions were fulfilled for the extradition. The final step was signing of this decision by the federal Minister of Human and Minority Rights. Rasim Ljajic was at that moment also the president of the National Council for cooperation with the ICTY but it was not necessary that these two positions coincide. After Montenegro left the federation of Serbia and Montenegro, the same procedure applies only now the final step is the signature of the Minister of Justice of Serbia.

This procedure also had some different forms prior to 2004 which additionally complicated the process. Because there were several ministries involved the archives or any statistical data on cooperation are not at one place and it is very difficult to get the right numbers on the issues related to the cooperation. Moreover, most of the issues are viewed by the government as confidential and are not open to the public.²³⁵ The part of the cooperation that refers to the arrests is done as explained above and has nothing to do with the National Council for cooperation and the Council cannot give any data on this. Also, voluntary surrenders are, by definition not regulated by law, as they are voluntary and the Council has no information on this either. Usually, volunteers would approach the Serbian government if they wanted to surrender but there is no strict procedure.

Other forms of cooperation where the Council has more active role are releasing witnesses from keeping state or military secrets, requests for sending relevant documents for the ongoing cases and requests for other information. The National Council meets once every three weeks and originally had nine members. Three were suggested by the Councils of Ministers of Serbia and Montenegro, three by Serbian and three by

²³⁵ All information regarding the National Council for cooperation with the ICTY were gathered through an interview with the Secretary of the Office of the National Council, June 2005, Belgrade. The interview is on file with the author

Montenegrin government. During the period 2004-2006 members were, Ljajic as the president, Vuk Draskovic (SPO) as Federal Minister of Foreign Affairs and Prvoslav Davinic (DS) as Federal Ministers of Defense. Serbian members were Dragan Jovic (DSS) as Minister of Interior of Serbia, Branislav Bjelica deputy minister of Justice of Serbia and Zoran Loncar Minister of state administration of Serbia. The three members from Montenegro were deputy Ministers of Defense and Justice of Montenegro, as well as deputy federal minister of Foreign Affairs of Serbia and Montenegro, but they did not attend the meetings of the Council from September 2004 onwards. Despite this, the Council had regular meetings and performed its duties.

When there is a request for some documentation to be sent to the ICTY, the Council gives a recommendation that the Council of Ministers of Serbia and Montenegro removes the secret status of the document before it can be sent to the ICTY. Thus, the National Council has no executive power or any power to sanction any body for not cooperating; it has only coordinating role. It deals with all requests that arrive from the ICTY and forwards them to relevant ministries, or has advisory role when it suggest to the Council of Ministers (or after Montenegrin independence, to the government of Serbia) to remove secrecy from a document asked by the ICTY or to release a witness of an obligation to keep a state secret. Therefore, it has no executive role, members of the Council are ministers whose ministries are responsible for the arrests of judiciary procedures and these ministers can influence their employees to work more efficiently but in general it the Council has no real power. However, whenever the Council invited all those involved in the process of cooperation to be more efficient it usually resulted in a more efficient work. Although the Council is in almost daily contact with the ICTY, it

has no duty to submit any reports to the ICTY. Usually, the Prosecutor of the ICTY would give her assessments of the cooperation based on ICTY data and not on the data that the National Council has. The prosecutor on her visits to Serbia would meet the president of the Council but also individual ministers and/or the Prime Minister. Thus, the council is important for the coordination and advising ministries and the government what to do, it can meet in special cases to deal with arising problems, but ultimately it is on the individual ministries to fulfill the requests from the Tribunal. Therefore, any criticism of the work of the Council, or referring to the decisions of the Council to justify non-cooperation with the ICTY is not correct interpretation of its function.

As mentioned above unified data on cooperation with the ICTY are not available, due to the fragmentation of the process of cooperation. Estimated data of the office of National Council for the period from October 2000 until June 2005 are the following: 27 voluntary surrenders, out of whom 14 from November 2004 to June 2005; 10 persons were arrested, but the last arrest was in the middle of 2003. In total, 37 people either surrendered or were arrested. In June 2005, there were 10 indictees still at large, nine of whom were Serbs by nationality but only one was known to be in Serbia, General Vlastimir Djordjevic, who was one of the four mentioned generals. However, the Prosecutor of the ICTY claimed that six out of those nine were in Serbia, but the Office of the National Council could not have confirmed this.

The Council also had no information how the cooperation was done between Serbia and Republika Srpska in Bosnia because most of these indictees were Bosnian Serbs. They also had no information on arrests. Only Ministry of Interior would have these data, but they would be confidential. The National Council processed about 850

requests for different documents and information and about 290 people were released from the obligation to keep state secret. According to their records, almost all requests have been responded to and the few that were being processed were only the ones that had arrived within previous weeks. The National Council for cooperation with the ICTY claims there were no delays with cooperation and that response to the requests from the Tribunal are fulfilled almost hundred percent.

This brief description of the institutional structure for cooperation shows that there are many points in the process where a decision or action could be delayed. That is why it is important who holds positions relevant for cooperation. Once Vuk Draskovic (SPO) became the Minister of Foreign Affairs (MFA), he immediately started working on EU integration and cooperation with the ICTY. Allegedly, the biggest rift between him and Kostunica happened when the MFA forwarded indictments to Belgrade District Court against top army and police generals without first discussing the issue with Kostunica. These indictments were received in October 2003 during the government of Zoran Zivkovic, and were against the four military and police generals. Moreover, Draskovic accused Kostunica of inability to replace certain individuals in the top army ranks and thus enable better cooperation with the ICTY. This is only one example how an individual holding relevant position for cooperation can make the cooperation more efficient or delay it. Therefore, party positions on ICTY cooperation are crucial in order for the institutional framework for the cooperation to work. The following section will look at partisan veto players.

4.4 Partisan veto players

According to the classification mentioned in the introduction the governments of Kostunica in both periods 2003-2007 and 2007-2008 were fragmented governments with relatively weak parliamentary support. Thus, there were many veto points, which would mean that the change of policy would be incremental or impossible.

As already before Kostunica became prime minister the cooperation with the ICTY was not very good, especially there were arrests in the second part of 2003 due to the unstable situation after the assassination. The new government of Kostunica adopted this as an excuse not to cooperate, but in essence his and his party position was against active cooperation.

The main veto players, i.e. actors that prevented cooperation with the ICTY were Kostunica and his party members, whose position on cooperation with the ICTY was very particular. They accepted the ICTY as a political reality but never accepted that it was legal body, thus they did not want to arrest any indictees and preferred the transfers to The Hague to be voluntary. Upon the elections, Kostunica argued that the new government would not extradite the four generals because there were more important problems that Serbia needed to solve than were extraditions.²³⁶ He pointed out that extraditions would only strengthen the ultra nationalist Radical Party, and enhance social tensions. He claimed that democracy meant cooperation, deliberation and allowing new government to find a way to solve problems.

DSS program stresses “participation in the work of European organizations and accession to European integration processes with the final aim of full membership in the

²³⁶ *Beta*, 21 February 2004, <http://www.b92.net/info/vesti/index.php?dd=21&mm=2&yyyy=2004>

European Union.”²³⁷ However, it seems that the DSS did not link achieving this with the full cooperation with the ICTY for which it said, “Although ICTY is more political than legal institution, and it is easy to transform into an instrument of the politics of the big powers, cooperation with ICTY is our international duty which is unavoidable. However, this cooperation needs to be according to the law, mutual...with full respect of national dignity.”²³⁸

In response to Kostunica’s position on the ICTY, Boris Tadic (DS) who became the president of Serbia in June 2004, focused on the necessity of the national strategy for cooperation with the ICTY.²³⁹ Tadic acknowledged that from a legal perspective, the ICTY was problematic, but it was the reality, it existed, it was a UN institution and thus, cooperation was necessary.

The position of the SPO was that “National, state or any other reasons can never justify non responsibility of the UN Charter, Security Council or other international institutions, courts and conventions.”²⁴⁰ Thus, clearly it shows the SPO position for cooperation with the ICTY. In addition, the president of the party, later as the minister of foreign affairs, has always been vociferous in support of cooperation with the ICTY. However, this position and an active role in the cooperation while Draskovic, president of the SPO was federal minister for Foreign Affairs did not lead to change in the policy. Despite the fact that MFA sent the indictment to the District court in Belgrade, the arrest warrants were not acted upon, as the Minister of Interior was from the DSS which

²³⁷ DSS party program, available at: http://www.dss.org.yu/zasto_postojimo/program.php?id=65 last accessed March 2006

²³⁸ *ibid.*

²³⁹ RTS tv report, 24 February 2004, http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=02&dd=24&nav_id=133599

²⁴⁰ SPO party program, available at: <http://www.spo.org.yu/action.php?objekat=Program&akcija=Pregled> last accessed March 2006

attempted to find a middle way between international duty to cooperate and insistence that the ICTY is not legal body, by encouraging voluntary surrenders. Draskovic argued it was clear who was against cooperation because the Ministers of Justice and Police were not even part of the National Council for cooperation with the ICTY. He also inferred that the Minister of Defense should be president of the council as the indictees were army members. This statement of Draskovic contradicts the data from the Office of National Council for cooperation with the ICTY, which shows that there were many ways to avoid responsibility of cooperation.

Draskovic also criticized Kostunica for keeping the staff that was still loyal to Milosevic's regime. And this problem persisted even after the 2007 elections. The EU also mentioned this question in February 2007 before the new government was formed after the elections in January. When it was pointed out in 2007 that the Service did not do an efficient job because the ICTY indictees were still at large, there was no clear response from the DSS. The DSS did not give up the right to choose who would be the Director of Secret Services, and Rade Bulatovic remained at this post until the following elections in 2008. Reportedly, Bulatovic was only responsible to Kostunica and all information that the Service might have had on the indictees would be only given to Kostunica directly.

The DSS also did not make any other personnel change; even though some of the four indictees generals were still active officers. In March 2004, when Sreten Lukic, one of the indicted generals, was removed from his position within the Ministry of Interior, the Ministry and the new government denied that his removal had anything to do with the indictment, stating it was a routine change at the end of the previous government.²⁴¹ The DSS again stated that four generals would not be extradited, and that the government was

²⁴¹ B92, 5 March 2004 <http://www.b92.net/info/vesti/index.php?dd=5&mm=3&yyyy=2004>

looking for different ways in how to cooperate with the ICTY.²⁴² This is clear example that the Ministry of Interior did not want to arrest 'one of its own' and that the government was supporting such position. Thus, regardless of some individual cases of some government members such as Draskovic to change this status quo, the DSS was holding all relevant positions for cooperation and it did not allow change.

The SPS and SRS were not directly preventing cooperation as they had no executive power, and thus were not able to do so. But they were active in passing legislation through the parliament, where they had considerable number of seats, in order to mitigate the effects of cooperation with the ICTY. One of the most controversial was the Law on the Rights of the ICTY indictees and their families adopted on 30 March 2004. The law was suggested by the SRS, voted for by the DSS, SRS and SPS (141 MPs in total), which was enough for the law to pass.²⁴³ Out of four members of coalition government, only the DSS voted for the law. The G 17 plus abstained from voting, the NS and SPO MPs walked out during the voting. The DS voted against the law. Although this was the only concession to the SPS for their support of the government, the DSS lost credibility by supporting the law. The law was suspended immediately and sent to the Constitutional Court for a review. The law actually made clear that those three parties did not view the indictees as criminals and their protection was seen as a priority, even before the government fulfilled the international responsibility of extraditing them. It seems that even the international incentives that the EU and other international organizations and individual governments were giving Serbia, did not motivate Kostunica's government to

²⁴² *RTS television*, 4 March 2004,
http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=04&nav_id=134383

²⁴³ International Crisis Group (ICG) report, Belgrade/Brussels, 22 July 2004, available at www.icg.org

change the position on the ICTY. The following section will look closely at the international rewards and pressures.

4.5 External pressures and incentives

During the months after the elections in 2003, the EU repeatedly reminded the Serbian authorities that it expected all democratic forces to form the government which would be able to continue with reforms.²⁴⁴ Both EU and UN members expressed worries about the possibility that the new government was established by the support of the SPS.²⁴⁵

In March 2004, the US discontinued help to Serbia due to the lack of cooperation with the ICTY.²⁴⁶ The EU representative in Serbia presented the new EU report on Serbia in March 2004, which criticized lack of reforms in police and justice system, lack of cooperation with the ICTY.²⁴⁷ The new law on the assistance with the ICTY indictees was not seen as contributing to the cooperation. Most of the pressures from the EU and US were based on the ICTY reports. The ICTY reports confirmed negative assessment.

The ICTY report for 2003 which covers period from July 2002 until August 2003 shows relatively good cooperation.²⁴⁸ This was, however, the period of DOS government and after the assassination of the Prime Minister, Djindjic, in March 2003 the cooperation became slower and less enthusiastic leading to almost no cooperation after autumn 2003.

The report clearly shows deterioration in communication with the ICTY after the assassination of the prime minister. The government was more focused on solving

²⁴⁴ Beta, 4 February 2004:

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=02&dd=04&nav_id=131872

²⁴⁵ FoNet, 11 February 2004:

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=02&dd=11&nav_id=132489,

Beta, 6 February 2004 <http://www.b92.net/info/vesti/index.php?dd=6&mm=2&yyyy=2004>

²⁴⁶ Beta, 31 March 2004, <http://www.b92.net/info/vesti/index.php?dd=31&mm=3&yyyy=2004>

²⁴⁷ B92, 31 March 2004,

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=31&nav_id=136938

²⁴⁸ Annual ICTY Report 2003, available at: <http://www.un.org/icty/rappannu-e/2003/index.htm>

internal problems, keeping order within the country. Moreover, the assassination showed the government did not control the army, security services and police, making it more difficult to cooperate with the ICTY. The assassination proved that it could be fatal for the state as well as for those structures that government did not have control of, preventing full cooperation by not fulfilling requests by ICTY asked from the government.

The ICTY Report 2004 covering period from August 2003 to August 2004 showed the deterioration in cooperation. Out of nine arrests during that period, only one took place in Serbia.²⁴⁹ “Cooperation by Serbia and Montenegro continued to be complex, partial and variable until the end of 2003. Cooperation usually was politicized by the authorities. From the beginning of 2004 Serbia and Montenegro practically suspended any cooperation with the Tribunal.”²⁵⁰ The Prosecutor was noting inability of the government to act on arrest warrants issued by the tribunal even though it was clear where the accused were. She added that three of four indicted persons in October 2003 were openly active in political life of Serbia calling for referendum whether they needed to surrender or not. The ICTY president, therefore, was forced to report Serbia and Montenegro to the Security Council of the UN in May 2004. The report again showed that 15 fugitives, including Mladic, were still believed to be in Serbia and Montenegro.

The report of 2005 covering the period from August 2004 to August 2005 presented a slightly better compliance record. In October 2004 one accused was arrested in Serbia and from December 2004 to 25 April 2005, 20 accused surrendered to the

²⁴⁹ Annual ICTY report 2004, paragraph 268, available at, <http://www.un.org/icty/rappannu-e/2004/index.htm> last accessed March 2006

²⁵⁰ Ibid., paragraph 277.

ICTY.²⁵¹ “Cooperation by Serbia and Montenegro started to improve late in 2004, but it has not yet reached the point of being complete, consistent and speedy. The positive efforts of the President of the National Council for Cooperation, Rasim Ljajic, produced progress in regard to the waivers for interviews and some documents.”²⁵² Although in 2005 Serbian government enabled 14 voluntary transfers to the ICTY, Ratko Mladic was still out of reach and at least six of the 10 remaining indictees were still not arrested but were believed to be in Serbia according to the report.

In November 2004, the EU again stated that the feasibility study would only be positively assessed if there was cooperation with the ICTY.²⁵³ During this period, in domestic politics there was a big debate going on, accusations and counter accusations about whether the ICTY indictees were hiding on the premises of the army. This was provoked by the death of two soldiers in army barracks in Belgrade, whose causes of death were ambiguous. There were speculations that they might have been killed because they had seen something they were not supposed to see. It was never confirmed whether these speculations were true.

Also in November, the US Congress again conditioned help of 73 million dollars to the extradition of Ratko Mladic.²⁵⁴ Likewise, in November 2004, Del Ponte addressed the UN Security Council, saying there was no change since the previous report in May 2004. Twelve indictees were freely residing in Serbia, and Kostunica openly stated he would not arrest them but would only wait

²⁵¹ Annual ICTY report 2005, paragraph 180, available at: <http://www.un.org/icty/rappannu-e/2005/index.htm>

²⁵² Ibid., paragraph 189.

²⁵³ *Beta*, 8 November 2004:

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=11&dd=08&nav_id=155289

²⁵⁴ *Beta*, 22 November 2004,

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=11&dd=22&nav_id=156352

for their surrender. Del Ponte reported this policy did not produce results. She claimed that the last person that voluntarily surrendered was actually arrested and that for domestic purposes it was presented as a voluntary surrender. She warned that such an attitude was unacceptable.

As mentioned above, these negative reports and discontinuation of incentives from the EU and the US were direct consequence of the policy of non-arrests by the DSS government. In April 2004, Minister of Interior Jovic (DSS) said there was continuous search for those indicted who were still at large but regarding the four indicted generals he said he would talk to them to find the best solution for the state and for them individually.²⁵⁵ The Minister of Defense still waited for the two generals Lazarevic and Pavkovic to talk to him about surrender to the ICTY.²⁵⁶

In July 2004, the Ministry of Foreign Affairs sent the indictments against four generals to the country court in Belgrade.²⁵⁷ This was in line with the law on cooperation with the ICTY and was now on the court to proceed to the arrest of the indictees. Dacic (SPS) threatened to stop support to the government if the four generals were arrested.²⁵⁸ As noted above, the SPS did not discontinue support because Kostunica's government did not act on the indictments. Despite the indictments being served to the court, they were not served to the indicted because the Ministry of Interior did not do it.

²⁵⁵ *B92*, 23 April 2004,

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=04&dd=23&nav_id=138986

²⁵⁶ *Beta*, 8 May 2004:

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=05&dd=08&nav_id=140222

²⁵⁷ *B92*, 1 July 2004

<http://www.b92.net/info/vesti/index.php?dd=1&mm=7&yyyy=2004>

²⁵⁸ *Beta*, 1 July 2004,

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=07&dd=01&nav_id=144885

Kostunica stated that it was the duty of the National Council for cooperation to decide whether extraditions were necessary and when.²⁵⁹ He added that it was the position of the previous Council that the extraditions were not timely, and that once the new Council was constituted it would deal with it. Finally, in July, the Council was constituted and Ljajic became its president.²⁶⁰ He said he accepted the position as no one else wanted it. The National Council had no jurisdiction to arrest anyone but only to coordinate different bodies; the government of Serbia was responsible to ensure cooperation. As explained above the under institutional framework for cooperation, National Council for cooperation has no executive role, it is only advisory body. Kostunica, as a law expert was aware of this. His statements could only confuse the public, but were not seriously taken by the international organization, and especially the ICTY.

The ICTY position was that bureaucracy could not be the reason for lack of cooperation. However, in August 2004, the chief of the Serbia and Montenegro office for EU integration resigned stating that there was a lack of political will for the common view of the future of European process and that it was clear in lack of cooperation with the ICTY.²⁶¹ Although Tadic said that non-cooperation with ICTY was catastrophe there was a problem with the thinking of the leading parties.²⁶² At the same time a survey showed that 60% of Serbian citizens were absolutely against extraditions of any Serbian

²⁵⁹ B92 y, 2 July 2004,

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=07&dd=02&nav_id=144962

²⁶⁰ B92, 16 July 2004,

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=07&dd=16&nav_id=145977

²⁶¹ B92, 16 August 2004, <http://www.b92.net/info/vesti/index.php?dd=16&mm=8&yyyy=2004>

²⁶² Vecernje novosti, daily 20 August, 2004

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=08&dd=20&nav_id=148885

citizen to the ICTY.²⁶³ In September, all Montenegrin members of the National Council for cooperation with the ICTY resigned from the posts.²⁶⁴ Montenegro never fully accepted responsibility of the ICTY cooperation, always stating that they were cooperating while Serbia was not. Once they realized that the National Council was only a façade they resigned.

Finally, in September 2004 Sreten Lukic accepted the indictment, which was viewed by the president Tadic as a deed worth of respect.²⁶⁵ Almost a year after he had been indicted, the general accepted the indictment. It seemed against all legal principles that someone indicted was thanked for the acceptance of indictment and was not arrested almost a year after the indictment. This shows that the whole attitude towards the cooperation with the ICTY was not based on legality or procedures set up by the law on cooperation but was purely based on political relations. The government was not ready to extradite anyone, and when finally one of the indicted accepted the indictment, it was supposed to be praised as an extraordinary deed of courage and respect. The atmosphere in the government showed that it was reluctant to arrest anyone. According to the *Blic* daily, an anonymous source in the Serbian government revealed that Kostunica was only ready to cooperate with the ICTY

²⁶³ *FoNet*, 31 August 2004, http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=08&dd=31&nav_id=149904

²⁶⁴ *B92*, 22 September 2004, <http://www.b92.net/info/vesti/index.php?dd=22&mm=9&yyyy=2004>

²⁶⁵ *Beta*, 30 September 2004, http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=09&dd=30&nav_id=152188

if the indictees surrendered voluntarily.²⁶⁶ The source added that Kostunica still resisted pressures from the EU, ICTY or US and still insisted on trials in Serbia.

In October 2004, one ICTY indictee surrendered and EU officials stated that some improvement was seen.²⁶⁷ They also said that the feasibility study was worked on and that it might be completed by spring 2005. Still, relations with the EU were still tense over lack of the ICTY cooperation on which some EU members insisted. The EU council of ministers invited all countries to extradite those indicted by the ICTY.²⁶⁸ Despite these calls, the Minister of Justice of Serbia still maintained that the arrests would mean destabilization of Serbia and that thus the generals would not be arrested.²⁶⁹ He stated that the former government decided not to arrest the generals because it would endanger the security of the country and until this conclusion was annulled by some other conclusions the arrests would not be performed. This position was somewhat illogical. Firstly, it was impossible that courts waited for a political decision in order to arrest someone. Secondly, the decision of the former government was not impediment to action for the new government. Finally, if the state was fearful of the retired generals, then they did not possess any power. This just showed that Kostunica and his party simply did not want to cooperate with the ICTY.

It is not still clear what were the incentives, if any, for those indictees that surrendered voluntarily; whether there were some secret talks between them and the

²⁶⁶ *Blic* daily , 1 October 2004,

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=10&dd=01&nav_id=152237

²⁶⁷ *Beta*, 9 October 2004:

<http://www.b92.net/info/vesti/index.php?dd=9&mm=10&yyyy=2004>

²⁶⁸ *B 92*, 13 October 2004:

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=10&dd=13&nav_id=153122

²⁶⁹ *B92* , 19 October 2004,

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=10&dd=19&nav_id=153607

government; or if the government played on the card of their responsibility as individuals and patriots not to prevent their own country from EU integration because they did not want to surrender. The motives are not yet clear, but in fact, as mentioned above 14 people voluntarily surrendered between November 2004 and June 2005, including all four generals.

The number of voluntary surrenders increased as the international pressure increased. In January 2005, the Human Rights Watch claimed that the authorities of Serbia and Montenegro were avoiding full cooperation with the ICTY.²⁷⁰ The HRW repeated what the ICTY reports had already asserted, i.e. that Kostunica was stubborn in non-cooperation and depended on voluntary surrenders. In January, the US government suspended assistance to Serbia for 2005, withdrew part of staff from Belgrade, and banned the JAT airways to fly to the US.²⁷¹ These partial sanctions were introduced due to the lack of cooperation with the ICTY. The US ambassador warned that partial cooperation was not acceptable, and that only full cooperation counts. He said it was the duty of the Serbian authorities to locate and arrest Mladic. The Serbian government repeated that cooperation was done regularly, expressing surprise at the decision of the US State Department because the government of Serbia never linked fulfillment of international obligations with receiving assistance. Therefore, it is difficult to show direct link between surrenders and the international pressure, but they potentially had effect on the indictees who eventually acted on the indictment.

Olli Rehn, EU Enlargement commission visited Serbia at the end of January, and repeated that international obligations, especially the ICTY cooperation, were crucial for

²⁷⁰ *Beta*, 13 January 2005

http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=01&dd=13&nav_id=159916

²⁷¹ *B92*, 14 January 2005 <http://www.b92.net/info/vesti/index.php?dd=14&mm=1&yyyy=2005>

the EU integrations, emphasizing that it was up to citizens to decide whether they wished to join integration or not.²⁷² Again the EU put a pressure and another voluntary surrender followed.

On 28 January 2005, the General Vladimir Lazarevic decided to surrender.²⁷³ The government of Serbia stated that Lazarevic made this decision after talking to Prime Minister Kostunica; as national interests were the most important, he decided to serve the country to the end. It is unclear why Lazarevic changed his mind as he was against surrenders, stating earlier that authorities should decide what to do because he did not fight a private war but fought for the country, and was also worried that these indictments against generals gave amnesty to the NATO and to Albanian terrorists.

The church, as well, took part in the negotiations - the Patriarch Pavle talked to Kostunica and Lazarevic.²⁷⁴ This is also a change in the position of the church because earlier it did not have such a positive approach to voluntary surrenders. After Lazarevic surrendered, in March the former chief of staff general Momcilo Perisic decided to do the same.²⁷⁵ Kostunica was pleased with his method of cooperation, i.e. surrenders were finally working. Indictment against Perisic was secret until he was served the indictment. In the statement for either Lazarevic or Perisic, there was no mention of what crimes the individuals were accused. Del Ponte was still not impressed. Voluntary surrenders were fine but still, in her opinion, it was not cooperation. She demanded answers for those who had been at large for 10 years.

²⁷² B92, 24 January 2005 <http://www.b92.net/info/vesti/index.php?dd=24&mm=1&yyyy=2005>

²⁷³ B92, 28 January 2005 <http://www.b92.net/info/vesti/index.php?dd=28&mm=1&yyyy=2005>

²⁷⁴ B92, 2 February 2005

http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=02&dd=02&nav_id=161313

²⁷⁵ Beta, 3 March 2005

<http://www.b92.net/info/vesti/index.php?dd=2&mm=3&yyyy=2005>

The EU was pleased to see some improvement in the cooperation but as it delayed the beginning of negotiations for membership with Croatia due to non-extradition of Gotovina, the authorities in Serbia got the message that arrests were necessary, and that the EU was serious. The President of the ICTY visited Serbia in mid March 2005, and again appealed to the authorities to fulfill their obligations.²⁷⁶ Despite a positive report of the State Department about democratization in Serbia, assistance was still withheld, said the US ambassador to Serbia and Montenegro.²⁷⁷ Still, as a main condition, cooperation with the ICTY was put forth.

General Sreten Lukic went to The Hague in April 2005.²⁷⁸ However, it was unclear whether he went voluntarily. Lukic's lawyer said he was taken against his will, in his pajamas, from the medical center in Belgrade. The lawyer argued that his rights were violated and he did not understand why he was taken away because he did not run away from responsibility; he was regularly contacting authorities, providing medical reports and progress with his treatment. The Minister of Justice denied that Lukic was arrested, claiming that all other speculations were just politicization.

Ljajic talked to the ICTY representatives, reporting that positive assessment of cooperation was confirmed.²⁷⁹ This incentive for receiving the positive feasibility study and delay in Croatian negotiations made the government of the Serbia work harder on Pavkovic case. His flat was searched and his closest allies were interrogated.²⁸⁰ This was done because Pavkovic failed to appear before the court on another domestic charge, but

²⁷⁶ *Beta*, 15 March 2005:

http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=03&dd=15&nav_id=164291

²⁷⁷ *B92*, 30 March 2005,

http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=03&dd=30&nav_id=165392

²⁷⁸ *FoNet*, 4 April 2005, <http://www.b92.net/info/vesti/index.php?dd=4&mm=4&yyyy=2005>

²⁷⁹ *Beta*, 5 April 2005, <http://www.b92.net/info/vesti/index.php?dd=5&mm=4&yyyy=2005>

²⁸⁰ *B92*, 6 April 2005, <http://www.b92.net/info/vesti/index.php?dd=6&mm=4&yyyy=2005>

since the ICTY has supremacy over domestic courts, this also meant that search for him was ICTY related. The government never accepted such treatment, which is why it remains unclear whether they really searched his home based on domestic law suit and persuaded him to surrender, or they actually arrested him and portrayed the forced transfer as a voluntary surrender. Similarly, the EU stated that they expected Pavkovic in The Hague in order to receive the final confirmation of cooperation with the ICTY. Rehn talked about this on the phone with Kostunica.

Once this was solved and the ICTY cooperation was seen as improving, Serbia and Montenegro got the positive feasibility study on 12 April 2005.²⁸¹ However, the ambassador of Germany to Serbia and Montenegro asserted that the EU would be consistent as it was with Croatia a month earlier, and that the EU council of Ministers would adopt the feasibility study in light of Pavkovic's case, which was still pending.²⁸² On 22 April 2005, Pavkovic confirmed he was going to the ICTY to fulfill his professional duty, as he did not wish to be an obstacle to the progress of his country.²⁸³ It is still unclear what made Pavkovic change his mind as his earlier statements contradicted this attitude. Nonetheless, he and his lawyer claimed professional duty and patriotism were the only motive and denied that the feasibility study had anything to do with this.

Thus, in April 2005, the Commission staff working paper that dealt with the preparedness of Serbia and Montenegro to negotiate the Stabilization and Association Agreement with the European Union stated that concerning the ICTY cooperation there

²⁸¹ B92, 12 April 2005, <http://www.b92.net/info/vesti/index.php?dd=12&mm=4&yyyy=2005>

²⁸² B92, 14 April 2005, <http://www.b92.net/info/vesti/index.php?dd=14&mm=4&yyyy=2005>

²⁸³ B92, 22 April 2005, <http://www.b92.net/info/vesti/index.php?dd=22&mm=4&yyyy=2005>

had been some improvement though the most wanted were still at large.²⁸⁴ The report stated that the ICTY was the only part of the Dayton Peace Agreement that was still problematic. The report referred to the ICTY, underlining that the implementation was sometimes prevented by those in the administration and especially in the army who had access to the documents but were against cooperation with the ICTY. On the positive side the EU report acknowledged a considerable number of voluntary surrenders and transfers to the ICTY in the recent period, but mentioned constant failure to arrest Mladic. Among positive decisions was also adoption of the law to freeze the assets of the ICTY accused in March 2005.

This report was used as a basis for the feasibility study of Serbia and Montenegro preparedness to start SAA negotiations and the study concluded that Serbia and Montenegro made significant progress in meeting its international obligations for cooperation with the ICTY.²⁸⁵ Thus, it was concluded that Serbia and Montenegro was sufficiently prepared for SAA negotiations with the EU. The EU Commission recommended that the Council open negotiations. Nonetheless, the Study also reads that in the event continuous progress was expected in all areas as outlined in the study. The study reads, “in order to progress through the various stages of the process, both before and during the negotiations, Serbia and Montenegro **must continue to co-operate with the ICTY**, and achieve full cooperation without delay.”²⁸⁶

²⁸⁴ Commission staff working paper, Report on the preparedness of Serbia and Montenegro to negotiate a Stabilization and Association Agreement with the European Union, April 2005, SEC (2005) 478, 15.

²⁸⁵ Communication from the Commission on the preparedness of Serbia and Montenegro to negotiate Stabilization and Association Agreement with the EU, April 2005, COM (2005) 476, 6.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0476en01.pdf

²⁸⁶ *ibid.*, 8. (original emphasize)

On 3 October 2005, the EU decided to open negotiations with Serbia and Montenegro, which were officially opened in Belgrade on 10 October 2005.²⁸⁷ The report however, stated that “the pace and conclusions of the negotiations will depend in particular on the country’s progress in developing its legislative framework and administrative capacity, the effective implementation of the Constitutional Charter and full co-operation with the ICTY.”²⁸⁸ Again, the obligation of cooperation with the ICTY was mentioned not only as international obligation of Serbia and Montenegro as a UN member and signatory of the Dayton Accords but was also an obligation “under Council of Europe post-accession commitments and an integral part of the EU’s political conditionality under the Stabilization and Association process.”²⁸⁹ It reiterated that Montenegro had the same obligations under this provision. In addition, despite positive assessment of ICTY cooperation, the EU report noted that policy of ‘voluntary surrenders’ had reached its limits, and that a number of indictees were still at large.

However, after a brief period of intensive voluntary surrenders and opening of negotiations for SAA, Serbia continued the same passive policy towards the ICTY. In January 2006, Del Ponte asked from the EU the same pressure as it had been put to Croatian in March 2005, when negotiations on EU accession were not open because Croatian indictee General Gotovina had not been arrested. Del Ponte demanded the same pressure against Serbian in order to arrest Mladic before July 2006.²⁹⁰ The prosecutor said this in a meeting with Rehn, and the EU Commissioner responded that the EU might

²⁸⁷Brussels, 9 November 2005, SEC (2005) 1428, Serbia and Montenegro, 2005 Progress Report, 5 http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1428_final_progress_report_cs_en.pdf

²⁸⁸ Ibid,

²⁸⁹ Ibid., 22.

²⁹⁰ http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=01&dd=20&nav_id=185816&order=priority

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suspend the negotiations on the SAA with Serbia if there is no improvement in the cooperation with the ICTY. Del Ponte announced a visit to Serbia for February 2006. On 28 January the former chief of Mladic's security, colonel of the Army of Republika Srpska Jovo Djogo, was arrested.²⁹¹ He was arrested on the charges of helping Mladic to hide. Reportedly, Mladic did not only get the assistance from Republika Srpska but also from the Army of Serbia (VJ). Three days after this the Supreme Defense Council had a five hour long session where the chief of military security intelligence unit was submitting a report on the cooperation with ICTY.²⁹² The Council said it was necessary to determine criminal responsibility for those who might have assisted ICTY indictees, but the report presented of the session of the Council was given state secret status and was not presented to the public.

On 1 February 2006, a member of the EU Commission delegation in Belgrade, David Hudson said the EU did not give a precise date until when Serbia should fulfill its obligations towards the ICTY, but that it was "losing patience and understanding" with Serbia.²⁹³ The cooperation with the ICTY was one of the main principles of a new EU document, Partnership between Serbia and Montenegro and the EU, which was adopted in Brussels few days before and was supposed to enter force on 11 February. Del Ponte visited Belgrade on 6 February and already on 13 February EU commissioner for enlargement again stated that the Prosecutor informed him of non-cooperation of Serbia

²⁹¹ http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=01&dd=28&nav_id=186730&order=priority

28 January 2006, Beta

²⁹² <http://www.b92.net/info/vesti/index.php?order=priority&dd=1&mm=2&yyyy=2006>

1 February 2006, B92

²⁹³ http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=02&dd=01&nav_id=187121&order=priority

1 February 2006, FoNet

with the ICTY.²⁹⁴ Three days later Rehn was in Belgrade and again repeated that the EU was only interested in deeds, not words and that it was stated very clear in October 2005 that the negotiations would continue only as long as the cooperation with the ICTY was continuing.²⁹⁵ He repeated that if the full cooperation with the ICTY was not reached it would have negative effects on negotiations and on European future of Serbia and Montenegro. On 27 February, the Council of Ministers of the EU invited Serbia and Montenegro to fulfill all obligations to the ICTY, i.e. extradite all remaining indictees in order for the negotiations to continue.²⁹⁶ This request was repeated again by the Council of Minister of the EU in the end of March but there was still no major breakthrough on the arrests of indictees. On 31 March the EU decided to give Serbia one more month and to do another review of cooperation by the end of April. Olli Rehn confirmed that he received assurances from Kostunica that everything was done to locate, arrest and extradite Mladic, and that on the basis on this the EU decided to give Serbia some more time.²⁹⁷

Despite some activities in taking into custody those who were suspected of assisting Mladic, he was not arrested by the end of April. After months of negotiations and visits from the EU to Belgrade, the EU decided to suspend the negotiations on SAA on 3 May 2006.²⁹⁸ Del Ponte claimed the authorities knew where Mladic was ten days

²⁹⁴ http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=02&dd=13&nav_id=188508&order=priority

13 February 2006, Beta

²⁹⁵ http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=02&dd=16&nav_id=188747&order=priority

16 February 2006, B92

²⁹⁶ http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=02&dd=27&nav_id=189859&order=priority

27 February 2006, FoNet

²⁹⁷ <http://www.b92.net/info/vesti/index.php?order=priority&dd=31&mm=3&yyyy=2006>

31 March 2006, Beta

²⁹⁸ <http://www.b92.net/info/vesti/index.php?order=priority&dd=3&mm=5&yyyy=2006>

3 May 2006, B92

before, but did not arrest him. Based on her report the EU made the decision. Miroslav Labus (G17plus) who was chief negotiator with the EU on the SAA submitted his resignation because he said the government failed to do what it had promised.

In June 2006, Montenegro had a referendum where majority voted for independence. This was accepted in both members of the federation and both Montenegro and Serbia had to constitute new independent states. Politicians in Serbia became preoccupied with the new elections, preparing and adopting new constitution and solving state questions related to the newly gained independence. As a consequence, cooperation with the ICTY was not on the agenda and therefore, the negotiations with the EU still remained suspended.

After the elections in January 2007 the statements from the EU were showing preferences towards the DS being included in the new government. The EU, had doubts that governments including the SPS or SRS would be ready to undertake necessary reforms that would bring the country closer to the EU. The EU offered to restart negotiations on the SAA once new government showed willingness to continue reforms and cooperation with the ICTY.²⁹⁹ Eventually, after months of difficult negotiations the DS and DSS came to an agreement on the coalition government, albeit a very fragile one. Negotiations with the EU resumed in June 2007, but the cooperation with the ICTY did not change substantially. The same positions related to cooperation were still under control of DSS. Kostunica remained as the president of the government. The end of the year passed in the preparations for the presidential elections and some parties advocated parliamentary elections as well.

²⁹⁹ 16 April 2007, Beta

http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=04&dd=16&nav_id=242155&nav_category=11

On 14 February 2008 Kosovo proclaimed its independence and from then on the rift between the DS and DSS on cooperation with the EU became final. The DSS continued to link signing of SAA with the pressure on Serbia to recognize Kosovo, the two issues which were never linked by the EU. Eventually, this proved impossible obstacle for the government to continue to work together. In May 2008 parliamentary elections changed the political constellation of power within Serbia. The next chapter will deal with these changes.

4.6 Conclusion

In conclusion, five years of Kostunica's government in two mandates, showed firm policy on passive cooperation with the ICTY. The EU had high rewards for Serbia, but the DSS government was determined to follow its principles on the ICTY, and was not tempted by the rewards, at least not officially. It is difficult to prove whether it unofficially discussed this with the indictees who eventually surrender.

Regarding the hypotheses on timing and size of the reward, this period showed that the timing and the size of the reward, in this case negotiations on SAA, were not enough as the government valued more its principles that the ICTY was illegal and thus decided to administer no arrests. Hence, these hypotheses were not proved for this period

The hypotheses relating to negative attitudes for ICTY cooperation and anti-ICTY bloc in the parliament were proved. These negative attitudes proved impossible to overcome and the cooperation was lacking. This also goes for the hypothesis on institutional obstacles and fragmentation of the decision-making process. The process of cooperation is so fragmented and involving many steps, therefore it was possible to delay it or do not take a certain step which led to the failure of cooperation. Thus, the

hypothesis that the higher number of the crucial positions in cooperation with the ICTY is held by anti ICTY parties, the lower likelihood of cooperation was confirmed.

Chapter 5 - Serbia 2008 - present

5.1 Introduction

The period after the elections in May 2008 marks the change in the constellation of power as Democratic Party (DS) took over the leading position in the government. Among others, DS held the positions of the prime minister, ministers of foreign affairs, defense, finance, justice, human and minority rights as well as the minister for Kosovo. Out of 26 ministers DS has eleven, plus the position of prime minister. Their coalition partners G17 plus has six, SPO one, SDP one and SDA Sandzak one. The last two are parties representing minorities. Although Rasim Ljajic from SDP is minister of labor and social policy, his role is relevant for the ICTY cooperation because he remained the president of the National Council for the Cooperation with the ICTY, the position he assumed in 2004 while he was federal minister for human rights in the government of Serbia and Montenegro. As this position is very politically sensitive and not very popular he remained at this position since then.

Another important shift that happened after the elections of 2008 was the return to power of Socialist Party of Serbia (SPS), the party of the former leader Slobodan Milosevic. SPS made coalition government with DS and holds 4 ministries including one minister without portfolio and two deputy prime ministerial positions. Ivica Dacic the successor to Milosevic as the president of SPS is the minister of Interior and vice president of the government. Some parties that belonged to the opposition bloc during the Milosevic's period saw this return of SPS as a big step back and refrained from entering the government coalition. LDP, Liberal democratic party of Cedomir Jovanovic who was vice president of the Djindjic government and very close collaborator of Djindjic,

decided not to enter government because he did not want to share power with the party they fought against during 1990s. Yet, LDP decided to support the government on the issues that were in line with LDP program, which is pro-EU and pro co-operation with the ICTY. The former governing parties Kostunica's Democratic Party of Serbia (DSS) and Nova Serbia (NS) moved to the opposition, as well as Serbian Radical Party- SRS.

As before the elections, the main issues were cooperation with the EU and issue of the independence of Kosovo. The parliament had to ratify the Stabilization and Association Agreement (SAA) and that was the first debate in the newly formed government. The pressure from the EU, the US and other international organizations was that Serbia should choose parties that are able to implement reforms and continue on the path towards the EU. The EU increased pressure that Serbia had to fulfill all obligations related to the ICTY cooperation before any progress towards further institutional relations with the EU. The EU did not encourage Serbia to apply for membership before the SAA was ratified by all members. The Netherlands especially, along with some other member states insisted on the full cooperation with the ICTY before ratification.

Two most important events related to the ICTY cooperation were two arrests. The arrest of Stojan Zupljanin happened in June soon after the elections. As soon as the new government was formed, on 21 July 2008, one of the most important arrests of the ICTY fugitive Radovan Karadzic was carried out. These were deemed enormous steps closer to the full cooperation with the ICTY, and EU membership, but continuous cooperation and extraditions of the last two fugitives was still expected.

5.2 Actors: general positions and power costs

According to the Republican Election Committee, the List for European Serbia (DS, G17plus, SPO, parties representing minorities: SDP and SDA Sandzak) won 38.44% of votes or 102 seats, while SRS won 29,36% of votes or 78 seats in the parliament; for DSS-NS voted 11,59% of voters, which was 30 seats, while coalition SPS-PUPS-JS won 7,6 % of votes and 20 seats; LDP 5,24% of votes and 13 seats.³⁰⁰ This did not allow any one of the parties to form a government on its own. DS had choice to form a government with SPS but LDP did not want to join such government, also DSS did not want to form government with DS. SRS had enough seats to form a government with SPS and DSS-NS. SPS's position was that it would either join the government or stay in the opposition, supporting minority government was not an option for them.

New government was approved by the parliament on 7 July 2008 with 127 votes for and 27 against.³⁰¹ This is a very narrow margin and since the creation of the new government there have always been problems in securing enough votes for major decisions in the parliament. The speech of the prime minister elect, Mirko Cvetkovic from DS, focused on the EU future and unacceptance of the independence of Kosovo as the two main issues for the new government, along with stronger economy, social responsibility, and fight against crime and corruption. EU membership was on the top of the agenda of the new government. Prime minister stated in his speech that one of the first tasks of the new government would be the ratification of the SAA in the parliament, achieving candidate status by the end of the year and implementation of the reforms, making the country prepared to be a fullfledged member of the EU, and the end of the

³⁰⁰ <http://www.b92.net/info/vesti/index.php?order=priority&dd=12&mm=5&yyyy=2008>

Tanjung, 12 May 2008

³⁰¹ <http://www.b92.net/info/vesti/index.php?order=priority&dd=7&mm=7&yyyy=2008>

Tanjung, 7 July 2008

government's mandate. He underscored that the country would strengthen ties with Russia, the US and other partners and continue policy of respecting international law fulfill all international obligation. Regarding the ICTY, he said that the government would insist that all crimes were treated equally. All members of the coalition government agreed that Serbia would never recognize independence of Kosovo and that it would use all diplomatic and legal measures in order to solve the status of Kosovo and would initiate a new dialogue with the Kosovo Albanians to attempt to reach an acceptable solution for all.

Prior to the decision on the government dialogue was going between various parties, which showed the aims and main principles of the parties. In the initial negotiations among SPS, SRS and DSS five principles for potential cooperation were agreed. These included: Kosovo within Serbia, fight against corruption, economic development, European integrations but with Kosovo within Serbia and SPS insisted on social justice.³⁰²

The deputy president of SRS Tomislav Nikolic and the vice president Dragan Todorovic were not present during the negotiations on formation of the government because they were in the Hague visiting the president of the party Vojislav Seselj, who is on trial at the ICTY. SRS leadership said it was a regular visit that had been scheduled earlier and that it depended on the approval from the Tribunal, thus was not related to the elections. Many actors from the international community, which will be explained in more detail below, did not look favorable on a coalition that would include the SRS which was taking instructions from the president who is on trial before the ICTY.

³⁰²<http://www.b92.net/info/vesti/index.php?order=priority&dd=15&mm=5&yyyy=2008>
15 May 2008, FoNet

At the same time SPS was negotiating with DS also. President of Serbia and of Democratic party, Boris Tadic, said they negotiated with SPS because the two parties shared the same ideology. He specified that it was not negotiations on government positions but on the possibilities of creating a partnership. According to Tadic there were good preconditions for this partnership because both parties shared ideology of Socialist International, both parties worked for social reforms which would lead to prosperity of society with social justice and equal chances for each citizen. Tadic also said that DS and SPS were for a society that had balanced economic development which would enlarge its capacities for the defense of Kosovo. Additional dimension of their cooperation was creating conditions for accelerated increase of the standard of living, and on the other hand starting the process of historic reconciliation.

Reportedly, SPS and Dacic asked from DS rehabilitation of Milosevic's family. SPS wanted Serbia to withdraw request for extradition of Milosevic's wife and son from Russia. On the other hand, DS expected SPS to fully cooperate with the ICTY.

The bone of contention that led to the elections and was again the main point of discussions during the negotiations on making new coalitions for the new government was the issue of SAA and how it related to the issue of the independence of Kosovo. DSS made these two issues intertwined while the EU side kept it separate. SRS was on the side of DSS on this, but after the elections Nikolic from SRS tried to find a middle ground between the two positions.

Nikolic said that a new government would negotiate about SAA with the EU and that it would ask the EU to insert one amendment with one sentence that Kosovo is

within Serbia.³⁰³ He said that was what they had suggested during the election campaign and that it was enough for the Socialists, and he said that DSS was not asking for complete cancellation, but only partial modification. However, DSS was much more determined in its positions that the SAA was not legally valid. DSS started a legal analysis of the document trying to show how its modification could protect national interest of Serbia, which is what DSS wanted.³⁰⁴

Once it became clear that SPS would enter into coalition with DS, Kostunica outgoing prime minister and DSS president said it was good SPS showed its real face, and that SPS did not have real convictions but only protected its narrow personal interests.³⁰⁵ Dacic defended SPS by saying that the coalition is in the interest of Serbia citizens and that common policies were identified with DS which would be carried through. He claimed there was no compromise on what SPS stood for and that coalition would continue as long as the aims of both parties were the same.

Although SPS leader knew his move to join government with DS would distance some of the SPS supporters he was trying to show how SPS did not change its policy and was true to its original positions on all issues including the ICTY, Kosovo and others. Survey done by Strategic Marketing for the National council for the cooperation with the ICTY, showed that 70% of surveyed supported cooperation with the ICTY.³⁰⁶ Still, 54% did not support extraditions to that Tribunal, while 42% did; 43% believed that Ratko

³⁰³ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=05&dd=29&nav_id=301038&order=priority
FoNet, 29 May 2008

³⁰⁴

http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=06&dd=02&nav_id=301548&order=priority
2 June 2008, Tanjug

³⁰⁵ <http://www.b92.net/info/vesti/index.php?order=priority&dd=26&mm=6&yyy=2008>
26 June 2006, Beta

³⁰⁶ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=25&nav_id=310152&order=priority
25 July 2008, B92

Mladic and Radovan Karadzic must be in The Hague. One third of the surveyed thought Karadzic was a hero, while 17% saw him as a criminal. That the ICTY was biased and worked against the Serbs believed 86% and 82% saw it as a political court. Thus, the public opinion, though not very favorable to the ICTY was not largely against seeing Mladic and Karadzic in The Hague. After the arrest of Karadzic, relatively small turnout for the protests against the arrest, once again demonstrated that public opinion or public action was not a major threat to government decision to cooperate. Nevertheless, nobody could have claimed for certain what the reactions of the public would be. Institutional and partisan veto points were more influential factors on cooperation with the ICTY.

5.3 Institutional veto points

Given the different points of view of the former and the new government on the issues of the EU and Kosovo, the functioning of the main political institutions was difficult at times. The new president of the parliament Slavica Djukic-Dejanovic (SPS), from the start had problems conducting the sessions of the parliament. The main reason was that the parties used their discussion time, not to deal with the points on the agenda, but to discuss daily political disagreements or issues related to the division of political power at a local level. As the parliamentary sessions were broadcasted live on national television, the speeches were directed towards scoring points with the voters, rather than the discussion on the laws and other documents on the agenda.

Often the work of the parliament was interrupted. The first session of the new parliament in the middle of Jul 2008 was supposed to have discussed the ratification of SAA, but DSS MPs shifted the discussion to another issue, as they believed the resolution of Kosovo they had proposed should have been on the agenda and not the one prepared

by the government. The regular session was continued only after the president of the parliament apologized to the MPs of DSS.³⁰⁷ Still, the work of the parliament did not continue smoothly as the MPs continued to talk about what was incorrect in the work of the Parliament and not to discuss the points on the agenda.

Once the discussion returned to the ratification of SAA, SRS Secretary-general Aleksandar Vucic said that the radicals would not reject SAA if it were regarded in the internal legal system as if Kosovo was part of Serbia.³⁰⁸ At the same time, DSS had an initiative to do legality analysis of the SAA. Along similar lines, the Fund for the development of democracy submitted to the Constitutional court of Serbia the initiative for deciding whether article 135 of the SAA was in accord with the Constitution of Serbia. The Court rejected the initiative because there were no procedural preconditions for the Court to act in this case. The article in question reads that the agreement will not be applied to Kosovo, because it is administered by the bodies of International community. The court rejected the initiative because the SAA is an international contract not ratified in the Parliament and the court had no jurisdiction. In addition, the text of the Agreement was drafted by EU members and Serbia which both parties signed after long negotiations and mutual agreement on the text. In order to change the text it would require all EU members agreement which would be next to impossible as all countries already agreed on the text and the legality of the SAA was not in question. This was clear attempt to use institutional obstacles by some political actors in order to prolong the ratification or to create confusion among those who were still undecided on the issue.

³⁰⁷ <http://www.b92.net/info/vesti/index.php?order=priority&dd=17&mm=7&yyyy=2008>
FoNet, 17 July 2008

³⁰⁸ Ibid.

As the debate in the parliament continued on the issues not related to the agenda, the president of the party decided to stop the session and continue the work of the parliament one week later. Although Serbian Radical Party's (SRS) MPs used parliamentary sessions to read the minutes from the parliaments of local municipalities where local governments had still not been created, SRS still accused the president of the parliament of obstruction. The interruption of the session of the parliament for one week came just a day before Karadzic was arrested. The opposition accused the governing coalition and the president of the parliament to have known about the arrest and thus closed down the parliament for a week in order to prevent any discussion on the issue in the parliament. The SPS and the President of the parliament who was from the SPS denied they knew anything about the arrest. Even though SPS leader Ivica Dacic was already Minister of Interior at the time, he denied that the Ministry had any involvement with the arrest and that the arrest came because SPS joined the government. The next section will explain what party positions were on the issue, and how this influenced cooperation.

5.4 Partisan veto players

Since the adoption of the law on cooperation with the ICTY in 2002, during the government of Zoran Djindjic, in principle there were no institutional obstacles for the cooperation with the Tribunal. According to the law, the Ministry of Justice receives the indictment, which is then sent to a relevant court which gives instructions to Ministry of Interior and secret services to locate and arrest an indictee. After the indictee is taken into custody and the court confirms that all legal preconditions for extradition are met, the

ministry of Justice issues a decision on extradition which is signed by the minister of Justice.

Nevertheless, there were always speculations that the partisan positions on the issues of the ICTY were always detrimental as to whether the institutional and legal procedures would be carried out or not. That is why it is important to assess whether the positions relevant for cooperation with the ICTY were given to impartial professionals, or to party personnel that followed the position of the party regardless of the law on cooperation. As soon as the new government came to power in July 2008, it appointed by unanimous decision Sasa Vukadinovic as the new director of Security and Information Agency, i.e. secret service. According to some media reports, president Tadic himself suggested Vukadinovic for the job.³⁰⁹ The former director of the Secret Service Rade Bulatovic submitted his resignation as soon as the new government took over. He was believed to be very close ally of previous Prime Minister Kostunica (DSS).

Although it was expected that the biggest task of the new director was locating and capturing the last three fugitives indicted by the ICTY, Rasim Ljajic the president of the national council for cooperation with the ICTY said that the role of Vukadinovic is not crucial for cooperation with the ICTY. What Ljajic identified as more important was achieving political stability. He said it would be wrong to equate cooperation with the ICTY with one personnel change within administration. Ljajic underlined that previous government, state apparatus, secret services all made significant success in cooperation

³⁰⁹ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=17&nav_id=308996&order=priority
17 July 2008, B92

with the ICTY. He reminded that during the period when Rade Bulatovic was director twenty-one indictees were sent to The Hague.³¹⁰

Security analysts who follow the work of police and secret services suggest that the period when Bulatovic was director of the Service new personnel were brought in from the party, i.e. DSS or through nepotism, and that another challenge for Vukadinovic should also be the reform of the Service. Goran Petrovic who was the director of the Service for ten months in 2001 said that the first steps that a new director takes would show the reflection of the direction in which the Service would go, but that these steps would have already been decided by the people who put Vukadinovic to this position.³¹¹

On 20 July 2008, President of the National council for cooperation with the ICTY, Ljajic said they did not know where the last three fugitives were, but that they were continuing the search. He also mentioned that up to that point Serbia extradited 43 indictees.³¹² The following day the National council gave a statement that after the actions of Serbian secret services Radovan Karadzic was located and arrested. He was taken to the War crimes department of the County court in Belgrade, in line with the Law on cooperation with the ICTY.³¹³

The first indictment against him was confirmed on 24th July 1995. The first indictment was against him and general Mladic and was accusing them of genocide and crime against humanity. Another one, confirmed on 16 November 1996 was referring to Srebrenica and was also indicting them for genocide and crime against humanity. Under

³¹⁰ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=18&nav_id=309067&order=priority
18 July 2008, Blic daily news paper

³¹¹ Ibid.

³¹² http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=20&nav_id=309335&order=priority
20 July 2008, Beta Tanjug

³¹³ <http://www.b92.net/info/vesti/index.php?order=priority&dd=21&mm=7&yyyy=2008>
21 July 2008, FoNet, Beta

international pressure he withdrew from public life in 1996 and since then was in hiding. On 14th October 2002 the ICTY made public the indictment made on 31st May 2000 which remained secret until October 2002, and this one was divided from the earlier one that was joint indictment against Karadzic and Mladic. The new indictment accuses Karadzic of genocide, participation in genocide, crime against humanity, breaching the laws and customs of war.

In their statements about the arrest the parties expressed their position on the ICTY and the actions of the new government.³¹⁴ Prime minister of Serbia Cvetkovic, invited the last two fugitives to surrender. He expected the tribunal will try equally and fairly all persons indicted before it. Cvetkovic said that one of the basic principles during the creation of the government is the principle of respect for international law and that respecting duties towards the ICTY, at the same time domestic and international law were respected.³¹⁵ He said that Serbia made an enormous step and he invited other indictees to surrender voluntarily, which should be better for them and for Serbia. He said that the respect for international law is universal principle whose respect would enable reconciliation in the region and ensure basis for better life and more efficient defense of sovereignty and territorial integrity on the basis of international law.

Dacic, the Minister of Interior and vice prime minister, as well as SPS president, said that the arrest was a heritage from the previous government and had nothing to do with the fact that SPS entered new government. Dacic explained that SPS, precisely because of this wrong notion that the arrest of Karadzic was connected with SPS joining the government, would ask for the review of the circumstances under which Karadzic had

³¹⁴ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=22&nav_id=309595&order=priority
22 July 2008, FoNet, Beta, Tanjug

³¹⁵ Ibid.

been arrested. „I do not want to diminish the significance of the new director of secret service but I do not believe that the arrest of Karadzic is a consequence of his four day work at this position, but it is heritage from the previous government of Serbia.“³¹⁶ Dacic said. He also pointed out that not a single member of the ministry of interior was participating in the finding and arresting of Karadzic, but it was done by secret service, and he repeated that the cooperation with the ICTY had to go in both directions.

Minister of foreign affairs, Jeremic (DS) addressed the media before the beginning of the session of the Council of Ministers of the EU and said „the new government of Serbia has very ambitious European agenda. We are very serious when it comes to our future within the EU and we showed it yesterday. We want to be a member of the EU, and regional player for the regional stability. We are truly dedicated to peace and the rule of international law and when it comes to our cooperation with the ICTY and when it comes to the defending our sovereignty of Kosovo.“³¹⁷

Minister of defense Dragan Sutanovac (DS) said the arrest of Karadzic showed that the new government chose to respect domestic and international legal responsibilities and that with this arrest the country stepped up on the ladder to European integration. He also invited the rest of the indictees to surrender as it was in their interest and in national interest. He congratulated all who participated in this important state issue but also criticized the ICTY for not treating all crimes equally and justly.

Kostunica president of DSS and former prime minister, said that the arrest of Karadzic was being shown as a progress in European integration in a time when the EU and the US were putting new pressure to legalise independence of Kosovo. He also

³¹⁶ Ibid.

³¹⁷ Ibid.

pointed out that this arrest came in a moment when Naser Oric and Ramus Haradinaj were released from the ICTY.³¹⁸ DSS twice warned that because of the releasing judgements to Haradinaj and Oric, Serbia had to reopen the question of whether the ICTY had any legitimacy any longer as a court which could justly try those accused of war crimes.

Nikolic from SRS said it was a difficult day in history of Serbia when Karadzic was arrested and that he was not a war criminal but that he rightfully became a legend and a myth among the Serbs. He accused president Tadic of treason and that SRS would use all means of political fight to overthrow his regime. Aleksandar Vucic also from SRS said that the arrest was horrible news for Serbia and that Serbia was on the way to extinction because Tadic started to 'strengthen his dictatorship' and that with this arrest he was returning the favor to those who had helped him to form 'unnatural government with the socialist'. As he said, the first favour was returning the ambassadors to the countries of EU from which they were withdrawn after they recognized independence of Kosovo and the second favor was the arrest of Karadzic and the third, as he said would be accepting the independence of Kosovo.

DS issued a statement which said that finding and arresting of Karadzic was a result of the commitment of the new government to the respect of international law, laws of Serbia and the fact that the responsibility of individuals who committed crime on the territory of former Yugoslavia had to be determined. DS once again underlined that international law would be respected not only in relation to the ICTY cooperation but also in defending territorial integrity of Kosovo. DS also insisted on having the same criteria for all indictees before the ICTY and also said it would insist on reconsidering the

³¹⁸ Naser Oric is Croatian indictee who was released and Haradinaj is Kosovo Albanian

decisions of the court in the processes against Oric and Haradinaj.

G17plus, another party in the coalition government said Serbia proved that it was a country that implemented laws and fulfilled international obligation. The time of collective guilt would be over only once crimes were individualised. Serbia had to go forward much faster and it was time for all states in the region to turn to Europe and the future. SPO also repeated that only by arresting indictees collective guilt could be removed from the whole nation and that by this arrest Serbian removed obstacles on the way to the EU. SPO also mentioned that it was important to arrest many, still unpunished criminals from the period of the 'terror' regime of Milosevic.

SPS said that the ICTY cooperation had to be mutual, i.e. that it should go in both directions and not only boiled down to extradition of arrested indictees. SPS said in the statement that the party was against the extraditions of Serbian citizens despite the fact that this cooperation was responsibility under international law and the fact that after 2000 changed legal and constitutional provisions allowed extraditions. SPS said they would reconsider circumstances under which Karadzic had been arrested and would ask that all relevant information about the arrest of Kardzic were made public. SPS did not want to be a subject of political manipulation because the full cooperation, including extraditions, was supported by all parties of the former government. SPS claimed that Ministry of Interior, headed by Ivica Dacic (SPS) was not involved in searching for and the arrest of Karadzic.

NS leader Ilic, who was in the coalition with DSS for the elections, said he was surprised by the arrest but that it would bring Serbia closer to the EU. Though, he asked what would the EU bring Serbia, and asked for the referendum on joining the EU.

According to him decision on joining the EU was not a job for one person or one party. Also, he said that the arrest of Karadzic proved that all what was Serbian would be extradited and transferred to the Hague. Referring to Haradinaj and Oric, he said that only Serbs were tried at the court and all others were released, which was not fair. He claimed a whole nation was punished and also a part of its territory was taken away. He considered hiding of Karadzic and Mladic the last symbolic way of rebellion of Serbia. Serbian government fulfilled all requirements and he asked why nothing was done for Serbia.

DHSS leader Vladan Batic, who was minister of justice in Djindjic's government, said that secret service had operational information for a long time about Karadzic, otherwise he would not have been arrested. Therefore, he claimed that Kostunica and former secret services director Bulatovic were solely responsible that Karadzic had not been arrested earlier. Therefore, DHSS invited the prosecutor to urgently start criminal proceedings against these two and others who helped to hide indictees by their action or inaction. DHSS was sure that Bulatovic and Kostunica in the same way enabled other indictees to hide.

Many analysts agree that the key factor for the arrest was a change on top of secret service, as well as the fact that president of Serbia was heading the National Security council. Military analyst Ljubodrag Stojadinovic believes that once Bulatovic came to the secret service he had monopoly of information and that the flow of information was only between the chief of the Service and the prime minister.³¹⁹ He also pointed out that there were many people within the service who could have concealed

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http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=22&nav_id=309596&order=priority
22 July 2008, FoNet, Beta, Tanjug

important information from the chief. He maintained that political will and the professionalism of the person heading secret service were in accord and that this meant he was not afraid of threats and was simply determined to protect the state and not individual officials. For Stojadinovic this was a proof that the authorities slowly but surely were putting secret service under their control.

Others believed that it was not possible that MUP-Ministry of Interior had not been involved because secret service just did not have jurisdiction and securing the scene of the arrest, and the arrest itself had to be done by MUP. It is clear that some politicians wanted to distance themselves from the arrest while others wanted to score points, which is why it would not be clear what really happened and the public had been informed in a very limited way.

Vukčević and Ljajić said that the actions leading to the arrest started the day before the arrest though the preparations lasted longer. Ljajić said that a group of people who were suspected of being in a network of Karadzic's helpers had been followed and that was how he was located.³²⁰ Action team was waiting for Karadzic to transfer in order to avoid any casualties during the arrest. They said they could not have given more information because they were still working on the reconstruction of his movement in the last decade and that could be used in the investigations for the other two fugitives. They once again confirmed that the successful arrest was made as a consequence of following Karadzic's associates and not, as it was reported by some media, on the basis of received information from foreign secret services.

Ljajic said that this showed how they were not choosing time or place for the

³²⁰ <http://www.b92.net/info/vesti/index.php?order=priority&dd=22&mm=7&yyyy=2008>
22 July 2009, FoNet, Beta

arrest of indictees. He said there was international pressure to arrest Mladic and that almost no one expected the arrest of Karadzic, but new information in the investigations led to locating and arresting Karadzic.

Following the arrest of Karadzic there were protests against the arrest organized by right wing organisations. Every day about hundred protesters would gather in the center of Belgrade, give speeches and then take a walk on the streets of central Belgrade. They were usually supported by SRS MPs and the brother of Radovan Karadzic, Luka Karadzic was always there.³²¹ Except for several brutal attacks by protesters on journalists, causing them serious injuries, there were no major disturbances, or any large scale demonstrations and threats to public order.³²² SRS used these protest to attack DS and president Tadic and criticize SPS for participating in the government that extradited Karadzic.

Still, this was overshadowed by the questions how Karadzic managed to get false ID and live in Belgrade for years before he was captured. This was very closely related to the questions of the secret service, and MUP and the abuse of position within authorities to help a fugitive. Until now there were no public statements about the results of the investigation on who helped Karadzic get personal ID.

Protests and walks around Belgrade continued every day and SRS was planning to organize a big demonstration on 29 July 2009. NS and DSS decided to join because they were dissatisfied with the way the country was led. They criticized new government for

³²¹ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=23&nav_id=309878&order=priority
23 July 2008, FoNet, Beta

³²² <http://www.b92.net/info/vesti/index.php?order=priority&dd=24&mm=7&yyyy=2008>
24 July 2008, FoNet Beta

not leading Serbian but pro Western politics.³²³ DSS spokesperson said the government was making steps that are instructed from abroad and are not in the interests of Serbia.

The differences between the previous Kostunica's government and the new one, on the issue of the ICTY were seen in the address of Prime Minister Cvetkovic who was expecting the positive report from the ICTY prosecutor Serge Brammertz. Cvetkovic said there was a unity in the new government about the cooperation with the ICTY and also that there was a wish of some of the coalition partners that indictees should surrender voluntarily.³²⁴ He also confirmed that the arrest of Karadzic was done by the secret service and that MUP was not involved. He also said that the protests in Belgrade about the arrest do not present any danger for political stability in the country and security of citizens.

Discussing the reasons for low efficiency of the secret services in locating Mladic and Karadzic, some criticized the fact that Karadzic's nephew who seemed to have been the only one who communicated with him from the family, was not followed by the Service.³²⁵ This could have also been used to cover others who were part of the network of Karadzic's helpers, i.e. that someone deliberately allowed this to happen. Rade Bulatovic former secret service director said, once the negotiations with the EU were stopped because Mladic was not arrested, that it was impossible to do such arrest due to general social circumstances in the country.

Questioning the way in which Karadzic was arrested, Dragan Todorovic (SRS), who is president of the Parliament committee for the defense and security said that all

³²³http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=25&nav_id=310084&order=priority
25 July 2009, B92

³²⁴http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=26&nav_id=310266&order=priority
26 July 2008, Beta

³²⁵http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=27&nav_id=310402&order=priority
27 July 2008, B92

circumstances of the arrest showed that during the arrest the Constitution and laws of Serbia were breached because Karadzic was not informed about the reasons of the arrest, he was not allowed to inform anyone about the arrest, and for 48h he was not brought before a judge.³²⁶ Todorovic suspects that Karadzic was arrested by 'a third party', taken into account that neither MUP nor military secret service were involved. Other members of the committee accused Todorovic of presenting his opinions as facts and for misusing the session of the committee to prepare the protests of SRS that were to be organised the next day. The committee concluded that the arrest was done in accordance with the laws. Therefore, the committee concluded that legal system of Serbia was not breached. After the big protests in Belgrade organised by SRS and NS, protesters clashed with the police. There were 46 injured, 25 policemen and 21 civilians.³²⁷ MUP said the situation was under control though hooligans mostly supporters of football clubs broke shopwindows, pushed and set on fire rubbish containers and broke traffic signs. The police used rubber bullets as a response to the rocks and teargas that hooligans threw at them. SRS deputy president Nikolic tried to calm down the demonstrators telling them the point was not to overthrow (destroy) Belgrade but Boris Tadic, president of Serbia.

Despite the rhetoric against Tadic, Nikolic and SRS showed support for the EU integration process and his role in the parliament was important in order for the SAA to be ratified. Nikolic suggested in the parliament that the law for the implementation of SAA contains a provision that clearly states Kosovo was part of Serbia. This was something most of the parties could agree on. However, SRS leader who is on trial in the

³²⁶ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=28&nav_id=310505&order=priority
28 July 2008, B92, FoNet, Beta Tanjug

³²⁷ <http://www.b92.net/info/vesti/index.php?order=priority&dd=29&mm=7&yyyy=2008>
29 July 2009, B92, Tanjug

ICTY did not support the decision of SRS to vote for the ratification of SAA and Nikolic resigned from SRS on 6 September 2008. He started up his own parliamentary group and on 12 September he was expelled from SRS. In October he formed a new party Serbian progressive Party (SNP) which initially had more than 10,000 members and a certain number of SRS leadership joined Nikolic.

The parliament ratified SAA on 9 September 2008 and SRS and new SNP MPs abstained from voting.³²⁸ All members of governing coalition DS, G17plus, SPO minority parties, SPS and their coalitions partners, plus LDP voted for the ratification. 28 MPs of DSS and NS voted against. The debate on ratification of SAA proved detrimental in the political landscape of Serbia in late 2008. First it led to the new elections, then created some unusual coalitions for the new government and finally led to the division within one of the most powerful opposition parties since democratic elections in 2000, SRS.

Following this collaboration on ratification of SAA, DS and SPS signed a Declaration on reconciliation in October 2008.³²⁹ Boris Tadic president of DS said Declaration on political reconciliation was open for any party to sign because its main purpose was to maintain political stability and to enable better future for Serbian citizens. The Declaration according to Tadic marked the end of politics of confrontation in the past and its goal was to focus on common goals – EU membership and better life for the citizens. Nevertheless, many criticized such Declaration, not because of its aims but because current SPS leadership did not distance itself from the actions and convictions of previous SPS regime. Opposition parties whose members or leaders during Milosevic's

³²⁸ <http://www.kurir-info.rs/clanak/politika/kurir-10-09-2008/ratifikovan-ssp-i-gasni-sporazum>

Kurir daily newspaper, 10 Sep 2008

³²⁹ <http://www.blic.rs/politika.php?id=61402>

Blic, daily newspaper 19 October 2008

SPS regime were directly attacked, put to prison or even assassinated were dissatisfied there such victims of political regimes were not mentioned and that current SPS preident did not mention this. Also, family members of those killed during the NATO bombing, for which they blamed Milosevic, were also against the Declaration.

In short, partisan positions and goals of the parties influence party members behaviour when holding an important position that relevant for cooperation with the ICTY. The most interesting is to see how and if these strong partisan convictions could bend against the EU political conditionality, i.e. pressures and incentives from the EU on the road to membership.

5.5 External pressures and incentives

As soon as the new government was confirmed, the arrest of Karadzic followed and the steps by both sides, Serbia and the EU, were made to show improvement of relations. Serbia started by deciding to return its ambassadors to the EU memberstates from which they were withdrawn as an act of protest after those states recognised the independence of Kosovo. This was a partial revision of the Action plan. The decision was reached by unanimous vote. It was said that the action plan was working because only 43 states recognized Kosovo even though it was expected that the number would be higher, and also Kosovo did not become a member of any international organisation.³³⁰ This decision balanced two principles –continuation of the protection of Kosovo and acceleration of the EU integration processes in order for Serbia to get candidate status by the end of the year.

This decision came after a series of positive statements by the EU and other

³³⁰ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=24&nav_id=309912&order=priority
24 July 2009, B92, FoNet

international organisations that gave support to the new government in Serbia.³³¹ EU representative Olli Rehn expressed his belief that the new government would continue the reforms on the way to Europe, and that Serbia could become the driving force of Western Balkans. He repeated the readiness of EU to accelerates the road of Serbia into the EU, including giving Serbia candidate status. He welcomed the success of the reformist parties at the elections which share European values. EU high representative for CFSP, Javier Solana expressed his hope that the new government of Serbia would be formed shortly and that it would be dedicated to the reforms and meeting the criteria for the advancement of Serbia towards EU, which would help her on that way. He said that after signing the Stabilisation and Association Agreement, the country was in a good position to advance quickly.

MEP Jelko Kacin a Rapporteur for Serbia in the EU parliament, said in Ljubljana that the result of the elections showed proEU orientation of majority of Serbian citizens which was a very important fact that should to be respected by EU leaders in futher relations towards Serbia. Priorites should be cooperation with the ICTY, because only in such way can Serbia get closer to the candidate status and future membership in the EU according to Kacin. He reminded again that only full coopearation with the ICTY was precondition that EU members ratify SAA.

US amabassador to Serbia, Cameron Munter, also expected pro-EU government in Serbia.³³² American ambassador in Belgrade, Cameron Munter stated that SPS in coalition with pro European parties could contribute to the European future of the

³³¹ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=05&dd=12&nav_id=298256&order=priority
12 May 2008, B92, Beta

³³² http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=05&dd=15&nav_id=298757&order=priority
12 May 2008, FoNet

country, while possibility of SPS-SRS-DSS would be surprising because it would not be in accord with what the people showed they wanted in the elections. He stated that the citizens of Serbia clearly opted for Europe and European future of the country.

He said that new Serbian government, if it was proEuropean, which citizens preferred according to elections results, could be prosperous and contribute to continuation of Euroatlantic integrations with Socialists as well. SPS could in such government play very important role solving social problems and pensions, which was in accord with strong economy and European future. American ambassador said the relations between US and Serbia were 'essentially healthy' and expressed belief that with time and with strengthening of business and cultural ties they could be better and better.

Spokesperson of DSS accused US ambassador that he was creating the new government but also said that the majority in the parliament was also influenced by Serbian tycoons.³³³ British ambassador, Wordsworth said he was meeting many influential people of Serbia but that he was not pressuring anyone or offering millions of dollars to persuade anyone into what should be done.³³⁴ He believed the worst outcome would be another elections and that Serbia would get the government that would lead her to the EU. He also underlined that Russia and the West had the same goals in the Balkans, which were for the region to be stable, prosperous and within the EU. He commented that it was interesting that SPS was changing and becoming more modern while DSS was transforming more into nationalist party.

³³³http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=06&dd=05&nav_id=302128&order=priority
9 June 2008, B92

³³⁴http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=06&dd=12&nav_id=303342&order=priority
12 June 2008, FoNet, Beta

When DSS tried to challenge SAA on the basis that it did not include Kosovo and was thus legally invalid document, the EU took firm stance that the Agreement could not be questioned.³³⁵ EU Commission representative in Belgrade Josep Lloveras said that the document was prepared with the involvement of Serbian government representatives and during a long discussion. So he did not see any connection between signing of that agreement and the question of Kosovo. He said the agreement was completely legally valid and that the government of Kostunica pre-signed the Agreement in November 2007 before it was signed in 2009. What was more crucial is the cooperation with the ICTY on the basis of which would have the EU member states ratified the signed agreement. Only after all EU members ratify the Agreement it would be possible to start negotiations for membership.

In June 2008, EU Council of ministers repeated that the EU remains strongly committed to the European future of the Western Balkans and encouraged the countries of the region to fulfill the necessary conditions.³³⁶ The ministers suggested that Serbia could accelerate its accession to EU including receiving candidate status. However, The Netherlands asked for this not to be included or the wording to be milder. Also, the EU leaders expected the new government in Belgrade to be with a clear European program which would accelerate necessary reforms. Olli Rehn said that the candidate status could be discussed once a new government was formed and if this government would cooperate with the ICTY, implement SAA and work on meeting the criteria for visa liberalisation.

Austria and Slovakia asked that EU confirms to the countries of the Western Balkan that

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http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=06&dd=05&nav_id=302128&order=priority

EU: SSP pravno validan, 5 June 2008, FoNet, Beta Tanjug

³³⁶

http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=06&dd=16&nav_id=303886&order=priority

EU: rasprava o zapadnom balkanu, 16 June 2008, B92, Beta, Tanjug

their accession would not be disturbed due to the internal EU problems about the Irish rejection of the Lisbon Agreement. Commissioner Rehn said in Luxembourg that the ministers of the EU countries confirmed this. Both Rehn and Rupel, said the Lisbon process and the process of enlargement were not connected. However, EU parliament president maintained that it would be difficult to imagine further enlargements without accepting Lisbon agreement.

Dutch minister of foreign affairs Verhagen said that the indictees still at large had to be arrested and that the witnesses had to be protected in order to be able to freely give the statements necessary for the Tribunal.³³⁷ Access to the documents and archives was necessary as well. It was not only the arrest of Mladic that was needed but complete cooperation with the Tribunal. He said if Serbia fulfilled given conditions then The Netherlands could not set new conditions, but would have to keep the promise given to Serbia.

After the arrest of Karadzic in July 2008, diplomatic rhetoric was stepped up. Olli Rehn suggested that SAA immediately comes to force after he met Minister of Foreign Affairs, Jeremic in Brusells.³³⁸ According to him, the EU Commission believed that after the arrest of Karadzic temporary agreement between EU and Serbia should come to force. In his opinion, Serbia showed it wanted to close this chapter and forget about the nationalist past. But he also said that the condition for the application of SAA was still the arrest of all fugitives, especially Ratko Mladic. But he suggested that in light of the new events Serbia should get some incentives. In its conclusions, the council of Ministers

³³⁷http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=06&dd=22&nav_category=64&nav_id=3049
83

June 2008, Beta

³³⁸http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=22&nav_id=309661&order=priority
22 July 2009, B92, Beta

welcomed the arrest of Karadzic as an important phase on Serbia's road to the EU. They encouraged Belgrade to continue on this path. They repeated their commitment to the dialogue with Serbia about visa liberalisation and asked the new government to follow the criteria set in the Road map for achieving this goal.

UN Secretary General Ban, also showed appreciation of the action Serbia made in the direction of punishing those accused of serious breaches of international humanitarian law during the conflict in former Yugoslavia. Secretary general of Council of Europe Terry Davis also welcomed Radovan Karadzic's arrest. Davis said that the arrest significantly contributed to the improvement of the image the Serbs have in Europe, as the man responsible for some of the worst human rights violations in Europe in the last 60 years was caught.

President of the parliament of the assembly of the Council of Europe Lous Maria de Puc also said that this was a clear signal about the determination of Belgrade to connect Serbia with European institutions even further. He said that they received in Strasbourg this message loud and clear, and that he was sure Brussels would take it into account very practically and very quickly. But he added that after this, extradition of the former military leader of Bosnian Serbs Ratko Mladic had to follow. Alexander Stub, President of the OSCE welcomed the arrest and said the act was a positive sign of the ability of the new Serbian government to cooperate with the ICTY.

The US and NATO also welcomed the arrest. The White house issued a statement that this operation showed significant determination of Serbian government to fulfill responsibility towards the ICTY.³³⁹ NATO spokesperson also said it was what NATO

³³⁹http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=22&nav_id=309599&order=priority
22 July 2008, FoNet

expected from Serbia and asked Serbia to continue efforts to arrest the remaining indictees including Ratko Mladic. Richard Holbrooke also saw this as an extraordinary step forward for Serbia and its wish to join the West. He said that Mladic was still at large, but that Karadzic was more important of the two. According to Holbrook Karadzic was worse than Milosevic and was intellectual creator of ethnic cleansing. Holbrook pointed out that it was enormous issue for, as he called him, pro-Western, president Tadic, because he needed enormous courage. Holbrook reminded that prime minister Djindjic was murdered because he had arrested Milosevic.

Despite the praises, conditions were still firm. The Netherlands was waiting for the report by Brammertz on the last two indictees in order to decide whether temporary trade agreement between Serbia and the EU should come to force.³⁴⁰ Dutch minister for Europe Frank Timermans said this, and pointed out that two indictees were still at large and that full cooperation was necessary in these two cases, and especially in the case of Ratko Mladic. He said Brammertz's position was very important though the final decision would not depend only on his report but also whether Serbia fulfilled other conditions.

Swedish minister of foreign affairs Carl Bildt excluded the possibility of SAA coming to force before Ratko Mladic was extradited to The Hague, which was the same position the Netherlands took.³⁴¹ The EU ministers waited for the report by the ICTY. Officials from the EU said as soon as they received the report and knew the nature of the cooperation between the ICTY and Serbia, they were willing to do everything to make a

³⁴⁰ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=23&nav_id=309744&order=priority
23 July 2008 Beta

³⁴¹ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=26&nav_id=310277&order=priority
26 July 2008, B92

step forward in the direction of tangible support to Serbia³⁴²

Press representative of French presidency said the agreement was still frozen as there were no new elements to change that decision. The EU would follow the situation and depending on that would decide about the new steps. Marin de Karne also said that extradition of Karadzic and positive report of Brammertz were necessary for the green light on trade agreement. Most EU countries, and especially Cyprus, Romania, Slovakia, Italy and Slovenia acted for Serbia to get green light. But some countries such as Holland insisted on Brammertz's report. Serbia signed SAA and accompanied temporary agreement on 29 April 2008 in Luxembourg, but as a result of compromise within the EU and because of the positions of Holland and Belgium, ratification of SAA and implementation of Temporary agreement that covers all trade issues from SAA, was conditioned on the full cooperation between Belgrade and the ICTY.

It is important to note here that although the new government had willingness to cooperate with the ICTY it did not yet have all intelligence information or enough time to make further progress on the arrests of other indictees. The arrest of Karadzic seemed to have been done on the information that were inherited from the previous government. Thus, either the previous government just finalized collection of the information and it was ready for the new government to act, or the previous government chose not to act is difficult to know. What seems to be the case is that the new government acted on the data it possessed and arrested Karadzic, even though the insistence of most diplomats was to arrest Mladic. However, as the ICTY prosecutor said at one point in Croatia, the successful cooperation did not only depend on political will but on operational capability

³⁴²http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=29&nav_id=310601&order=priority
29 July 2008, Beta

and professionalism of the people included in the search of the fugitives.³⁴³ Though the government acted on the encouragement from the West to arrest remaining indictees it could not, in the same month when the government was constituted, to have more intelligence information but had to act on what is available. The president of the National Council for cooperation also confirmed this saying that they acted on the available data and that they could not have revealed more about the case as it is relevant for other cases of the indictees still at large.

In August 2008, the ICTY prosecutor Serge Brammertz issued the annual report which most of the EU governments expected to see in order to know what steps to take in relations with Serbia. The report listed positive acts of cooperation but underlined that two fugitives are still at large and mentioned other issues that still needed improvement.³⁴⁴ There were still obstacles in accessing some archives necessary for ongoing trials. Although Serbia facilitated appearance of some important witnesses, the report suggested there were interferences with the witnesses which they saw as intimidation because there was increased number of occasions where witnesses failed to appear voluntarily to testify. This was one of the strongest concerns of the ICTY as well as the fact that two fugitives are still at large. During the reporting period only two indictees were transferred and that happened after the elections. The report points out that „During the first part of the reporting period, the pace of work of security agencies in charge of tracking fugitives was generally slow and there was a lack of coordination“, but

³⁴³ See chapter 8 on the case of Croatian indictee General Gotovina

³⁴⁴ http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_2008_en.pdf

Annual ICTY 2008

the last two arrests „demonstrate the improvement in Serbia’s cooperation with the Tribunal.“³⁴⁵

In November 2008, the Commission of the EU issued a document *Enlargement Strategy and Main Challenges 2008-09* where it referred to the prospects of Serbia's EU membership. „Serbia needs to build on positive developments through full cooperation with the ICTY and tangible progress in priority reform areas. The Commission considers that it should be possible to grant candidate status to Serbia in 2009, if the conditions are met and in the light of a Commission opinion assessing the country's readiness“³⁴⁶ The document acknowledges some progress made on cooperation with the ICTY, but emphasizes that „Full cooperation remains a key international obligation which must be fully complied with. In the Council conclusions of 29 April 2008 EU ministers agreed to submit the SAA to their parliaments for ratification and the Community agreed to implement the Interim Agreement as soon as the Council decides that Serbia is fully cooperating with the ICTY.“³⁴⁷ Therefore, the EU confirmed once again that the progress towards membership for Serbia would be possible once full cooperation with the ICTY was achieved.

5.6 Conclusion

To sum up the analysis above concluding remarks will go through the hypotheses listed in the beginning. As was hypothesized, the stronger the connected between fulfilling the conditions and the reward of membership, the higher likelihood for government to cooperate fully. The new government of Serbia understood and accepted that fulfilling

³⁴⁵ Ibid., paragraph 78.

³⁴⁶

http://ec.europa.eu/enlargement/pdf/press_corner/keydocuments/reports_nov_2008/strategy_paper_incl_country_conclu_en.pdf

COM (2008), 674 final, 5.11.2008, *Enlargement Strategy and Main Challenges 2008-2009*, 15.

³⁴⁷ Ibid., 48.

conditions would lead to membership, which was the main reward and coincided with the main goal of the government for its mandate. It was clearly stated by the EU officials that once conditions are met, the reward would follow. Therefore, the hypotheses were confirmed.

Despite the fact that public opinion surveys showed that majority saw the ICTY political court, the public was split on the issue whether indictees should be sent to it. What was more indicative was that the arrest of Karadzic did not provoke major public disturbances. In general the public opinion is pro-EU which was expressed through the election results, and the government received their mandate to fulfill all conditions in order for EU membership, which included extraditions. Therefore, these hypotheses were confirmed.

The existence of anti-EU and anti-ICTY bloc in the parliament which attempted to prevent ratification of the SAA as whole was not decisive factor as the government had majority, even if very narrow. The DSS and SRS attempted to link the independence of Kosovo with the ratification of the SAA claiming that ratification would mean recognizing the independence of the province, but eventually this did not prevent ratification. Thus the positive position of the government towards the EU and ICTY led to the improvement of cooperation with the ICTY.

The crucial factor that seemed to have influenced cooperation with the ICTY, at least during this period, was personnel, i.e. cadre of what party held relevant positions for cooperation. The quick arrest of Karadzic after the creation of the new government and the change on top of the Secret service suggest that the operation data the Service had were used as the government had clear aim of arresting the ICTY fugitives. As it is

difficult to prove this due to the sensitivity of the issues and the procedures related to the work of Secret service, which are not readily available to the public, we could only derive from the available information that the new leadership had the information and acted on it. By default, it could be implied that the government of Kostunica had the same information but decided not to act, i.e. not to carry out the arrest. Thus the hypothesis that the higher number of crucial positions in cooperation with the ICTY are held by anti-ICTY parties, the lower likelihood to cooperate fully was confirmed. In this case the positions relevant for cooperation with the ICTY were held by the pro ICTY parties leading to a successful case of cooperation.

On the other hand, related hypotheses, the more fragmented the decision making process on the ICTY cooperation the lower likelihood to cooperate fully. It could be possible that some secret service members choose not to disclose all information to their superiors thus hiding evidence and preventing effective cooperation. However this is very difficult to determine or prove. For the case of Karadzic it seems there were no cases of this but the remaining cases of fugitives will prove whether all employed resources on the cooperation with the ICTY are working professionally and effectively. This is especially important because Minister of Interior Dacic (SPS) distanced himself and his Ministry from being involved in the arrest of Karadzic, and it will be interesting to see whether this position of chief of the police, which should be part of the cooperation mechanisms with the ICTY, would have any implications on the further cooperation.

In short, for this period, the government was positive towards the EU and the ICTY cooperation. The public opinion was not dissenting and the incentives for EU membership were clear, as were the conditions. The decision-making process seemed to

have worked quicker as most of the crucial positions within administration were held by people belonging to or supporting the government and its pro EU policies. It remains to be seen whether the cooperation with the ICTY will be completely finished after this initial instances of cooperation that have been shown.

Chapter 6- Croatia 1993-1999

6.1 Introduction

This chapter starts with a brief historical overview of the events leading to the war in Croatia in order to set the scene for better understanding of the subsequent positions of the main political actors. After the introduction, the section on main actors, their positions and power costs will follow. The third section will be on general institutional structure and for cooperation with the ICTY and the fourth will look at party positions within such structure. The final section will outline important external pressures and incentives and how, against these external influences, the government of Croatia dealt with some issues related to the ICTY. These issues include: the criticism against the ICTY for not making a distinction between a victim and an aggressor in a war, whereby Croatia held that it was a victim in the war in Yugoslavia against the aggression of Serbia; the work on the draft and passing of the law on cooperation with the ICTY; the cases of extraditions of Mladen Naletilic Tuta and Vinko Martinovic Stela, as well as voluntary surrender of Tihomir Blaskic and how the government cooperated in these case and the criticisms of the ICTY for indictments against those involved in the operations 'Storm' and 'Flash'. These were seen as the most important actions that freed Croatia from the occupation by the Serbian aggressors, and as such were regarded as actions of defense, not subject to the ICTY investigations.

The main problem of the Socialist Federal Republic of Yugoslavia in the late 1980s was disagreement of the elites as to what constituted the most appropriate re-organization of the country. According to Ivan Siber and Christian Welzel, in 1990 the

Croats were more in favor of Yugoslavia as a confederation than were the Serbs.³⁴⁸ In late May 1991, according to Stipe Mesic, the last and contested president of the rotating Presidency of Yugoslavia, there were three options. Two of the republics suggested federation and socialism and the remaining four wanted a confederate “union of sovereign states.”³⁴⁹ The third according to him would be a struggle of Serbia for the creation of the third Yugoslavia.

On 25 June 1991 the Croatian parliament proclaimed its independence.³⁵⁰ The support for an independent Croatia was the legacy of the brief establishment of Independent State of Croatia during the Second World War, and that was also why Croats did not have enough trust in the Communist government of the SFRY.³⁵¹ The new state was defined as one of ethnic Croats. This and other actions of the government (such as changing names of streets) led to increased insecurity of the Serbs, and eventually when Croatia proclaimed its independence from Yugoslavia in 1991, the rural parts of Croatia where the Serbs held the majority did not recognize the new state and started creating their own institutions. During 1991, the conflict between the Serbs and the police force of

³⁴⁸Ivan Siber and Christian Welzel, “Electoral Behavior in Croatia” in Ivan Siber (ed.), *The 1990 and 1992/93 Sabor Elections in Croatia: Analyses, Documents and Data*, (Berlin: Sigma, 1997), 85.

³⁴⁹ Stipe Mesic, *The Demise of Yugoslavia: A political Memoir*, (Budapest: CEU Press, 2004), 21.

³⁵⁰ On the same day Slovenia proclaimed its independence and JNA moved in, allegedly to protect the borders. This was resisted by the Slovenian territorial defense leading to a short war. With the mediation from EU, on 1 July Mesic was finally elected President of the Presidency, a cease fire and three months moratorium on the decisions of independence of Slovenia and Croatia were agreed by both of the republics. At the time of the session of the presidency 40 people were reported killed in clashes in Slovenia and clashes in Croatia were intensifying. JNA was acting completely on its own and Mesic saw it as a coup informing European states about it. In July the JNA left Slovenia but not Croatia where until September 1991 the war escalated and the JNA attacked Dubrovnik and Zagreb. Although it was clear the JNA had no state anymore to defend, it wanted to defeat Croatia and international community started to view the Serb leadership as influencing the Army in this direction. In September Macedonia proclaimed its independence and in December Mesic resigned as the president of the SFRY presidency. Thus, the SFRY de facto ceased to exist though de jure it ceased to exist in 1992 when most of the states recognized Croatia and Slovenia and later both of them became the UN members. Also in December 1991, Serbian Krajina (Republika Srpska Krajina) announced its independence from Croatia thus making further conflicts unavoidable.

³⁵¹ Sinisa Malesevic, *Ideology, Legitimacy and the New State: Yugoslavia, Serbia and Croatia* (London: Frank Cass, 2002), 223.

Croatia led to a war, which involved the JNA(the Yugoslav National Army) as well. The most controversial events during the war were attacks on Zagreb and Dubrovnik as well as the battle for Vukovar. The elite never agreed on what was the legitimate role of the JNA. The Croats believed that the JNA was led by Serb officers who used the military power to attack Croatia, while the Serbs had the position that the JNA was exercising its constitutional role of protecting Yugoslavia. Eventually, the UN intervention stopped the war and created a *de facto* Serb state in the part of Croatia called Republika Srpska Krajina between 1992 and 1994. In May and August 1995 the Croatian army and the police carried out two operations ‘Storm’ and ‘Flash’ and established full control over the territory of Croatia. During these operations, some 200,000 Serbs fled to Serbia and there are still controversies about the responsibility of the military leaders of the operations about the high number of refugees. Croatia has always denied that there were any atrocities and regarded these as the most important actions in the Homeland war that brought back sovereignty to Croatia.

6.2 Actors: general positions and power costs

Many authors agree that the war had important influence on the path democratic development took in Croatia. Mirjana Kasapovic argues that the war had severe consequences on the democratization and state building.³⁵² Firstly, the war led to the transformation of the mass movement of Croatia, against the Serbian nationalist movement, into an exclusive link to the Croatian Democratic Union -HDZ. There were no borders between the state, the party and the movement and the system’s stability was dependent on the mobilization of the masses. Secondly, this created a situation where

³⁵² Mirjana Kasapovic (ed.), *Hrvatska politika 1990-2000 Izbori, stranke i parlament u Hrvatskoj* [Croatian politics 1990, elections, parties and the parliament in Croatia], (Zagreb :Fakultet politickih znanosti Sveucilista, 2000)

alternative politics was not allowed and the party could impose ideology of national identity. Thirdly, the war undermined the role of other political and social conflicts. Any deviation from the position of the regime was seen as an attempt to intentionally destabilize the country.

The HDZ established itself as the most important party very early on and had a monopoly over the political life in Croatia throughout 1990s. In 1990, the HDZ won the first multiparty elections with 41 percent of the vote, and gained 54 of the 80 available seats in the first chamber of the parliament and the majority in Sabor.³⁵³ At the first meeting of Sabor in May 1990 Franjo Tudjman was elected the President of the Republic and Stipe Mesic became the Prime Minister. In the 1992 elections, the HDZ won 44% and in 1995 45%.³⁵⁴ The party won all of the elections in the 1990s and its success has been associated with the charismatic leader of the party Franjo Tudjman.

Tudjman established the HDZ in June 1989.³⁵⁵ He started as the youngest general in Yugoslav history and Tito's political commissar.³⁵⁶ In 1967 he started challenging official accounts of Croatian history and was imprisoned in 1971 after the Croatian Spring for nationalist writings, thus he became a martyr for a Croatian cause. He was seen by his followers as a God-given leader to reestablish Croatian history and independence and to "realize the 1000-year-old dream of establishing independent Croatia."³⁵⁷ The party program was against what it called Serbian hegemony and it promoted the return of Croatian emigrants and increased birth rate. At rallies the party

³⁵³http://en.wikipedia.org/wiki/Croatian_parliamentary_election,_1990

³⁵⁴http://en.wikipedia.org/wiki/Croatian_parliamentary_election,_1992

http://en.wikipedia.org/wiki/Croatian_parliamentary_election,_1995

³⁵⁵ William Bartlett, *Croatia Between Europe and the Balkans*, (London: Routledge, 2003), 33.

³⁵⁶ David Bruce MacDonald, *Balkan Holocausts? Serbian & Croatian victim-centered propaganda and the war in Yugoslavia* (Manchester: University press, 2002).

³⁵⁷ Malesevic, 230.

“used various elements of folklore and linguistic archaisms with nationalist undertones.”³⁵⁸ Although his party domination during the 1990s began to show authoritarian tendencies, Tudjman’s personal popularity remained high and he succeeded in winning the presidential elections in June 1997 with about 61 percent of vote. He almost had plebiscitary rule, whereby the majority of people saw him as a national father who gave Croatia its statehood back.³⁵⁹

The first party established in Croatia in early 1989 was the Croatian Social Liberal Party HSLS (Hrvatska socijalno-liberalna stranka). It was led by Drazen Budisa and other non-communist liberal intellectuals. Budisa, as well as Tudjman, were among the participants of the Croatian Spring and had been imprisoned for taking part in the movement.³⁶⁰ The HSLS was a centrist party, targeting educated voters and interested in developing civil society. It combined intellectual and liberal ideas with economic reforms. Despite never winning the elections independently, HSLS held the second largest position in the Croatian political scene for a long time. In the 1992 elections it won 17% and in 1995 about 11%. Although during the domination of the HDZ it was difficult for other parties to gain support, the HSLS has a constant presence in the political life of Croatia. Budisa reconciled, in his presidential position two wings of the party: nationalist-populist and liberal.

Another party that has been influential on the Croatian political stage is the SDP that developed from the League of Communists. Ivica Racan was elected leader of the League of Communists of Croatia (SKH) in December 1989.³⁶¹ The party soon dropped

³⁵⁸ Ibid.

³⁵⁹ Malesevic, 231.

³⁶⁰ Bartlett, 33.

³⁶¹ Bartlett, 35.

the first part of the name and called itself simply the Party of Democratic Change or SDP. In 1994 it merged with Social Democrats of Croatia and changed the name into Social Democratic Party with the same abbreviation SDP. It is centre left social democratic party. In the 1990 elections the party won 22% of the vote, while in 1995 only 8%.³⁶²

A few more parties started to gain influence after the first multiparty elections. The Croatian Peasants' Party -HSS and the Croatian Party of Rights -HSP. The HSS “combined republican and anti-clerical Croatian nationalism with concern for rural economic and social problems.”³⁶³ At the same time it wanted to appeal to the urban middle class. The HNS- Croatian People's Party-Liberal Democrats is another centre-left liberal party in Croatia. The HSP was young supporters who “voted for HSP in protest, frustrated by the situation in Croatia and by the occupation of one-third of its territory.”³⁶⁴ The HSP was on the far right, and was in favor of reintroducing the Ustasha program. Ustashes were Croatian nationalists led by Ante Pavelic, who created the Independent State of Croatia in the area of Croatia and parts of Bosnia and Herzegovina in 1941 with the support of Germany and Italy during the Second World War. This party is extreme right party with very nationalist and conservative policies.

Thus, in the left-right spectrum, the parties could be classified as follows. The SDP was on the left, HNS on the centre left, while the HSP on the extreme right; the HSLs occupied the centre. Just right of the centre were the HSS and the HDZ while the left was occupied by regional parties such as IDS- Istrian Democratic Assembly. What is clear is that the parties were mostly basing their programs on nationalist platforms, which

³⁶² http://en.wikipedia.org/wiki/Croatian_parliamentary_election,_1990

³⁶³ Siber, 46.

³⁶⁴ Ibid., 47.

was understandable due to the war. However, this situation hampered the development of a healthy pluralist party system.

Regarding the positions towards the EU and the ICTY, there were some changes during the course of the 1990s. The positive attitude towards the EU has always been shown, but the attitudes towards the ICTY were shifting. Minister Ljerka Mintas-Hodak (HDZ) said that without doubt there was in the Croatian public and in political structures a pro-European orientation and it was because of “our deeply rooted feeling of belonging to the values and achievements of western European cultural and civilization circle but also from the belief that Croatia can develop and be stronger only as open state integrated in wider surrounding of modern and developed Europe.”³⁶⁵

However, the position towards the ICTY changed from a very positive when the Tribunal began its work to a very hostile and uneasy relationship towards 1999. Croatia supported the ICTY as long as it focused on processing the crimes committed against Croatia and Croatian citizens. Once the Tribunal started indicting Croats from 1995 onwards, especially for the actions that represented defense of Croatia from the aggressors, Croatia became very negative towards the ICTY. This was more or less shared by all the mentioned parties. Only the HSP was openly against any cooperation with the ICTY that included sending Croats to The Hague, and it even at some occasions suggested completely cutting off the relations with the ICTY. Other parties accepted the cooperation as a reality but used every opportunity to criticize the actions of the Tribunal that they saw as infringing upon Croatia’s sovereignty or undermining the efforts Croatia made in its fight for independence.

³⁶⁵ “Croatia is for Europe only Western Balkans” (Hrvatska je za Europu samo zapadni balkan), *Jutarnji list* 23 October 1999.

In early 1996, in the public opinion was supporting the work of the court.³⁶⁶ Although 52.9 percent believed in the partiality of the ICTY 69.8 percent supported the law on cooperation with the ICTY, and only 9 percent opposed it. Also 76 percent believed that Croatia should cooperate with the ICTY regardless of what Bosnian and Serbian side did and 71 percent did not believe that Croatia was compromising its sovereignty by cooperating with the ICTY; only 7 percent thought it did. 46 percent believed that the most important reason for the creation of the ICTY was moral, as opposed to 26 percent who believed it was political. However, when it came to extraditions of Tihomir Blaskic and other Croats to the ICTY, 33 percent were against; 26 percent were for and 30 percent did not know how to answer. This group of Croats was accused of serious violations of humanitarian law against Bosnian Muslims in Bosnia and Herzegovina.³⁶⁷

In 1999, in a survey when asked whether the ICTY could be said to be impartial and objective 50 percent said 'no' while only 20 percent said 'yes'. 33 percent believed cooperation of the government with the ICTY was enough, though 23 percent believed it was not enough and 25 percent believed it was too much. 76 percent believed Croatia should continue cooperation with the ICTY while only 11 percent answered negatively to this. Still 48 percent said they had negative general opinion about the ICTY to only 13 percent with positive one.³⁶⁸

Having fought a war and winning its independence, Croatia was in a very delicate situation whether to cooperate with the ICTY and thus, in a way criminalize the path to its independence. The HDZ led government and later other governments were

³⁶⁶ “Croats support the Hague” (Haagu podrška Hrvata), *Obzor*, 25 March 1996.

³⁶⁷ Available at <http://www.un.org/icty/cases-e/index-e.htm> last accessed 11 April 2006

³⁶⁸ “Parliament is judging the ICTY” (Sabor sudi Hagu), *Obzor*, 23 January 1999.

balancing between national interests and international obligations which lead to an incoherent trend of cooperation. In addition, the involvement of the Croats in Bosnian war was never publicly acknowledged and therefore later indictments of Bosnian Croats caused confusion among political actors.

The Croatian regime of Tudjman was struggling to achieve two goals - to protect the administrative borders of the SFRY when it came to Croatia, but not to lose historical opportunity to receive Croatian territories in Bosnia and Herzegovina if there was a chance.³⁶⁹ Therefore, the HDZ government had a double policy on Bosnia: officially it proclaimed respect for its borders but unofficially it tried to agree with Milosevic on its partition. Eventually, the decision to create Herceg-Bosna and enable the Croatian population in Bosnia to defend itself was seen by some as legitimate and by opposition as aggressive war. Opposition leaders were not aware of this double strategy and they continued to support the official view, even the HDZ members were not aware of it, which caused further conflicts and fractions.

Vesna Pusic (HNS) said that in 1993 Croatia began acting as an aggressor in neighboring Bosnia. Croats were committing atrocities not unlike those that had been committed against their compatriots only few months earlier. "The war in Bosnia brought shame to Croatia and deeply divided its electorate."³⁷⁰ The HDZ itself split, and was forced to call for a government of national unity. However, the coverage of the atrocities and the public awareness of these did not follow.

In the aftermath of the war, the Croatian media investigated war events and especially the situation where Croatian soldiers were involved in atrocities. "Their

³⁶⁹ Zdravko Tomac, *President: against lies and oblivion (Predsjednik Protiv krivotvorina i zaborava)*, (Zagreb: Slovo M, 2004), 230.

³⁷⁰ Vesna Pusic, "Croatia at the Crossroads", *Journal of Democracy*, vol. 9, no. 1, January 1998, 115.

general observations were that the extraordinary conditions imposed by war led to cruelties that the Croatian public was not ready to face.”³⁷¹ Croatian soldiers were represented as the good, the strong, and the just, who fought against the bad Serbian aggressors. The government seemed to have encouraged such an image. “Milan Vikovic, Supreme court president publicly declared that, in defense of his own country, a soldier could not commit a war crime.”³⁷² This became an official stance of the HDZ and created problems for cooperation with the ICTY. Moreover, the political system that enabled the HDZ to control most of the political life and the media only spread and enforced such position.

6.3 Institutional veto points and partisan veto players

Having won independence for Croatia Tudjman enjoyed enormous support by the voters and slowly began to control all poles of political life, which was not sanctioned by the voters due to the respect he enjoyed among the electorate.

Constitution guaranteed disproportionate power to the institution of the president of the country.³⁷³ Additional causes of this were: firstly, ‘harmony’ between the president and the parliamentary majority throughout the 1990s; secondly, charismatic and nature of the ruling party that was basing its main principles in ethnic intolerance, politicization of religion, violations of ethnic and human rights, corruption, nepotism which all violated the liberal-democratic rights and the norms of political life.³⁷⁴

³⁷¹ Stjepan Malovic and Gary W. Selnow (eds.), *The People, Press and Politics of Croatia*, Westpoint, Connecticut, London 2001, 135

³⁷² *Ibid.*, 136.

³⁷³ Mirjana Kasapovic, “Democratic consolidation and electoral policy in Croatia” in Mirjana Kasapovic (ed.), 21.

³⁷⁴ *Ibid.*, 21.

Controlling the media and increase in security services were the main means of the HDZ authoritarian rule. *Slobodna Dalmacija*, an independent daily that was critical of the government, was subject to renewed process of privatization and the new owners were those close to the government. Thus many journalists resigned. But other opposition magazines such as *Novi List* and *Feral Tribune* were freely sold. “The government was able to make life difficult for the opposition media by more subtle means of control such as placing commercial obstacles in their way to limit their business expansion.”³⁷⁵

Tudjman controlled television and that many newspapers were attacked for not following the regime. *Vjesnik* was Tudjman’s “mouthpiece.”³⁷⁶ Other authors agree that the dominant newspaper *Vecernji list* was influenced strongly by the leading political party HDZ and that Croatian TV- HRTV was “run by, for and about the leading party.”³⁷⁷ Only a few independent media (*Novi list*, Radio 101, *Feral Tribune*, *Nacional*, *Globus*) “remained reasonably impartial and maintained a diet of balance news.”³⁷⁸

Vlatko Cvrtila examined the ‘electoral geography’, i.e. how the ruling party used electoral systems, i.e. the size of electoral districts to its own advantage at the elections. At every election the HDZ government changed the electoral system. After the 1995 successful military operations that liberated the majority of Croatian territory, the early elections were called in order to capitalize on the military success. In order to maximize the result the HDZ government changed the electoral system to determine the electoral units not based on the number of voters, but based on the number of inhabitants.³⁷⁹

³⁷⁵ Bartlett, 5.

³⁷⁶ Jasminka Udovicki, and James Ridgeway, *Burn This House: The Making and Unmaking of Yugoslavia*, (Duke University Press, 1997), 276.

³⁷⁷ Malovic, and Selnow, 4.

³⁷⁸ *Ibid*, 16.

³⁷⁹ *Ibid.*, 55.

In such circumstances the HDZ held all ministerial positions. Before the passing of the law on cooperation with the ICTY there were no special institutional rules for cooperation. The law set out general legal procedure of accepting indictments and searching for these individuals, which was done through the relevant ministries and bodies, but there was no special bodies for cooperation with the ICTY. Minister Vladimir Seks (HDZ), vice president of the government was responsible to coordinate relations with the ICTY. After the law was passed in 1996 the Office for cooperation with the ICTY was created. Minister of Justice was the president of the Council of the Office for cooperation with the ICTY. Unlike Serbia, which ignored the ICTY completely, Croatia adopted the law on cooperation in April 1996 but used every opportunity to criticize its work through legal and diplomatic means. Thus it always tried to prove that there was cooperation with the ICTY but in effect there was very almost no cooperation on extraditions of the indictees.

During the 1990s, neither Croatia nor Serbia extradited those who fought on their side during the war. The indictments for Croats Ivica Rajic, Dario Kordic and Tihomir Blaskic were announced in August and November 1995. According to the Croatian media Dario Kordic was seen in Zagreb, while Ivica Rajic was allocated a flat as military personnel.³⁸⁰ The Croatian Ministry of Defense denied that it protected indictee Ivica Rajic.³⁸¹ However, they did not deny that Kordic was in Zagreb and, as well as Blaskic. Blaskic surrendered voluntarily in October 1997 and Ivica Rajic was arrested in 2003. Some other indictees were extradited by Germany or arrested in Bosnia. Thus, although a

³⁸⁰ "Pride and prejudice" (Ponos i predrasude), *Novi List*, 7 April 1996.

³⁸¹ "Panic among Hague candidates" (Panika u redovima haskih kandidata), *Novi List*, 27 October 1996.

formal position was cooperation with the tribunal the government rarely took difficult decisions to arrest indictees.

The Helsinki committee added that the real position of Croatian government towards war crimes was seen in the fact that not a single Croat has been convicted of a war crime in Croatia until end of 1998.³⁸² Milan Vukovic was still president of the Supreme Court who stated that not a single Croat could commit a war crime because Croatia was defending itself from the aggressors, which made it clear why in Croatia individuals that committed crimes on Croatian side were not prosecuted. Thus, it can be said that all of the structures within Croatian government and administration including legal bodies, military and police forces as well as government were united in the position that the Croats could not be tried because they were defending their own country. The whole period is marked by the attempts of Croatia to communicate this position to the ICTY. The following section will mention several instances where this position of Croatia led to open conflict with the ICTY.

6.4 External pressures and incentives

Croatia as all countries in the region had to comply with the provisions of the Dayton peace agreement of 1995, which included the cooperation with the ICTY as the most important provision of the agreement. This was reiterated in the Council conclusions for cooperation with the countries of former Yugoslavia passed in 1997, where again cooperation with the ICTY was one of the most important condition for improving relations with the EU. In 1999 when the Stabilization and Association Program was launched by the EU, it stressed again those obligations. The EU and other

³⁸² “Tudjman initiated a series of attacks on the ICTY” (Tudjman inicirao seriju napada na haski sud), *Novi List*, 31 December 1998.

international institutions, such as the NATO, the UN were always consistent in demanding these conditions to be met. Dissatisfaction with this and other conditions was always clearly seen.

Against these demands from the international community Croatia on several occasions had open conflicts with the ICTY. The most important was over the Tribunals inability to make a distinction between the aggressors and victims in the conflict, which cause many vehement discussions; another conflict was related to the debate on the law on cooperation with the ICTY and indictments against some of those who had participated in ‘Storm’ and ‘Flash’ actions. These conflicts with the ICTY will be explained in more detail below.

After the operations ‘Storm’ and ‘Flash’ which were very controversial in terms of destruction, refugees and deaths of civilians the EU took measures immediately Negotiations for PHARE between Croatia and the EU were suspended. The EU kept this position. This was at the time one of the tools which the EU used to show what would not be tolerated by the countries that aspired to join the EU. The following two years did not see any improvement on this issue and the situation remained unchanged. Only in 1997 after the conditionality for the former Yugoslav countries was formulated did the EU assume more firm stance on demanding all set conditions to be fulfilled.

Other institutions also took position of conditionality. In February 1998, Jamie Shea, spokesperson for NATO said that Croatia was welcome to Partnership for Peace but that it had to follow Dayton, adding that Dayton was the Bible for all.³⁸³ Dayton provisions referred to the return of refugees as well as cooperation with the ICTY. The

³⁸³ “OSCE chief of mission suggests imposing visa regime for Croats for entering EU!” (Sef OESSa u Zagrebu predlaže uvodjenje viza Hrvatima za zemlje EUa!), *Slobodna Dalmacija*, 28 February 1998.

NATO was dissatisfied with the departure of Serbs from Podunavlje to western countries and OSCE mentioned economic discrimination. A month after this, Ivo Sanader, deputy Minister of foreign affairs said after the meeting in Brussels that Croatia was not in any type of isolation from EU.³⁸⁴ The meetings at different levels showed that problems were not overlooked but discussed and EU was ready to follow progress of Croatia. The message of the EU was “We want you in our company, but you have to realize that our criteria are high.”³⁸⁵ The criteria were not economic but political, especially contributing to stability and peace process and normalization in Podunavlje as well as fulfilling Dayton accords.

However in March 1998, the report of the EU office in Zagreb was negative and suggested an end to further institutional relations with the EU.³⁸⁶ PHARE negotiations were still suspended. Although there were no threats of sanctions, Croatia was put on the same level as FRY and Belarus because EU conditionality had not been fulfilled. The Ministry of Foreign Affairs reacted that it could not accept the assessment that president of Croatia and government were not ready to cooperate with EU.³⁸⁷ In his report before the parliament on 27 January and at the fourth general congress of HDZ on 21 February 1998, the president clearly emphasized that accession to the EU was one of the many strategic goals of Croatian national policy and development. The MFA claimed the government continued to implement the Dayton agreement to contribute to implementation of it in Bosnia and Herzegovina.

³⁸⁴ “Tough report of European Commission about Croatia” (Tvrdo izvesce Evropske komisije o Hrvatskoj), *Novi list*, 6 March 1998.

³⁸⁵ *ibid.*

³⁸⁶ “Because of Tudjman’s speech at the HDZ congress and police action against unions, Croatia will not enter PHARE even in 1998” (Zbog Tudjmanova govora na Saboru HDZa i policijske akcije protiv sindikalnog prosvjeda Hrvatska ni 1998. neće ući u PHARE program), *Globus*, 13 March 1998.

³⁸⁷ “Unnecessary political pressure” (Nepotreban politički pritisak), *Vecernji list*, 14 March 1998.

One of the strictest warnings came from the UK foreign minister Robin Cook in March 1998, who said that Croatia was not welcome in the EU until it fulfilled its international obligations.³⁸⁸ The Dayton agreement was seen as the most important; EU would cooperate with those forces that wanted to establish a democratic state. Tudjman was attempting to address the EU demand to cut the ties with Bosnian HDZ but announced de-militarization was not going as planned. The EU was not happy with undemocratic HDZ and effectively what they said was that Croatia was not welcomed as long as HDZ was in power. The pressure continued in April 1998. The EU was not satisfied with the cooperation, especially return of refugees and cooperation with the ICTY.³⁸⁹ Thus, Croatia was not reintegrated in PHARE and bilateral negotiations were not even on the agenda. The Commission suggested status quo, i.e. no independent trade regime, no conditions for participating in PHARE and no conditions for negotiations on cooperation with the EU.³⁹⁰

At the Council of Ministers on 15 April 1998 in Luxembourg, the ministers concluded that Croatia had not fulfilled set conditions. The EU threatened to abolish preferential trade agreement with Croatia if there was no improvement by September/October 1998. In addition to asking for improvement in the level of democratization, respect for human and minority rights and freedom of the media, the EU required from Croatian government to create atmosphere for the Serbs in Croatia to feel safe to return. Although several Bosnian Croats were in the ICTY, the overall

³⁸⁸ “EU does not count on Croatia where HDZ is in power” (Europska unija ne racuna na Republiku Hrvatsku u kojoj je HDZ na vlasti), *Globus*, 27 March 1998.

³⁸⁹ “Dayton and Erdut keys for Croatia” (Dayton i Erdut-kljucevi Hrvatske), *Vecernji list*, 16 April 1998.

³⁹⁰ “More is required from Croatia than from the others “ (Od Hrvatske se trazi vise nego od drugih), *Vecernji list*, 27 April 1998.

cooperation with the ICTY should have been improved and in the Council of Ministers expected Zagreb to influence Bosnian Croats.

In July 1999 Osmo Lipponen, Finish ambassador whose country held the EU presidency said that if there was political will Croatia would go further towards EU integration.³⁹¹ He agreed with the ICTY prosecutor Louise Arbour that Croatia in the last three years had made no progress in cooperation with the ICTY – there was delay in submission of evidence and documentations. In October 1999, Croatia still did not start institutionalized relations with EU; the only relation was preferential trade which was left from the former Yugoslavia.³⁹²

In late 1999, the UN report again stated that Croatia was not -cooperating.³⁹³ Minister of Justice Zvonimir Separovic (HDZ) assessed the report as surprising and disappointing: it did not show to what extent Croatia cooperated. The ICTY was still the means of pressure on Croatia and he added that the policy of the ICTY was not equitable and it neglected prosecution of big criminals. The next sections will outline some of the main criticism of the ICTY which were hindrance on the cooperation with the ICTY and thus better institutional relations with the EU.

6.4.1 Attitudes towards establishment of the ICTY and the beginning of its work

Initially, the official government position on the ICTY was very positive as it was believed that crimes against Croatia had to be punished. In November 1993, Ivica Kostovic, vice president of the government, when he had to allow the UN representatives

³⁹¹ “Negotiations with EU after Republic Croatia fulfils the demands” (Lipponen: pregovori s EU nakon sto RH zadovolji uvjete), *Vjesnik*, 22 July 1999.

³⁹² “Croatia is for Europe only Western Balkans” (Hrvatska je za Europu samo zapadni balkan), *Jutarnji list*, 23 October 1999.

³⁹³ “President of the ICTY will on 8 November report to the UN about the non-cooperation with the ICTY!” (Predsjednica Haskog suda 8. studenoga izvijestit ce UN o hrvatskoj nesuradnji!), *Jutarnji List*, 24 October 1999.

to investigate some crimes in Croatia, noticed a “fine political tendency of the court to show that everybody was guilty.”³⁹⁴ Croatia protested against this and sent a list of all localities where Serbs committed crimes but the tribunal did not have financial means to investigate all of them. The main objection was attempt of the court to make guilt relative and put the aggressor and the victim on equal footing.

In November 1994 Croatian support for the ICTY was again confirmed by the Croatian mission to the UN. It was said that it was crucial to try initiators, organizations and executors of the crimes and not the whole nation, as collective guilt would not help establishing peace and stability. Croatia was worried that the FRY was not cooperating and the Croatian UN Representative Vladimir Drobnyak said that the crimes committed by the Serbs were partly well planned and part of systematic politics of territorial expansion, which was done in the most brutal way.³⁹⁵ He also said that Croatia wanted to cooperate with the ICTY and that up to that point it convicted and arrested 127 persons who committed crimes against humanitarian law. However, among these there were no Croats. Despite trying to show how it could process war criminals before domestic courts, Croatia failed to demonstrate enough judicial independence to prosecute war criminals of all nationalities.

It was not even imaginable that war crimes could be made by the side that had been attacked and Croatia stuck to that position. The view of international organizations were condemned as they “often ignore the fact that the Serbs are aggressors with rational plan of committing war crimes in order to expand territory, in contrast to Croats who react impulsively when his young child or old parents are killed, when his wife is

³⁹⁴ “Attempts to equalize guilt” (Pokus izjednacavanja krivnje), *Danas*, 30 November 1993.

³⁹⁵ “The work of the court is a message that war crimes will not remain unpunished” (Rad suda je poruka da ratni zlocini nece ostati nekaznjeni), *Vjesnik*, 15 November 1994.

raped.”³⁹⁶ The position of the government was reiterated that it was a war of one state – aggressor (Serbia) against another state (Croatia) and it was not any kind of religious, ethnic or other war. While applying this logic of erasing difference between the aggressor and the victim, EU “again demonstrates its inability to justly solve one important problem in the territory of Europe. Such Europe, after fifty years of communist darkness, the Croats were not expecting.”³⁹⁷

6.4.2 Debates about law on cooperation with the ICTY and responses to indictments

As explained above the position of Croatia on war very strong and it could not accept any indictments for action that it regarded as defending its own sovereignty. The information that the ICTY was preparing indictments against those who coo participated in the actions ‘Storm’ and ‘Flash’ created heated arguments among Croatian parties which were in the midst of debate on the law of cooperation with the ICTY.

Ivic Pasalic, the advisor to Tudjman said that the law was the only possible way of cooperation with the ICTY that would not violate the constitution of the country. Despite personal struggle of each MP, he said, it was important to note that the law had protective mechanisms for the accused. He added that despite the vehement accusations in the parliament of who was a bigger Croat, it was important that as many MPs voted for the law, and if possible all of them (HDZ did not have 2/3 majority that was necessary for the law). Everybody wanted Croatia in European and world integration and thus this law was in interest of Croatia said Pasalic. Firstly, it would lead Croatia to the Council of Europe; secondly, Croatia needed to create its state on the foundations for which it had fought, i.e. if there were crimes they should be investigated and prosecuted and that was

³⁹⁶ “War crime – relative” (Ratni zlocni-relativan), *Obzor*, 20 November 1995.

³⁹⁷ Ibid.

in the interest of Croatia.³⁹⁸ Croatia passed the law on cooperation with the ICTY on 26 April 1996, and it joined the Council of Europe on 6 November 1996.³⁹⁹ It is not clear whether these two had any direct connection, but the fact that there was a law on cooperation did not mean that the debates about whether Croatia should cooperate, would cease.

Mato Arlovic (SDP) thought that the law was not the best legal form; that special agreement with the International Organizations would have been better as it would have higher validity above the law. He stressed that this led to homogenization of Croatian people who were afraid that the court would put the victim and the aggressor on an equal level. He also said there was nothing questionable about the fact that Croatia had to cooperate with the ICTY and that those who committed crimes should be tried, but it was questionable in which legal way it should be done. Ante Djapic and his far right HSP were against the law that, as they saw it, cut through Croatian sovereignty. He was also puzzled by the passivity of the Croatian public to this issue and believed that Croats should be tried in Croatia because Croatia was defending herself from aggression and Croats should not go to The Hague.

Despite the differences among different parties, during this period the government presented its position on the ICTY as unified and coordinated. The Ministers of Foreign and Affairs and Defense, Granic and Susak both from HDZ, denied any difference in stance of different ministries, as the position of Croatia had to be based on united and consequential approach to solving issues of cooperation with the ICTY. Granic said, “We have bound ourselves to cooperate with the ICTY and we will respect that, but we will

³⁹⁸ “Why is the Hague important?” (Zasto nam je vazan Hag?), *Vjesnik*, 16 April 1996.

³⁹⁹ “After ‘Storm’ 4654 trials” (Nakon Oluje – 4654 sudska postupka), *Vecernji list*, 9 September 1997.

criticize it when we see that there is not objective or there is biased position of the ICTY.”⁴⁰⁰ Croatian government, i.e. Office for Cooperation with the ICTY, issued a statement saying that policy towards the ICTY was unified, coordinated by the government.⁴⁰¹ According to the law on cooperation government dealt with all cooperation matters. Office for cooperation and its council implemented policy towards the ICTY in a unified way, so it was unfounded to talk about situation that some ministries had their own policy and that it was different from the policy of the government of Croatia.

The biggest conflict between the ICTY and Croatia came when Judge Gabrielle Kirk McDonald ordered Minister of Defense Gojko Susak to hand over all materials in his possession related to Blaskic case during the two years of war in Bosnia and if not then to come to the ICTY to explain his inability to do as requested.⁴⁰² This was shocking for Croatia as it disregarded the cooperation of Croatia with the ICTY, Croatia did not want to receive from the court demands for its officials to appear before the court and justify actions of cooperation. Croatia won in the appeal process (i.e. the ICTY suspended implementation of subpoena – the decision that Croatian official goes to Hague and explain their actions for not sending materials).⁴⁰³ This showed that Croatia found legal way to deal with unpopular decisions of the ICTY. UN representative of

⁴⁰⁰ “Government, Ministers, the Hague” (Vlada, Ministri, Hag), *Vjesnik*, 6 July 1996.

⁴⁰¹ “Unified policy towards the Hague tribunal” (Jedinstvena politika prema haskom sudu), *Slobodna Dalmacija*, 4 March 1997.

⁴⁰² “Strange demands from the Hague”, (Cudni zahtjevi iz Haga), *Vjesnik*, 17 February 1997.

⁴⁰³ “Hague: the implementation of subpoena has been suspended” (Haag: suspendirano izvršenje subpoenae), *Vjesnik*, 1 August 1997.

Croatia Ivan Simonovic said there was no refusal to cooperate. Croatia only wanted the cooperation to be with respect of state sovereignty of Croatia.⁴⁰⁴

However, this did not solve the problems of further cooperation with the ICTY. Another vehement exchange between Croatia and the ICTY started as the ICTY wanted to investigate the operations ‘Storm’ and ‘Flash’. Minister of justice and president of the council of Office for cooperation with the ICTY, Miroslav Separovic, sent to the president and prosecutor of the ICTY a letter expressing strong protest against the arrival of the investigators of the ICTY to investigate events during and after ‘Storm’.⁴⁰⁵ It was seen as a unilateral decision and without the agreement of the Croatian government to investigate territory of Croatia. It was against public international law, respect of sovereignty and respect of the Croatian law on cooperation with the ICTY.

As soon as such reports started coming from the ICTY, the HDZ began suggesting cutting off cooperation with the ICTY. Davorko Vidovic (SDP) saw that any attempt to unilaterally cut ties with the ICTY would be very risky, so SDP would be against HDZ proposition and against abolition of law on cooperation with the ICTY, but they would like to have a mechanism to check in Croatia, whether possibly indicted generals could be guilty of war crimes. Drazen Budisa from HSLs said that crimes after ‘Storm’ and ‘Flash’ were not war crimes but criminal acts of murder (in peace time) and for those Croatian courts should have jurisdiction. He was also not happy about the parliamentary discussion, as he believed that there was dissatisfaction of the work of the ICTY in the public already. The HSS thought this debate was necessary and that it should

⁴⁰⁴ “We do not refuse to cooperate with the ICTY we just want respect of sovereignty” (Simonovic: ne odbijamo suradnju s Haagom, trazimo postivanje suvereniteta), *Novi list*, 23 September 1997.

⁴⁰⁵ “Unilateral actions of the Hague tribunal” (Jednostrani postupci haskog suda), *Vecernji list*, 21 May 1997.

have been done long ago. Ivan Jakovic from the IDS saw this debate as election campaign of the HDZ, which wanted to homogenize its electoral body on the logic of conflict with international community. IDS would not support any tension between Croatia and international community on any question.

President of the parliamentary committee for the Croatian veterans, general in retirement Janko Bobetko stressed that military invalids had the highest right to warn that Croatia needed every man who fought for the better Croatia and was ready to sacrifice their life. The military was against any cooperation with the ICTY. General Janko Bobetko said for Novi List that "We could get sanctions but we should not spit on ourselves."⁴⁰⁶ Bobetko was worried because he was acting general during the operations. His position was that Croats were tried because they defended their own country. The president of the Association of war veterans (HVIDR) said that they wanted the government to stop sending Croatian soldiers and officers to The Hague.⁴⁰⁷

When in 1999 indirect accusations against Franjo Tudjman started reaching Zagreb, tense relation with the ICTY were only exacerbated. In the case of Tihomir Blaskic, the Prosecution accused Franjo Tudjman of involvement in war in Bosnia and in creating Herceg-Bosna that was supposed to be joined with Croatia.⁴⁰⁸ HDZ officials denied there were any legal grounds for these accusations and viewed them as political pressure on Tudjman and Croatia. HSP, Djapic said that parliament had to stop this 'hunt' for the president by the ICTY. HSLS also did not accept the announcements of process

⁴⁰⁶ "The Hague judgment" (Haski usud), *Feral Tribune*, 25 January 1999.

⁴⁰⁷ "Association of Croatian military invalids of the Homeland war is asking for the stoppage of transferring Croats to the Hague" (HVIDR-a trazi prestanak slanja Hrvata u Haag), *Vjesnik*, 30 January 1999.

⁴⁰⁸ "The ICTY's calling on Tudjman is unfounded and the aim is political pressure" (Hasko prozivanje predsjednika Tudjmana neosnovano je, a svrha je politicki pritisak) *Vjesnik*, 28 July 1999.

against president Tudjman, though it accepted that the policy toward Bosnia was wrong, but made a distinction between mistaken political calculation and process for war crimes.

Despite these objections to the ICTY actions in August and September Croatia extradited Vinko Martinovic Stela and Mladen Naletilic Tuta.⁴⁰⁹ Both of them were accused in 1998 for war crimes in Bosnia in 1993. Also, both them were in the custody of Croatian authorities since 1997 due to the lawsuits against them in domestic courts on domestic indictments.⁴¹⁰ Before Naletilic was extradited, the ICTY prosecutor still wanted Croatia to fulfill all other outstanding requests from the ICTY, or threaten to report Croatia to the UN for not fully cooperating.⁴¹¹ Except for the extradition of Naletilic other outstanding issues included transfer of documents related to operation ‘Storm’. Croatia was insulted by the fact that the prosecutor said that Croatia behaved as FRY when it was known that FRY did not cooperate at all. Some believed that if Arbour indicted Tudjman, it would have been very difficult for HDZ to be reelected that year. Thus Arbour was directly involved in domestic politics of Croatia. Plus this would influence the position of Croatia in international standings.

The US shared the ICTY dissatisfaction with cooperation with the ICTY and asked Croatia government to fulfill its obligations.⁴¹² The US did not accept Croatian reasons for not extraditing Mladen Naletilic, and Croatian objections to the ICTY jurisdiction over ‘Flash’ and ‘Storm’ actions. Thus, it threatened to stop bilateral help, as

⁴⁰⁹ <http://www.icty.org/sid/7743>

⁴¹⁰ http://www.vreme.com/arhiva_html/454/9.html

Haski sud i Hrvatska [The ICTY and Croatia], [Time]Vreme 454, 18 September 1999

⁴¹¹ “By reporting Croatia to the UN prosecutor Arbour is directly involving herself into the election campaign of Croatia” (Tuzeci Hrvatsku UN-u, tuziteljica Arbour ukljucuje se u hrvatsku predizbornu kampanju), *Vjesnik*, 13 August 1999.

⁴¹² “USA: the ICTY has jurisdiction over possible crimes in Flash and Storm” “SAD: the ICTY je nadležan za eventualna kaznena djela Bljeska i Oluje), *Vjesnik*, 27 August 1999.

there was special amendment that had a provision for states that did not cooperate with the ICTY. In addition, this would have meant that the US would not support help to Croatia in other international institutions. Whether these criticisms forced Croatia to cooperate or whether it was believed that if these demands were fulfilled the accusations for 'Storm' and 'Flash' would be dropped, it is not clear.

Referring to the report of the ICTY to the UN in which Croatia was criticized for non-cooperation, Croatian government disagreed with the assessment and reminded that it was supporting the creation of the court. It stated it was cooperating always and especially after the law on cooperation entered force and that it always extradited those accused and submitted requested materials to the tribunal.⁴¹³ Concerning Mladen Naletilic, he was tried before the domestic courts and the process of establishing whether there were conditions for him to be extradited so the process on this case was ongoing and it was slowed down due to his medical conditions, but there was no question of non-cooperation. About 'Storm', the Croatian government said that this action was justified, it was legally founded and legally carried out in line with international law and therefore the ICTY had no jurisdiction. The government of Croatia could not fully exclude possibility that these were just political pressured in the election year.

When in 1999 government issued the White book, it created speculations whether it helped or hindered Croatian position.⁴¹⁴ The document listed all activities of the government concerning war crimes and Croatia's cooperation with the ICTY. The document also showed that Croatia did not try anybody for murder in 'Storm' and 'Flash'.

⁴¹³ "Croatian government: the ICTY has no jurisdiction over operations Flash and Storm" (Vlada RH: Haski tribuanl nije nadležan za Bljesak i Oluju), *Vjesnik*, 27 August 1999.

⁴¹⁴ "'White book' - more damage than use?" ('Bijela knjiga' - vise stete nego koristi?) *Slobodna Dalmacija*, 4 September 1999.

The White book also revealed that the ICTY asked Croatia to give them documents of Muslim activities in 1994, but Croatian government replied to the ICTY that they did not have any data on activities of Muslim forces in Bosnia and Herzegovina from September to January 1994. It also contained data that in April 1998 the ICTY wanted to talk to general Ante Gotovina for the operations 'Flash' and 'Storm', Croatia asked for more details and got it from the ICTY in May, after that from 18 May 1998 Croatia assumed the position that the ICTY had no jurisdiction over 'Storm' and 'Flash'. With such information in the report, it was questionable whether it improved the position of Croatia towards the ICTY.

The government defended the document because it was prepared for the UN Security Council, i.e. international public but also for the domestic public as it contained data on cooperation with the ICTY.⁴¹⁵ The document was compiled by experts from several ministries. In the first part the document has data on the victims and destruction during the war and in the second about the worst war crimes committed in Croatia. 'Storm' and 'Flash' were seen as legitimate police-army operations in line with Croatian and international law. The second part also showed chronology of work with the ICTY and its purpose was to show that Croatia had always continuously cooperated with it.

In November 1999 Croatia refused to allow arrival of the ICTY prosecutors to investigate alleged crimes during the two operations. Croatia waited for the ICTY to prove that it had jurisdiction over these actions.⁴¹⁶ Minister of Justice Zvonimir Separovic informed the prosecutor Del Ponte about this. She replied that Croatia could not decide

⁴¹⁵ "White book is a document, history but also a debt to numerous victims of aggression against Croatia!" (Bijela knjiga je dokument i povjest , ali i dug prema brojnim zrtvama agresije na Hrvatsku!), *Vjesnik*, 4 September 1999.

⁴¹⁶ "Croatia is not allowing arrival of the Hague investigators" (Hrvatska ne dopusta dolazak haskih istrazitelja), *Jutarnji list*, 14 November 1999.

what the Tribunal would investigate and reported Croatian's non-cooperation to the UN. She said that Croatia should not stop cooperation because it unilaterally decided that the ICTY had no jurisdiction. Minister again said that Croatia would not allow that her sovereignty was breached and that only Croatian courts had the right to investigate crimes in its own territory. He said that Croatia could allow the ICTY investigators to come only if the subject of the investigation were not the events over which Croatia was denying jurisdiction of the ICTY.

Thus in the end of 1999, Croatia was at the lowest point of cooperation with the ICTY, which was creating a lot of pressures on the political actors within Croatia. The relations with international organizations and the EU were also negative, economic situation deteriorated and in December 1999 Franjo Tudjman died after an illness, which was concealed for some time. All these factors created an atmosphere ripe for new elections which were held the following year. The next chapter will look at what changed with the ICTY cooperation after the new government was formed.

6.5 Conclusion

This chapter looked at a period between 1993 and 2000 and the problems that Croatia faced in an attempt to fulfill EU conditions and cooperate with the ICTY on the one hand, and not to allow the actions that led to Croatian independence to be criminalized or questioned in any way.

Throughout the 1990s Croatia stressed its European position but the prospects of EU membership were not so clear. The EU had common approach towards the region, which was objected to by Croatia, as they did not want to be regarded as a Balkan country. The clear membership promise only came in 1999 with the formulation of SAP

by the EU. However, by then Croatia was in conflicting situation with the ICTY and the EU for not cooperating fully with the Tribunal. Therefore, the Tudjman regime did not see clear rewards of cooperating and they were also very distant. Moreover, the reward would be gained only once cooperation with the ICTY was fulfilled which for Croatia during that period was not acceptable. There were only two extraditions from Croatia during the whole period, Croatia did not recognize jurisdiction of the ICTY for the two operations that led to its independence and in general could not accept that those who fought for the defense of their own country could be tried at an international Tribunal. These problems persisted through the period. Despite passing the law on cooperation and the regular communication with the ICTY, the actual acceptance of its jurisdiction has constantly been disputed.

The hypotheses on size and time of the rewards were confirmed, the lack of clear reward and time of the reward were not an incentive for Croatia. In addition, the hypotheses on low support for cooperation with the ICTY were confirmed. Even opposition parties were against cooperation that included trying Croatian defenders in The Hague.

The hypothesis that was not confirmed was that there was high support for the EU but it did not lead to a better cooperation with the ICTY. The higher number of institutional obstacles the lower likelihood of cooperation was not confirmed because there were no institutional obstacles but the cooperation was prevented based on principles of national interest set by the Croatian government. The hypothesis on the fragmentation of the decision making process was also not confirmed because the process of cooperation was centralized and again it did not help to improve the cooperation. The

crucial factor was position of the governing party and most of the opposition which was against cooperation in cases that criminalized the defense of Croatian independence.

Chapter 7- Croatia 2000-2003

7.1 Introduction

As mentioned above the tensions over the cooperation with the ICTY and lagging behind with the EU integration process, deteriorating economic situation and the death of Tudjman created new political environment that was expressed through the elections results. This chapter looks at period from the formation of the new government in 2000 to the early elections in 2003. The first section will set out some general conditions; the second will explain the institutional structure for cooperation with the ICTY followed by partisan positions on the issue. The last section will look at some important issues related to the cooperation with the ICTY against the pressures and incentives from the EU and other institutions.

The debate that started during the Tudjman government, whether Croatia should allow the ICTY to have jurisdiction for the crimes committed in operations ‘Storm’ and ‘Flash’, continued after the new government was formed. This was followed by some indictments from the ICTY that created conflict between the government and the opposition. These indictments were also a test for the government because they had to act on them in order to fulfill cooperation with the ICTY and in this way improve institutional relations with the EU. The most important indictments were against general Ante Gotovina for the operation ‘Storm’ (1995), which was made public in June 2001; against general Janko Bobetko for Medak pocket (territory near city of Gospic, in 1993) made public in September 2002. Two other officers Rahim Ademi and Mirko Norac were accused for the same operation in the Medak pocket. Ademi was indicted in 2001

and Norac in 2004. However, Norac was already in 2003 on trial in Croatian domestic courts for the crimes committed in 1991.

7.2 Actors: main positions and power costs

On 3 January 2000 Croatia held parliamentary elections, which brought the victory to the coalition of SDP-HSLS, together with the bloc of four other parties run together with: the Croatian Peasant party- HSS, the Croatian National Party-HNS, Istrian Democratic Assembly-IDS and the Liberal party -LS.

Based on the election results the coalition had the following number of seats in the parliament: together the SDP and HSLS had 65 seats (40%), the HDZ had 46 (26%), the HSS, IDS, HNS and LS had 25, the HSP had four and the HKDU had one.⁴¹⁷ The elections of January 2000 showed the real constellation of power on Croatian political scene.⁴¹⁸ The first elections in 1990 were more the expression of the liberation from the communist legacy and the following two elections (1992, 1995) were held during the Homeland war and thus were only showing the unity of the population and the elite in the efforts to create and liberate independent Croatia. During the 1990s the voters were in favor of HDZ as its aims were clear, to create an independent state. However, as the issues became more diverse and as the voters began to discover other political options the situation gradually began to change.⁴¹⁹ Please see the tables 5 and 6 below.

Table 5: Changes in Electoral Support for Party Blocks 1990-2000⁴²⁰

Support in million	1990	1992	1993	1995	1997	2000
1,8						
1,6						Left

⁴¹⁷http://sh.wikipedia.org/wiki/Parlamentarni_izbori_u_Hrvatskoj_2000

⁴¹⁸ Ivan Siber, "Political behavior of voters in elections 1990-2000" in Mirjana Kasapovic, (ed.), 66.

⁴¹⁹ Ibid., 75.

⁴²⁰ taken from Goran Cular, The Croatian Party system 1989-2002, in Dragica Vujadinovic *Between Authoritarianism and Democracy: Serbia, Montenegro, Croatia,* (Belgrade: CEDET, 2003), 204 .

						block
1,4	Left block *	HDZ,HSP				
1,2	HDZ,HSP	HDZ		HDZ,HSP		
1		Left block	HDZ,HSP Left block	HDZ	HDZ,HSP Left block	
0,8				Left block		HDZ, HSP
0,6						HDZ
0,4					Others	Others
0,2	Others	Others	Others			
0						

*HNS, HSLS, HS, IDS, SDP

Table 6, The Left-Right position of the Croatian Parties (1990-2000)⁴²¹

	Left -3	4	5	6	7	Right-8
1990	SKH-SDP; SSH			KNS, HSS, HDZ		
1992	SDP	IDS	HSLS HNS	HSS HDZ	HSP	
1995	SDP	IDS	HSLS HNS HSS	HDZ	HSP	
2000	SDP	HNS LS HSLS	IDS HSS	HSP HDZ		

Nenad Zakosek deals with the reasons for the shift of the preferences of voters away from the HDZ and towards parties of the left. The government of national unity was limiting the room for maneuver of the opposition and this situation lasted until about 1995. Then, as the war efforts decreased and as the monopoly of the HDZ became evident in all aspects of Croatian social life, the conflicts between the HDZ led government and the opposition became more evident and more present.⁴²² The domination of HDZ in the parliament was only possible due to the disproportionate number of the HDZ MPs thanks to the electoral law that favored the leading party. In 1992 and 1995, HDZ had six times more MPs than the second largest party did in the parliament.

⁴²¹ *ibid.*, 208

⁴²² *Ibid.*, 101.

The SDP-HSLS coalition formed a government. Ivica Racan (SDP) became the prime minister. The ministers of foreign affairs, justice and interior were all from the SDP and the vice president of the government Goran Granic was from the HSLS. Reportedly, the president of the HSLS Drazen Budiaša expected to win the presidential elections and once that did not happen he wanted Racan to appoint him the vice president of the government instead of Goran Granic.⁴²³ Racan did not accept this and allegedly, the HSLS from then on had two fractions. Eventually, the HSLS started moving away from SDP's position on cooperation with the ICTY, which was one of the reasons for early elections. The president of Croatia was elected in February 2000 when in the second round Stjepan (Stipe) Mesic was better than Drazen Budisa was.

Between 1990 and 2000 the President of the Republic (PR) was not accountable to either Parliament or the Government; he was only impeachable for a violation of Constitution. The motion for the impeachment required a 2/3 majority of all representatives and a 2/3 majority vote of all judges in the Constitutional Court. In addition, the government was subordinate to the PR he appointed and relieved of duty the prime minister(PM) and at the PM's suggestions appointed and relieved of duty the deputy prime minister and ministers. It was within his power to convene sessions of the Government and put on the agenda all issues he deemed important. In terms of legislature, PR could pass decrees with the force of law.⁴²⁴ This changed after 2000 elections and the powers of the president were as table 7 shows.

Table 7: powers of the president in Croatia before and after 2000⁴²⁵

Before 2000	After 2000
Semi-presidential system	Parliamentary system

⁴²³ http://en.wikipedia.org/wiki/Goran_Grani%C4%87

⁴²⁴ Arsen Bacic, "The Constitutional system of the Republic of Croatia", in Dragica Vujadinovic *Between Authoritarianism and Democracy: Serbia, Montenegro, Croatia*, (Belgrade: CEDET, 2003) ,60.

⁴²⁵ Ibid.

President had all executive power; was superior to the parliament and accountable to no one	President has to co-operate with other actors within distribution of power
Government subordinated to the President One party government due to parliamentary majority	Government subordinated to the Parliament Coalition government
Parliament was ruled by a majority of the party whose leader was the PR	No dominant majority

7.3 Institutional veto points and partisan veto players

Since 1996, Croatia institutionalized and had very regular communication with the ICTY.

The provisions of the Law on co-operation with the ICTY, which was adopted in April 1996, gave the government the highest responsibility for the co-operation.⁴²⁶ The law stipulates that all requests from the ICTY should be directed to the government, which then forwards them to the relevant body. Thus, the government in Croatia had full control and monitoring of the co-operation. The Croatian law did not have provisions related to the procedure of releasing witnesses of the obligation to keep state and military secrets, and this enabled more efficient cooperation with the ICTY.⁴²⁷ Table 8 shows which bodies were responsible for cooperation with the ICTY.

Table 8: institutional structure for cooperation with the ICTY⁴²⁸

	2000-2003	1990-1999
Government	Coalition of SDP, HSLs, HNS, LS, HSS, IDS; decisions made by qualified majority voting	Government controlled by HDZ and president Tudjman
Parliament	Comfortable majority in the parliament	Parliament controlled by HDZ majority
Ministry of Justice	SDP	HDZ
Ministry of Interior	SDP	HDZ

⁴²⁶ Constitutional Law on cooperation of Republic of Croatia with the ICTY, article 2, <http://www.vlada.hr/Download/2002/12/12/Zakon.Suradnji.Haag.htm>

⁴²⁷ http://www.projuris.org/tribunal_zakon.htm

⁴²⁸ Summary of the information collected from the following official governments sites: <http://www.vlada.hr/Default.asp?ru=17&sid=&jezik=1>, and www.sabor.hr

As the government is the main coordinating body for all the ICTY related activities, Goran Granic as the vice president of the government was appointed the president of the National council for cooperation with the ICTY. Relevant ministers were Minister of Justice Ivanisevic, Minister of Interior Sime Lucin, Minister for European Integration Neven Mimica and Minister of foreign Affairs Tonino Picula. All ministers were from the SDP. As in the case of Serbia mentioned above, national councils for cooperation do not have executive functions and were only there to coordinate and monitor activities, thus by no means they or their presidents could be seen as solely responsible for cooperation. This was especially because the government could not have acted independently of the general attitudes of the parliament majority. Especially on the issues of police and military actions that led to the independence of Croatia, all parties were very careful not to do anything that would criminalize these actions. Thus, there were always vehement debates on cooperation with the ICTY.

In April 2000, the new Croatian Parliament passed a Declaration that opposed the resolution passed a year before.⁴²⁹ The Resolution of 1999 had a provision that if there were any individual crimes during the operations that led to the liberation of Croatian they should be prosecuted in national courts. This in a way stopped all cooperation with the ICTY throughout 1999. The new government in its Declaration in 2000 stated that all committed crimes should be punished regardless of the nationality of the perpetrators. It also stated that the Republic of Croatia did not question the right of the ICTY to start

⁴²⁹ Declaration about co-operation with the ICTY, (Deklaracija o suradnji s Medjunrodnim kaznenim sudom u den Haagu) 14 April 2000 <http://narodne-novine.nn.hr/clanci/sluzbeni/272976.html>
Resolution about co-operation with the ICTY, (Reolucija o suradnji s medjunarodnim kaznenim sudom u Haagu) 5 March 1999 <http://narodne-novine.nn.hr/clanci/sluzbeni/270239.html>

investigations to determine responsibility for the crimes committed during the Homeland War and immediately after its completion.

Although within the government coalition there cannot always be agreement on all issues, in the first few months of the government the HSLs assumed position on the ICTY that was closer to the HDZ than the SDP.⁴³⁰ The bad start for the government was the fact that in March 2000, Tihomir Blaskic, who voluntarily surrendered in 1996, was sentenced to 45 years imprisonment.⁴³¹ Although he appealed and later his punishment was decreased to 9 years and in 2004 he was released, in 2000 his case was used by opposition parties to organize demonstrations against the cooperation with the ICTY and the activities of the government.⁴³² According to Racan those demonstrations undermined efforts of the government to negotiate that some cases be transferred to Croatia.

Despite the Declaration in 2000 that allowed the ICTY to investigate crimes committed during the operation of the Homeland War, this early improvement in the cooperation was soon overturned. In January 2001, Associations of volunteers and victims of war asked for the full termination of cooperation with the ICTY.⁴³³ In June 2001 the ICTY indicted generals Gotovina and Ademi for operations 'Storm' and Medak pocket respectively. In July, this was followed by the Conclusions of the Parliament: “energetically denying and condemning all attempts to devalue the Homeland War and decisively supports the positions of the President of the Croatian government which deny unacceptable political qualifications and attempts to revise the results of the Homeland

⁴³⁰ “Did the demonstrations in Zagreb ‘transferred’ Naletilic to the Hague?” (Jesu li demonstracije u Zagrebu ‘preselile’ Naletilica u Haag?), *Slobodna Dalmacija*, 11 March 2000

⁴³¹ http://www.icty.org/x/cases/blaskic/cis/en/cis_blaskic.pdf

⁴³² Hrvatska i haski sud, <http://www.aimpress.ch/dyn/pubs/archive/data/200003/00313-002-pubs-zag.htm>

⁴³³ “A court against a court” (Sudom protiv suda), *Vecernji list*, 15 January 2001

War that might even mean criminalizing it.”⁴³⁴ The Parliament was against criminalizing what it regarded as legal and legitimate military operations, but it supported investigating and punishing individual crimes and command responsibility which do not have anything to do with righteous aims of the Homeland War.

The government was in a very delicate position. It did not have institutional obstacles to cooperate with the ICTY but the fact that the opposition in the parliament, some of the coalition partners in the government, associations of those who participated in the war and their families were against cooperation left very little space for the government to maneuver. The parties on the right used every opportunity to remind the electorate that the HDZ government regarded the Homeland war as anti terrorist action and was not accepting that there could have been war crimes.

A survey was done by the agency Media meter on the issue.⁴³⁵ 90.8% agreed that any crime should be punished regardless of who committed it. 6.5% disagrees, 2.7% were undecided. New government was right to allow the ICTY to investigate all crimes said 39%, while 32.3% said it was mainly right and 22.7% said mainly no, and 2.8% said not at all. That Croatian defenders probably committed crimes during Homeland war believed 65%, 4.3% were sure they did, 18% said they probably did not, 1.6% believed they certainly did not and 9.6% were undecided. However, 50% were mostly not satisfied with the relations of the ICTY towards Croatia and only 14% were mostly satisfied. Only 2.5% were completely satisfied and 12.8% were not at all satisfied, while 19% did not

⁴³⁴ Conclusions about co-operation with the ICTY, (Zaključci o suradnji s međunarodnim kaznenim sudom u Haagu) <http://narodne-novine.nn.hr/clanci/sluzbeni/232666.html>

⁴³⁵ “90,8% of citizens believe every individual crime must be punished regardless of who committed it” (90,8% građana smatra da svaki zlocin mora biti kaznjen bez obzira na to tko ga je počinio) *Jutarnji list*, 18 April 2000

know. Although the survey shows that the electorate understood the issues involved and the reality of the situation, still a half was not favorable to the relations with the ICTY.

A survey done in August 2000 showed lack of confidence in prime minister and president.⁴³⁶ 52% thought that Hague wanted to criminalize Homeland war and only 31% that it did not. 56% thought that Hague tribunal was generally not just; and only 14% saw it as generally just; and 10% did not see it just at all. Against extraditions of generals were 78%; 12% supported it and 8% was undecided. That Croatia should change politics towards the ICTY if extradition of generals was required believed 61%; 18% thought that politics should not have been changed; and 20% was undecided. In general this showed sharpening of the negative attitudes towards the ICTY.

Thus, Racan government had a real threat of costs to power, as there was a more radical option to their right, which advocated less cooperation with the ICTY. The following section will outline how this domestic constellation of power was balanced against the external incentives.

7.4 External pressures and incentives

The Declaration of the new parliament that allowed the ICTY to investigate operations of the Homeland war brought immediately some rewards. This new Croatian policy was rewarded from the international arena. Croatia became a member of Partnership for Peace on 25 May 2000.⁴³⁷ On 26 September the Council of Europe withdrew its monitoring mission from Croatia and on 1 November the OSCE unit monitoring the Croatian police was closed down.⁴³⁸ The closing of these two missions showed that Croatia fulfilled all of

⁴³⁶ “Anti-Hague atmosphere is getting stronger in Croatia” (Zaostreno antihasko raspolozenje u Hrvatskoj), *Jutarnji list*, 19 August 2000

⁴³⁷ <http://www.nato.int/pfp/sig-cntr.htm>

⁴³⁸ Bartlett, 83.

the criteria for the full membership in the Council of Europe and it was performing well in the area of the OSCE mission. As invited in 1999 to join the Stabilization and Association Process, the biggest reward for Croatia was that at the Fiera summit in June 2000 the EU confirmed that all SAP countries are potential candidates for EU.⁴³⁹ During the Zagreb summit of SAP invited countries in November 2000 Croatia opened negotiations with the EU. The SAA was pre signed in May 2001 in Brussels and officially signed in October in Luxembourg.⁴⁴⁰ In February 2003 Croatia officially applied for membership but the process was not going further because it took four years for the EU members to ratify the agreement and the agreement took effect in February 2005.

The reason for this delay was the deterioration of the relations between the ICTY and Croatia. As mentioned above the two indictments that came in June 2001 led to new arguments about cooperation with the ICTY. Rahim Ademi accused for the Medak pocket (area near Gospić) actions in 1993 surrendered in July 2001.⁴⁴¹ However, the other indictee Gotovina was not arrested and this case remained one of the most important obstacles for cooperation with the ICTY throughout the Račan term in office. Moreover, General Janko Bobetko the Main Chief of Staff of Croatian army during the actions in Medak pocket (1993) was indicted in September 2002, and the government did not serve him the indictment even though they knew where he was. The government justified their position by the fact that Bobetko was having health problems. He died in

⁴³⁹ http://ec.europa.eu/enlargement/candidate-countries/croatia/eu_croatia_relations_en.htm

⁴⁴⁰ <http://www.mvpei.hr/ei/default.asp?ru=143&sid=&akcija=&jezik=1> Stabilisation and Association Agreement

⁴⁴¹ http://www.icty.org/x/cases/ademi/cis/en/cis_ademi_norac.pdf

April 2003, thus the government did not have to deal with this indictment any longer but the criticism of the ICTY remained that Croatia was not cooperating.

The ICTY 2000 was relatively positive as it stated that Croatia showed more willingness to cooperate with regards to arrests and search for evidence.⁴⁴² By March 2000 the new government recognized that the ICTY had jurisdiction over operations Storm/Flash, forwarded documents to Prosecutor and created liaison office for the Tribunal in Zagreb. All of these were very positive developments. “Co-operation with Croatia is gradually improving,” read the 2001 the ICTY report.⁴⁴³ New government was co-operating and allowing the prosecutor to collect crucial material for outstanding issue. Croatia’s co-operation continued to improve according to 2002 the ICTY report.⁴⁴⁴ Relations between the Office of the Prosecutor and Croatian government were kept on a regular basis and improvement in access to different archives and witnesses was marked. However, problems still persisted in gaining access to specific documents and witnesses and Gotovina “was allowed to escape following service of the arrest warrant on the Government.”⁴⁴⁵

The 2003 Report stated Croatia that had responsibility to apprehend Gotovina but nonetheless allowed him to abscond following failed negotiations with him to surrender voluntarily to the Tribunal.⁴⁴⁶ Croatian co-operation was assessed as improving though sometimes selective and slow but the Prosecutor was in direct and regular contact with Croatian government.⁴⁴⁷ Access to different archives and witnesses was improving; problems still existed in gaining prompt access to specific documents for the purpose of

⁴⁴²ICTY Annual Report 2000, paragraph 159 <http://www.un.org/icty/rappannu-e/2000/index.htm>

⁴⁴³ICTY Annual Report 2001, paragraph 196 <http://www.un.org/icty/rappannu-e/2001/index.htm>

⁴⁴⁴ ICTY Annual Report 2002, paragraph 227, <http://www.un.org/icty/rappannu-e/2002/index.htm>

⁴⁴⁵ibid., paragraph 226

⁴⁴⁶the ICTY Annual Report 2003, paragraph 240, <http://www.un.org/icty/rappannu-e/2003/index.htm>

⁴⁴⁷ ibid., 241

ongoing investigations. Gotovina was still a fugitive, which was the strongest criticism of Croatian co-operation. In addition, Croatia failed to act immediately upon the issuance of the indictment and arrest warrant against General Janko Bobetko.

7.4.1 Domestic debates concerning indictments of the generals of the Homeland war⁴⁴⁸

In April 2000 Del Ponte talking to Croatian Minister of Justice Stjepan Ivanisevic, gave compliments to the new government for handing over documents related to processes after Storm which were reluctantly given in the White Book by previous government minister Seperovic.⁴⁴⁹ This was just after the government passed a declaration on cooperation with the ICTY that allowed jurisdiction to the ICTY to prosecute crimes committed during the Homeland War, but the war veterans were dissatisfied. In a statement war veterans said it would undermine legal system, parliament and constitution of the county and would eliminate Croatia as a state.⁴⁵⁰ Ivica Pancic, Minister of

⁴⁴⁸ Chronology of main the ICTY related issues during the Racan's government

- 1 July **2001** – list of Croats indicted by the ICTY was published
- 5 July – indictment for general Gotovina
- 7 July- emergency government session
- 10 July – government wants to defend generals and HDZ starts procedure to change law on the ICTY
- 17 July – PM Racan attempts to negotiate change of the ICTY statute
- 24 July – arrest warrant for general Gotovina issues
- 25 July - Rahim Ademi voluntarily went to the Hague
- 27 July - the ICTY publicly indicted Gotovina for 'Storm'
- 29 August- Special forces have order to arrest Gotovina.
- 27 April **2002** -the ICTY does not want to change indictment against Gotovina
- 4 May – Government suggest that Croatia courts deal with the ICTY indictments
- 19 September – general Bobetko indicted
- 20 September – Croatia returns the indictment to the ICTY; then the ICTY made it public and returns it to Zagreb but there was no one to accept it.
- 21 September 'Bobetko' case makes the government and opposition position on the ICTY closer

⁴⁴⁹ “There are no secret indictments against Croats” (Nema zapevacenih optuznica protiv Hrvata), *Vecernji list*, 7 April 2000

⁴⁵⁰ “Defenders ready to go to war again over the declaration” (Branitelji zbog deklaracije spremni ponovo ratovati), *Jutarnji list*, 15 April 2000

Defenders tried to explain that the declaration was not an attack on defenders, but only a way to organize proper relations with the ICTY that the previous government avoided. As a response to that, one of the defenders removed his wooden lag, put it before government representatives and said that as long as there were those like him, the government would have to defend and protect the Croatian country, which was created by the defenders. There were some misconceptions about the ICTY that the new government did not manage to explain to the public. Some viewed it as the divide between urban and rural Croatia. One, predominantly urban, that acknowledged that individual crimes had to be punished even if they were committed during a righteous war of defense. And the other, mostly rural, that did not accept any form of criminality of Homeland war.⁴⁵¹

In the midst of the new debate over the ICTY cooperation, Croatia started negotiating SAP with EU on 18 December 2000.⁴⁵² Neven Mimica, leader of the Croatian negotiation team said that regional cooperation was important as well as cooperation with the ICTY. The EU did not specifically focus on the ICTY but mentioned that Croatia needed to fulfill conditions set in the 1997 Council conclusions one of which was cooperation with the ICTY. Mimica said there was no change in policy towards the ICTY but there should be strengthening of dialogue with office of the chief prosecutor of the ICTY. Strategic aim of Croatia in the period 2000-2004 was accession to the EU, Mimica concluded.

⁴⁵¹ “Zagreb and the Hague: the fight of rural vs. urban for the future of Croatia?” (Zagreb i Haag: Borba ruralnog i urbanog za buducnost Hrvatske?), *Vjesnik*, 11 August 2000

⁴⁵² “Negotiations between EU and Croatia: EU is not raising the issue of the ICTY” (EU u pregovorima s Hrvatskom ne poteze pitanje suradnje sa Haskim sudom), *Vjesnik*, 19 December 2000

A worsening of relations was seen in government decision to indefinitely postpone testimony of General Petar Stipetic before the ICTY.⁴⁵³ He was supposed to testify in some cases related to the operations during the Homeland War. The international community saw this as getting closer to the HDZ, though Racan denied it. Brussels was hoping that this government move was only motivated by internal political reasons to gradually prepare the domestic public for what had to be done. It was seen as a move to appease domestic dissenting voices, as local elections were close and the government needed voters.

In late 2000, to find some balance between the EU criteria and domestic opposition to the ICTY, the government made so called thirteen conclusions related to the ICTY. It was seen by some as genuine redefinition of relations but others saw it only as preparation of the public for the inevitable – indictments against generals of homeland war and its criminalization.⁴⁵⁴ The government could not accept indictments on command responsibility where objectively the indictees could not have influenced individuals who had committed crimes. The government had an absurd request that crimes should be prosecuted in chronological order as they had happened. This was political request and could be seen as asking from the ICTY more time to stabilize economic and social conditions in the country. Mesic, president of the republic was against conditioning cooperation and was supporting cooperation thus expressing dissatisfaction with the suggested points. In December Racan stated in an interview that indictments for the Homeland war would not be accepted by Croatian government because that was

⁴⁵³ “Trying to satisfy everybody in Croatia Racan’s government put a strain on cooperation with the ICTY and remained all alone” (Nastojeci se u Hrvatskoj svima svidjeti Racanova vlada zaostrila je odnose sa Haagom i ostala potpuno sama), *Republika*, 15 December 2000

⁴⁵⁴ “Getting The Hague out” (Istjerivanje Haaga), *Feral Tirbun*, 16 December 2000

something that in government's view could not have been a matter for indictment.⁴⁵⁵ Del Ponte replied that Croatia could not condition cooperation by choosing which investigations of the ICTY they liked or did not like. But the pressure on the government was strong as some coalition partners and not only HSLS said they would not stay in the government if 13 points were given up on.

In 2001 as the indictments of the two generals were received, Croatia was considering changing law that would mean that the ICTY could only ask extradition of those against whom there were reasonable doubt or specific evidence of crime.⁴⁵⁶ Deputy Prime Minister Goran Granic said the deadlock with the ICTY would be solved by legal, political and diplomatic means. Another reason for the change of law was that the government could not control president Mesic's cabinet, which was sending transcripts from the former president conversations. After each such transfer Government received new lists of potential suspects from the ICTY. Thus there were three currents forming: firstly, a current that did not want almost any cooperation, which was led by the HDZ, HSP and other right wing parties and their supporters: secondly, a current of the majority in the government that wanted some balanced cooperation which can protect Croatian sovereignty and those who participated in creating independent Croatia and thirdly, a current led by President of Croatia and his cabinet. They seemed to have acted independently sending all evidence they possessed in the cabinet of the president.

⁴⁵⁵“Government acceptance of the dictate from the Hague would break ruling coalition” (Vladin pristanak na kidtat Haaskog suda razorio bi vladajucukoaliciju), *Vjesnik*, 23 December 2000

⁴⁵⁶ “Government is changing Law on cooperation because it cannot control any longer Mesic sending transcripts to the Hague” (Vlada mijenja Zakon o suradnji jer ne moze vise kontrolirati Mesicevo slanje transkripata u Haag), *Glas Slavonije*, 6 January 2001

International community was disappointed with the tensions between the ICTY and Croatia.⁴⁵⁷ 13 points had been refused by the ICTY as legally unfounded. After the talks between Del Ponte and the Croatian Government, which ended positively – there was a relief for diplomats in Zagreb, as otherwise Croatia would have gone back to isolation.⁴⁵⁸ Racan was constructive in the talks and government did not insist on the 13 points. It was agreed that general Stipetic could testify in Zagreb and Croatia made assurances to continue full cooperation in further investigations and give necessary documents.

In July 2001 The HDZ proposed changes to the law on cooperation with the ICTY but they were rejected by the government as they might have led to cessation of cooperation of Croatia with the ICTY to which Croatia committed herself. The HDZ said they did not want to stop cooperation but just to protect Croatian defenders; and believed accusation of Generals affected all Croats as they presupposed that Croatia got independence by war crimes.⁴⁵⁹ In September, in order to mitigate the tensions, Goran Granic met Del Ponte in a closed meeting but speculations were that she would again visit the country before she reported to the UN and that Gotovina's arrest would be crucial if Croatia wanted a positive report on cooperation.⁴⁶⁰ Del Ponte reportedly wanted to know when Gotovina would be arrested as it was believed he was still in Croatia.

⁴⁵⁷ "Racan has to give up his 13 points on Hague or Croatia will again wither into isolation" (Racan mora odstupiti od 13 haaskih tocaka ili ce Hrvatska ponovo potonuti u izolaciju.), *Republika*, 12 January 2001

⁴⁵⁸ "Racan saved talks with Del Ponte, Hague is turning to Belgrade" (Racan je spasio razgovore s Del Ponte, Haag se okrece Beogradu), *Republika*, 18 January 2001

⁴⁵⁹ "Parliament again suggested to government to consider changing Constitutional law on cooperation with the ICTY" (Sabor opet predlozio Vladi da razmotri promjenu Ustavnog zakona o Haagu), *Jutarnji list*, 20 July 2001

⁴⁶⁰ "Carla Del Ponte wants to know when will Gotovina be arrested" (Carlu del Ponte je zanimalo kada ce biti uhicen Gotovina), *Slobodna Dalmacija*, 2 September 2001

Vladimir Seks (HDZ) maintained it was Del Ponte's fault that Gotovina had left. Croatia could not have arrested Gotovina preventively. She should have asked for the immediate detention of the person in a secret indictment.⁴⁶¹ Vesna Skare Ozbolt (DC) said she did not believe government let Gotovina go but she was disappointed in how the ICTY treated Croatia and said that Croatia was the only country in recent history that so easily disowned its own heroes. Luka Trconic(HSS) said it was unlikely that government let Gotovina go, he was sure that all relevant bodies did what was their legal duty. Del Ponte told the UN Security Council that she was disappointed that Gotovina had not been extradited but that she got assurances that Croatia was determined and wanted to arrest him. Non cooperation with the ICTY caused Croatia some international soft sanctions. EU parliament did not discuss Croatian SAA. The official reasons were economic-technical problems but it seemed that it was a warning that 'things were not going as they should'.⁴⁶²

In 2003 the government was not managing to persuade international community that it was cooperating. Gotovina was still at large, Bobetko was in Croatia but the government did not serve him the indictment. According to the Government Bobetko commanded legitimate military operations in 1993 in the Medak Pocket, as he was legally bound to do and as a result, he could not have been indicted based on implementation of these military activities. Later the Government submitted similar written objection to the ICTY indictments against generals Ademi and Gotovina, which

⁴⁶¹ Croatian government allowed Gotovina to run away" (Vlada RH pustila da Gotovina pobjegne) *Jutarnji list*, 28 November 2001

⁴⁶² "Delay because of Gotovina?" (Odgođa zbog Gotovine), *Vjesnik*, 27 November 2001

the ICTY rejected.⁴⁶³ The ICTY spokesperson Florence Hartmann said that they were still waiting for documents about the actions of Croatian army in Bosnia.⁴⁶⁴ She believed the request for documentation was as precise as possible and that they never asked for global access to archives. She still claimed Croatian government could arrest Gotovina if they wanted because they had such opportunity on few occasions. Granic denied they knew where Gotovina was and that they received information about his whereabouts. He said there could be discussion whether government was successful or not in getting him arrested but there could be no question that there was responsibility and readiness of the institutions to do their duty. Granic said Del Ponte was using Croatian candidacy bid for EU membership to put strong pressure on Croatia and to increase tension to the limits.

Western European diplomats were growing impatient with Croatia. The government gave mixed and unclear signals to international community.⁴⁶⁵ It was not clear whether there was special unit for catching the ICTY suspects, as there was contradictory information from the Croatian side. A diplomat was quoted saying: “if Croatia wants to enter EU it has to follow the rules of EU if cooperation with the ICTY is refused then it means it does not follow the rules, which again means that it will not enter EU so quickly.”⁴⁶⁶

The UK asked the UN Security Council to introduce sanctions against Croatia if Gotovina was not arrested.⁴⁶⁷ The UK kept Croatia in a form of sanctions by not ratifying the SAA. Thus it made it impossible for Croatia to start negotiation for EU membership.

⁴⁶³ OSCE mission in Croatia, Report Bobetko, 10th October 2002

⁴⁶⁴ “Granic: Hague is deceiving the public” (Granic: Hag obmanjuje javnost) *Glas Slavonije*, 8 March 2003

⁴⁶⁵ “Last round in the Hague: new requests of the ICTY to Racan’s government” (*Zadnja runda u Haagu: novi zahtjevi haaskog suda Racanovoj vladi*), *Jutarnji List*, 26 April 2003

⁴⁶⁶ Ibid.,

⁴⁶⁷ “London: Arrest Gotovina, or...” (London: uhitite Gotovinu inace...), *Globus*, 29 August 2003

The most difficult for Croatia was the fact that Gotovina was put in the UN resolution together with Karadzic and Mladic and Croatia was not accepting that they were at the same level. Symbolically it was also very important because Croatia was put again in the context of the UN Security Council resolution after years of not being mentioned in such way. Nobody contradicted the UK on this, which made diplomatic position of Croatia even worse. The UK was consistent with its position that until Gotovina was arrested they would not ratify the SAA.

Despite this Croatia was fulfilling the questionnaire for the membership application to the EU, which was submitted to the EU in October 2003. However, the report of the State prosecution was not finished before the questionnaire for the EU was submitted. The report showed how much Croatia cooperated with the ICTY.⁴⁶⁸ Between 1999 and 2003, 999 cases were solved; 563 cases had a verdict and 436 were released. Since 2000, 457 convicting verdicts were issued and 106 of those had already been served. This meant that Croatian courts did not flatter the ICTY but were making decision in accordance with cases that came to them. What was more important was that cases were started independently of creation of the ICTY and its work.

Despite all this, Florence Hartmann she expected the 2003 Report to the UN would be negative due to the failure to arrest Gotovina.⁴⁶⁹ Government needed to show more arguments to prove what they were doing because these arguments were not enough. Reportedly, President Mesic called Del Ponte to confirm again that they did not know where Gotovina was.

⁴⁶⁸ “In Croatia 3212 people have been under criminal proceedings under suspicion that they committed crimes during Homeland war” (U Hrvatskoj je 3212 ljudi podvrgnuto sudskom procesu zbog sumnje da su u Domovinskom ratu pocinili ratni zlocin), *Vjesnik*, 22 September 2003

⁴⁶⁹ “Hague: Positive report could only happen if government arrests Gotovina in the next 6 days” (Haag: Pozitivno izvjesce jedino ako Vlada uhvati Gotovinu iducih 6 dana), *Jutarnji list*, 3 October 2003

In a diplomatic mission to help Croatian bid for EU membership and mitigate some negative publicity Croatia had with regards to cooperation with the ICTY, Racan embarked upon a tour of the main European capitals to lobby for his country. His mission was the last attempt to fulfill the goal new government promised – EU membership, although the new parliamentary elections were already scheduled.⁴⁷⁰ Racan stated, “We are walking on a narrow path and abyss is on both sides... any wrong move can take us to hell, and even right moves do not guarantee success. It is clear that the fate of our candidacy for EU depends on two sentences by Del Ponte on the basis of which the UK will decide on ratification of SAA.”⁴⁷¹ That is why Racan went to London in anticipation of potentially negative report to appeal to the UK diplomats to support Croatia regardless of the report. But the UK position was that pressure was necessary for both Serbia and Croatia to extradite their indicted. British minister for Europe Dennis MacShane warned Croatia and Serbia “there can be no real steps towards future EU membership if significant steps for extradition of most wanted the ICTY fugitives are not taken.”⁴⁷² Racan accepted that Gotovina had to go to the ICTY but that Croatia should not be punished for something she objectively could not have done, i.e. find him. Racan’s argument was that Croatia could be easily destabilized which could mean destabilization of the whole region and appealed to the UK to support Croatia.

The ICTY pressure continued in October 2003 as Del Ponte accused Croatian government that its secret services were out of control and that it was not so much what it did or did not do but the way it was done and presented to the prosecutor’s office and to

⁴⁷⁰“Racan: We are on a narrow road and abyss is on both sides” (Ivica Racan: Na uskom smo putu a s obje strane ponor”, *Jutarnji list*, 4 October 2003

⁴⁷¹ *ibid.*

⁴⁷² *ibid.*,

the others.⁴⁷³ Granic as President of National council for cooperation repeated again that Croatia did much more than other countries in the regions. As a consequence, he resigned from the position of president of National Council for cooperation with the ICTY.

External pressures were increasing, domestic opposition was getting stronger, and it all influenced coalition government that slowly started to break. The elections were already imminent and the opposition used every opportunity to create new ways of exacerbating relations with the ICTY. The parliament made passed a regulation that lawyers of all accused, even of those who are not in the ICTY, could have documentation relevant to the indictment. Granic said this was unlawful and that he did not want to participate in breaking the law. Hartmann repeated that such regulation was against Croatian laws and the ICTY statute.⁴⁷⁴ The proposition of this parliament decision was made by the HSLs, a coalition party in the government, which proved that the government did not have unified position. However, Racan said that he regretted the decision but that the government would implement it. There were 70 MPs in favor 50 abstained from voting and only four were against.⁴⁷⁵

The Racan government was falling apart and the new elections were scheduled, but the pressure from the ICTY continued. The link between the ICTY cooperation and the EU integration was obvious. Del Ponte, addressing the OSCE meeting in Vienna insisted that the EU requirement for Croatia must be Gotovina's arrest, otherwise he

⁴⁷³ "Granic: I am no longer responsible for the issues of the ICTY" (Granic: Za poslove sa Haaskim sudom vise nisam nadlezan), *Vecernji list*, 18 October 2003

⁴⁷⁴ "Hague condemned decision of Croatian Sabor" (Haag osudio odluku Hrvatskog sabora), *Jutarnji list*, 19 October 2003

⁴⁷⁵ "Josipovic: Sabor decision has no legal consequences for the relations between Croatia and the ICTY" (Josipovic: Odluka Sabora za odnose Hrvatske i Haaga nema nikakvih pravnik ucinaka), *Vjesnik*, 20 October 2003

might never be arrested.⁴⁷⁶ Despite the justifications of the Ministry of Foreign Affairs that there was no information about Gotovina the external pressure continued. Even after early parliamentary elections in November 2003, that brought back the HDZ to power, the same demands were remained.

7.5 Conclusion

The period of 2000-03 is a demonstration that the domestic constellation of power can be stronger factor than the external incentives, no matter how tempting they may be for a government in power. The new government of Racan removed all institutional obstacles for the cooperation with the ICTY, by accepting that the ICTY had jurisdiction of the operations Storm and Flash. However, this stirred the debate, and as HDZ was in the opposition that gave it free a hand to criticize the government and accuse it of betraying the Homeland war efforts. This position of HDZ had appeal with the public and always created difficulties for the government to implement certain decisions because they were unsure how the public might react. Therefore, there was a constant threat to power for the government from the right wing oriented parties. Institutional veto points were formally eliminated but the partisan veto players, especially from the opposition were numerous, thus limiting the room for maneuver for the government.

Though the position towards the EU was clear and the government did everything to bring Croatia closer to the EU, the position towards the ICTY was ambiguous. The EU rewards were clear, the country started negotiations for SAP in 2000 and was preparing application for the candidacy. However, the position towards the ICTY was difficult to

⁴⁷⁶ “In cooperation with the ICTY it is needed to divide between possible from objectively impossible” (U suradnji sa Haagom treba dijeliti moguće od objektivno nemoguće), *Vjesnik*, 6 November 2003

balance against the patriotic sentiments and the pride that the country had gained its independence.

Croatia recognized the existence and reality of the ICTY and used all legal and political means to protect its national interest while still not obstructing the role of the ICTY in investigating potential crimes. Probably that is why Croatia has never arrested any of its citizens and they mostly went voluntarily, because they knew their government would provide all necessary support and guarantees. In the only case where the indicted did not surrender, i.e. in the case of General Janko Bobetko, the government of Racan defended the general with all possible legal means.

This demonstrates that government took responsibility. There was clear pro European policy, all efforts were put to get an EU candidate status for Croatia. At the same time Croatian government was always for cooperation with the ICTY. However, when the indictments started to cut deeply into the questions of national defense, of Homeland war, many dissenting voices even within government began to emerge and the position of the government became ambiguous. There were no institutional obstacles but different party positions, especially of the right parties, constantly threatened to reverse cooperation, to annul the law on cooperation, i.e. to create new institutional obstacles through the new party constellation. And this is where the Racan government began to face serious problems. Gains from the EU candidacy were clear but domestic problems on how to deal with indictments against generals that were seen as heroes who helped Croatian independence was too important a value to be compromised. The government was not able to sustain pressure, exacerbated by other problems that led to the final division between the coalition parties and an end to the governing coalition.

Hence, concerning the hypotheses, the ones on reward and size were not confirmed as the size and the timing of the reward was not enough for the cooperation. Actually, the government had ambitious plans for cooperation and in the beginning the cooperation started well, but as the demands were more difficult the domestic costs increased.

There was low public support on cooperation, and very strong anti- ICTY bloc in the parliament, which made cooperation less likely confirming these hypotheses. There were no institutional obstacles but there were numerous partisan veto players which led to numerous parliamentary decisions that in a way created some institutional problems; thus, preventing full cooperation. The decision making process was not fragmented due to the fact that all of the relevant ministries were held by SDP and that the general position of the government was cooperation with the ICTY and improving institutional relations with the EU. What remains unclear is whether the government truly had the control of all state bodies. The ICTY mentioned in one report that secret services were not doing their job. Whether this was because they were staffed by loyal supporters of the previous HDZ government and thus they did not follow the orders, or it was a question of solidarity among police and military personnel that they did not want to arrest colleagues is not completely clear. Nevertheless, in some cases even the government defended the positions of the indictees and did not issue the arrest warrants but sent objections to The Hague. This government position is a consequence of the special relations that all governments had towards the legacy of the Homeland war that was difficult to overcome.

Chapter 8- Croatia 2003-05

8.1 Introduction

The previous chapter dealt with the struggle of Racan government to appease the opposition, especially the HDZ and continue the cooperation with the ICTY. The elections brought back the HDZ to power and this chapter will look at what were their positions as the government party. The HDZ led by Ivo Sanader, its new president took a completely opposite stance from the previous HDZ government, which meant complete cooperation with the ICTY and the EU integration as the main priority. The chapter will firstly outline general positions and power cost, then explain the institutional structure and partisan veto players for the cooperation with the ICTY. The final section will look at some main issues regarding the cooperation in light of international incentives and pressures that the government was exposed to.

The main issues related to the ICTY were indictments of General Mirko Norac for Medak Pocket in 1993. Indictment was issued in May 2004 and as Norac was already in prison in Croatia serving a sentence for a different war crimes case that the Croatian prosecutor indicted him of, he was transferred do The Hague in July 2004. Other important indictments were those of generals Ivan Markac and Mladen Cermak for the operation 'Storm'. These two were related cases to the case of general Ante Gotovina. Both of them were indicted in February 2004 and voluntarily surrendered the following month. Ante Gotovina proved to be a difficult case for Sanader's government as well. His arrest became the most important condition for Croatia to improve institutional relations with the EU and progress towards membership.

8.2 Actors: general positions and power costs

Towards the November 2003 elections, the opposition focused on the ‘passivity and inefficiency’ of the government, while the incumbent government complained that the opposition was ‘too critical.’⁴⁷⁷ The polls showed that the citizens were the most displeased with the “inefficiency, mutual arguments and focusing on own positions in the power structures.”⁴⁷⁸ The HDZ headed by Ivo Sanader, won 66 out of 152 seats and together with coalition partners the HSLS and DC that got 3 seats; and the HSP with 9, it had enough to create majority coalition government.⁴⁷⁹ Surprising everyone, the HDZ decided to form a minority government with the support of the HSLS, HSU (Croatian party of pensioners) and the SDSS (Serbian democratic independent party) in the parliament. The SDP of Racan became an opposition party.

As soon as Sanader took over the position of prime minister, he made clear that the EU membership was a priority and that cooperation with the ICTY was high on the agenda. “We are now a reformed, democratic, center-right party. We are no longer a Tudjmanist party although we are grateful to the former head of state for what he did for Croatian independence.”⁴⁸⁰ The reformist character of HDZ was confirmed by the support of Serbian and other minority parties, which was a departure not only from Tudjman’s HDZ policy of marginalizing minorities but also was different from Racan’s government, which did not have minority representatives.⁴⁸¹ Representatives of minorities in the government marked a radical shift for the party that had built its image

⁴⁷⁷ Igor Dekanic, *Democratisation of Croatia: successes and complexes of contemporary Croatian politics* [Demokratizacija Hrvatske: uspjesi i kompleksi suvremene hrvatske politike], (Prometej:Zagreb, 2004), 320.

⁴⁷⁸ *Ibid.*, 321.

⁴⁷⁹ *Ibid.*, 323.

⁴⁸⁰ Quoted in Dejan Jovic, “Croatia and the European Union: a long delayed journey”, *Journal of Southern Europe and the Balkans*, vol. 8, no.1, April 2006, 98.

⁴⁸¹ *Ibid.*

on nationalism only until few years before. It was clear that there were elements in society, especially those directly influenced by the war such as veterans of war that could not understand the new position of the HDZ. However, this was not enough to endanger its position or increase power costs for the party. Although it was a minority government, Sanader's government was a strong one party government. Despite the fact that it depended on other parties in the parliament to carry out its policies, that goal was achievable because most of the parties in the parliament supported EU integrations and the cooperation with the ICTY, which the HDZ set as its priorities. All ministers were from the HDZ except for the Minister of Justice Vesna Skare-Ozbolt.⁴⁸² Though she used to be a member of the HDZ and an advisor to Franjo Tudjman during the 1990s, but from 2000 she joined Democratic Center (DC). The ministers were Miomir Zuzul for Foreign Affairs, Marijan Mlinaric for Interior, and Kolinda Grabar Kitarovic for European Integration.

Due to the major shift in the policy of the HDZ, the popularity Ivo Sanader, the HDZ and the government had decreased slightly by May 2004. The HDZ was still the most popular party but the popularity had dropped 3.4 percent in comparison to April from 35.2 to 31.8 %.⁴⁸³ After being the most popular politician during April, the following month Sanader was second to President Mesic, and his popularity fell from 32 to 26.4%. During the same month there had been a decrease in the popularity of the government. The second most popular party was the SDP and was supported by 22.8% as compared to 21.3% in the month before. The government was supported by 56.5%

⁴⁸² Sanaderova vlada: pet jakih, pet nepoznatih i sredina, <http://www.vjesnik.hr/pdf/2003%5C12%5C23%5C04A4.PDF> online issue of Vjesnik, 23 December 2003

⁴⁸³ <http://www.vjesnik.hr/html/2004/06/09/Clanak.asp?r=unu&c=2>
Pad popularnosti Sanadera, Vlade i HDZ-a [Falling support for Sanader, the government and the HDZ]

who said they were satisfied with its work, as compared to 64.4% in April. Stjepan Mesic was the most popular politician with 27.7%; Sanader dropped to second place with 26.4 and the third was Racan with 10.7%.

By August 2004, the opinion polls showed rising Euroscepticism in Croatia.⁴⁸⁴ Just over 50% did not support EU membership. Minister for EU integration Kolinda Grabar- Kitarovic was worried because she said this skepticism was not based on any real perception of the accession process. She found reasons for lower support because the survey took place just before the country gained candidate status and the public was overwhelmed with politicization of the topic. Her ministry had regular surveys that showed concerns for economic standards but that much of the surveys showed that people had no real information about EU or Croatian accession progress.

In short, the victory of HDZ and consequent coalition with minority parties and pronounced and unconditional cooperation with the ICTY, marked a significant shift in the policy of HDZ of the 1990s. Some viewed this as an evolutionary shift in the positions of HDZ, while others saw this as just acting on interests.⁴⁸⁵ It was not clear whether Sanader completely changed his position towards the Homeland war and cooperation with the ICTY, or if he was acting pragmatically with an aim to bring Croatia to the EU. During Racan's term in office, Sanader was leading rallies against cooperation with the ICTY, and once he came to power he became the biggest supporter of cooperation. It seems that Sanader acted in order to fulfill his and his party's political aims and interests. During Racan's government the HDZ was using all means to discredit

⁴⁸⁴ <http://www.vjesnik.hr/html/2004/08/30/Clanak.asp?r=tem&c=2>

Euroskepticizam

⁴⁸⁵ Interviews with members of political parties HNS and SDP in June 2005 in Zagreb; interviews on file with the author

the incumbent government; after Sanader became prime minister he started acting on what he thought was beneficial for Croatia, i.e. EU membership and thus it was necessary to cooperate with the ICTY. Consequently, he and his party were mobilizing the electorate in a way that suited their narrow party interests during the time in opposition, and once in power they took a stance they believed was more profitable for Croatia in the long run.

8.3 Institutional veto points and partisan veto players

The new government of Ivo Sanader did not have to deal with institutional obstacles to cooperate with the ICTY. With its firm position to cooperate, and having control in all ministries, the government did not have any formal and legal institutional obstacles. Moreover, in January 2004, the Directorate for cooperation with international criminal courts was formed within the Ministry of Justice.⁴⁸⁶ Jaksa Muljagic, head of the Directorate, believed these changes were showing that cooperation was a matter of legal and not political concern. This was supposed to show that former special bodies such as Council for cooperation with the ICTY were not necessary. The requests that came from The Hague were dealt with by standard legal procedures, which were nothing spectacular and did not deserve to be portrayed as such.

All parties, except for the HSP, were left of HDZ, thus in terms of partisan positions the only criticisms that came from the HSP were not able to shake the government's resolve to reach its aims of joining the EU by fulfilling all its obligations including the cooperation with the ICTY. Thus there was a broad consensus for the main

⁴⁸⁶ Haag 'preuzela' Uprava Ministarstva pravosudja [Directorate within the ministry of Justice to take over cooperation with the Hague], *Slobodna Dalmacija*, 8 January 2004

goal of Sanader's government to fulfill EU political criteria including cooperation with the ICTY.

However, a bone of contention was always balance between defending Croatia's Homeland war and coming to terms with the ICTY indictments for this war. Unofficially, there were parties which supported activities that expressed sympathies towards the indictees. In June 2004, one incident that stirred political debate within Croatian political circles was an appearance of posters of indicted General Ante Gotovina with the text 'He is guilty for defending Croatia'. According to Velimir Kvesic, a president of the Association of the Organizations of Volunteers in War they were distributed by volunteers of the HOS (Croatian defense forces-paramilitary units that operated during the Homeland war).⁴⁸⁷ They were protesting against the ICTY and against accepting new indictments. For the HSO generals Gotovina, Cermak and Markac were heroes and the volunteers protested against the policies of the HDZ which they thought were not defending the generals, the defenders and the Homeland war. There were some speculations that the SDP financed this, but it was denied by the SDP officials. The SDP reminded what Ivo Sanader, who was then in the opposition, was saying in Split when mass protests were organized against the ICTY in 2001. The SDP official said in the statement that what was happening was a backlash on the destructive HDZ behavior of the past and chameleon politics.

Despite these occasional statements, the SDP never posed a serious political threat to the HDZ. What made the position of Sanader easier in contrast to Racan's during his term, was that Racan always had to be careful of whether Sanader would take SDP votes

⁴⁸⁷ HVIDRA: Tiskanje plakata financirali Bandic i Demo [HVIDRA: printing of posters was financed by Bandic and Demo], *Vecernji list*, 8 June 2004

by appealing to the national issue. Once in power Sanader did not have anyone to the right of the HDZ on the political spectrum that could endanger his position or influence his policies. Thus in terms of the balance of power in the domestic arena Sanader had free hands to implement policies that the government set to fulfill. As partisan veto players were thus limited and mostly not significant, or appeased and while institutional obstacles for cooperation with the ICTY were removed even before Sanader came to power, the new government had an easier position to handle cooperation with the ICTY, if it so chose. There was no imminent threat of the incumbent government losing power and thus clearly the accession to the EU was primary goal and in order to achieve this, the ICTY cooperation was a necessary step that Sanader's government took.

8.4 International pressures and incentives

Despite the demands to cooperate with the ICTY, the incentives from the EU were becoming more visible and within reach. In April 2004 the EU Commission issued positive opinion on Croatia's application for membership and in June the European Council confirmed Croatia as candidate country. Nevertheless the European Council conditions the opening up of the negotiations for membership, set for 17 March 2009, upon the full cooperation with the ICTY.

In the European Commission Opinion on the application of Croatia for membership of the EU issued in April 2004, evolution of the fulfillment of the political conditions could be seen.⁴⁸⁸ The EU stated that the SAP conditions were defined by the Council on 29 April 1997 and they included cooperation with the ICTY and regional co-operation. "These conditions are a fundamental element of SAP and are integrated into

⁴⁸⁸ COM (2004)257 of 20 April 2004, Communication from the Commission Opinion on Croatia's Application for Membership of the European Union, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=504DC0257

the SAA signed with Croatia.”⁴⁸⁹ The ICTY was high on the agenda of the EU member states in their relations with the applicant countries. The Commission opinion on Croatia’s application for membership specifically referred to the obligations defined by EU Council conclusions of 29 April 1997. The report reads, “Cooperation has improved significantly in the past months. In April 2004 the Prosecutor stated that Croatia is now co-operating fully with the ICTY. However, Croatia needed to take all necessary steps to ensure that the remaining indictees were located and transferred to the ICTY.”⁴⁹⁰ This referred to general Ante Gotovina indicted in 2001 and who had not still been extradited at the time the report was written. This corroborated the ICTY report for 2004, which read, “Croatia, after the change of the Government in December 2003, acted immediately in regard to two new indictments and facilitated surrender of all accused, while still undertaking measures to locate accused Gotovina.”⁴⁹¹ The new government of Sanader was praised as being extremely cooperative in joint efforts to arrest Gotovina. The report concluded, “The Prosecutor is satisfied with the efforts of the Government of Croatia at this stage. However, the Croatian authorities are expected to continue to do their utmost until Gotovina is in The Hague.”⁴⁹²

8.4.1 Cases of Norac and Blaskic in domestic debates

2004 was a period of good cooperation with the ICTY. “Finally we have on state in the Balkans that we can say is fully cooperating with The Hague”,⁴⁹³ Del Ponte said to the press in Zagreb in April. Of course she said that the only outstanding question was the

⁴⁸⁹ *ibid.*, 5.

⁴⁹⁰ COM (2004) 257 of 20 April 2004, 31

⁴⁹¹ the ICTY report 2004, <http://www.un.org/icty/rappannu-e/2004/index.htm> paragraph 275

⁴⁹² *ibid.*, paragraph 276

⁴⁹³ <http://www.vjesnik.hr/html/2004/06/04/Clanak.asp?r=unu&c=1>

Zbog Gotovine pod prismotrom i Haag i Hrvatska [Because of Gotovina The Hague and Croatia under surveillance]

fugitive Gotovina and that it should not be forgotten. In June 2004, European council officially confirmed that Croatia was a candidate and that the negotiations would start in 2005.⁴⁹⁴ In June 2004, President Mesic addressed the nation in relation to the candidacy status and said the EU membership was the most important strategic aim of Croatia. He added that getting closer to the EU was not always easy: “It required crushing the obstacles of those who did not understand and even more of those who did not want to understand. It took determination and vision and above all it was necessary to understand that the EU is our national interest and national priority”. He also invited those relevant political and social actors to be responsible and not to anything to endanger the prospects of the EU accession by trying to get cheap points in the daily politics.⁴⁹⁵

Although in February 2004 two generals were indicted Markac and Cermak, they went to the ICTY voluntarily the following month and there was not much public debate on these two cases. However, when general Norac, who was already tried in Croatia and was serving his sentence, was indicted in July 2004 it created lot of unrest. Minister of Justice Vesna Skare Ozbolt said that arrest warrant was not served by the ICTY for Norac and that they were waiting for the whole case to be transferred to Croatia⁴⁹⁶.

Associations of defenders in the Homeland war were protesting. They gave unrestrained support to Norac because they saw him as innocent. They called for the respect for the Declaration about the Homeland war. Otherwise it threatened to organize protests against new indictments for Norac. In June 2004 associations of defenders of the

⁴⁹⁴ <http://www.vjesnik.hr/html/2004/06/19/Clanak.asp?r=van&c=1>

Hrvatska kandidat, pregovori početkom godine [croatia a candidate: negotiations next year]

⁴⁹⁵ <http://www.vjesnik.hr/html/2004/06/19/Clanak.asp?r=unu&c=1> news agency HINA

Clanstvo u Europskoj uniji nacionalni interes i prioritet [EU membership national priority and interest]

⁴⁹⁶ Norac nije kriv [Norac is not guilty], *Novi list*, 24 May 2004

city of Split organized protest in support of Norac⁴⁹⁷ They asked all representatives of political parties and of authorities to state clearly whether Norac was hero or war criminal. For the defenders Norac was a true hero of the Homeland war and they believed his prosecution was politically created in cooperation with the ICTY and Croatian authorities. Minister of Justice confirmed that Norac would go to the ICTY to give a statement, but was insuring that he would not stay there.⁴⁹⁸ After this the ICTY would decide whether Norac should be tried again before a domestic court or before the ICTY.

On the positive side, General Tihomir Blaskic who had surrendered in 1996 and was first sentenced to 45 years in prison was returning to Croatia after his sentence was reduced to 9 years and he finished serving it because he already spent in 8 years and 4 months in prison during his trial. The charges against him for the murders were dropped as it was concluded he had not had control over the military units that committed the crime. Prime Minister Sanader expressed his satisfaction with the sentence to Blaskic and his release and said, “The decision is an example how real truth of the Homeland war can be proven in the ICTY.”⁴⁹⁹ Sanader could use this to justify his position that it was important to cooperate with the ICTY in order to protect the achievements of the homeland war.

In an interview Del Ponte gave while in Croatia in June 2004, Del Ponte explained why there was full cooperation with the ICTY. “On the second day of assuming his office, new prime minister, Ivo Sanader called me and said that the

⁴⁹⁷ <http://www.vjesnik.hr/html/2004/06/28/Clanak.asp?r=tem&c=2>

Neka se vlasti izjasne je li Norac zlocinac ili heroj Domovinskog rata [Is Norac hero of war criminal]

⁴⁹⁸ <http://www.vjesnik.hr/html/2004/07/02/Clanak.asp?r=unu&c=1>

Norac u Haagu 8. srpnja [NOrac in theHague on 8 July]

⁴⁹⁹ <http://www.vjesnik.hr/html/2004/07/30/Clanak.asp?r=unu&c=2>

Sanader: Istrazit cemo tko je zadrzavao dokumente [Sanader: we will investigate here are the documents]

Government would fully cooperate. That is what happened. He fulfilled everything we asked for.”⁵⁰⁰ She mentioned that results were seen instantly. Generals Cermak, Markac and six other Croatians accused of war crimes in Bosnia and Herzegovina were immediately extradited. That is what she called ‘full cooperation’. She underlined that previous governments allowed themselves to be influenced politically and that cooperation suffered any time there was political question, but there was no such problem with the government of Ivo Sanader. She called his government politically intelligent. She revealed she was working closely with the state prosecutor Mladen Bajic, and said the government was ready to accept all the ICTY instructions necessary to find Gotovina. She claimed that they were working hard with the government of Croatia and that she was sure results would be seen in a few weeks because “we are doing everything right.”⁵⁰¹ She said that her job was to make sure the countries cooperate with the Tribunal. If the EU asked her for an opinion she gave it but she did not have any role in EU decisions nor did she presume that she had a role. She did not want to have any political role in the process.

This is very interesting position she took, especially because her reports decided whether Croatia could continue with EU integration. This became very apparent in March 2005 when the negotiations for membership were supposed to start with Croatia. “The European Council of 16/17 December 2004 decided that accession negotiations would be opened on 17 March 2005 provided that there was full cooperation with the UN International Criminal Tribunal for the former Yugoslavia in The Hague (the ICTY). However, in the absence of confirmation of full cooperation, the Council on 16 March

⁵⁰⁰ Sander je ispunio sve sto smo od njeg trazili [Sanader fulfilled everything we asked from him] joint interview of Del Pont for Vecernji list, Vjesnik and Slobodna Dalmacija, Vecernji list, 5 June 2004

⁵⁰¹ ibid

2005 decided to postpone the opening of accession negotiations.”⁵⁰² Despite the fact that Croatia was cooperating in all other respects, Gotovina was still not arrested. The EU offered incentives, the SAA entered force in February 2005. Croatia was aware of the opportunity but Gotovina was still not captured.

8.4.2 The pressures for Gotovina's arrest

This decision in March 2005 was a consequence of deterioration of relations with the ICTY and the inability to arrest Gotovina in the period between June 2004 and March 2005. Diplomats criticized Croatia’s self-satisfaction after gaining candidate status and noted that more needed to be done.⁵⁰³ However, *Vjesnik* reported, the government was serious about fulfilling all obligations and those whose positions were related to the actions to arrest general Gotovina would not have right to weekends in order to accelerate work on his arrest.⁵⁰⁴

At the same time of the efforts to arrest Gotovina, the support of the EU dropped. Less than 49% of the population was supporting EU.⁵⁰⁵ The support fell from 70 to 49%. Some reasons could be the unpopular actions of constructive cooperation with the ICTY. Open hunt of Gotovina was not forgiven by a part of HDZ electorate as well as some of its membership, but also unpopular changes in economic harmonization and standardization of agricultural products. Decrease in the support for EU was close to the dissatisfaction with Sanader’s government, which shows correlation. The trend of the

⁵⁰² EU- Croatia Relations, http://ec.europa.eu/enlargement/croatia/eu_croatia_relations_en.htm

⁵⁰³ <http://www.vjesnik.hr/html/2004/09/23/Clanak.asp?r=tem&c=2>

Zbog Gotovine velik pritisakna Hrvatsku [Pressure on Croatia because of Gotovina]

⁵⁰⁴ <http://www.vjesnik.hr/html/2004/09/24/Clanak.asp?r=unu&c=1>

U zadru poceo lov na Gotovinu [Open hunt on Gotovina]

⁵⁰⁵ <http://www.vjesnik.hr/html/2004/10/11/Clanak.asp?r=tem&c=1>

Strah od Europe raste kako se bliže pregovori [The fear of EU groing as negotiations get closer]

decrease was clear: in 2000 77% was pro EU and in 2002 79% while in October 2004 it was 49%

EU Council made a decision to freeze assets of the ICTY indictees, Radovan Karadzic, Ratko Mladic and Ante Gotovina.⁵⁰⁶ All candidate countries, including Croatia had to comply with this. In order to follow the EU decision on freezing of assets to the ICTY fugitives Ministry of Justice of Croatia made a draft law about special measures of support to the efficient fulfillment of the ICTY mandate, which could soon be given to the government for approval.⁵⁰⁷ Behind this long title the law was set to freeze the assets of Gotovina.

In November 2004, Carla Del Ponte again reported to the UN Security Council that Ante Gotovina was still an obstacle for the full cooperation of Croatia with the ICTY.⁵⁰⁸ She was then defining the arrest of Gotovina as full cooperation and asked international community to keep the pressure on Croatia until he was arrested and transferred to The Hague. The report noted increased activities towards the arrest of Gotovina but they had not been fruitful and also it seemed that within structures of the state authorities there were obstacles for full cooperation. Jaksa Muljadic assistant to the Minister of Justice in charge of the ICTY cooperation said that accusations of the existing structures within some parts of the government that they support fugitive were not true and that he was sure that state structures did not support him.

⁵⁰⁶ <http://www.vjesnik.hr/html/2004/10/22/Clanak.asp?r=unu&c=2>

Hrvatska mora zamrznuti Gotovininu imovinu [Croatia to freeze Gotovina's assets]

⁵⁰⁷ <http://www.vjesnik.hr/html/2004/11/11/Clanak.asp?r=tem&c=2> HINA news agency

Blokada svih Gotovinih racuna [Gotovina's accounts blocked]

⁵⁰⁸ <http://www.vjesnik.hr/html/2004/11/24/Clanak.asp?r=van&c=1>

Gotovina jedina prepeka za punu saradnju Hrvatske s Haaskim sudom [Gotovina the only obstacle left for full ICTY cooperation]

The EU's December 2004 decision was to open negotiations with Croatia on 17 March 2005.⁵⁰⁹ Still, full cooperation with the ICTY was necessary and it would be again assessed before the negotiations were supposed to open. Sanader said this was another affirmation of Croatia and that condition for the ICTY was nothing new, but had always been there. Olli Rehn said that without positive the ICTY report the negotiations with Croatia would not start on 17 March 2005 and that if everything went as planned, Croatia could expect to become a member of EU in 2009.⁵¹⁰ By the beginning of 2005 there was no progress in the cooperation with the ICTY. In February 2005, the EU Commission concluded that Croatia was not cooperating enough in order to start negotiations in March as planned.⁵¹¹ Rehn asked for political will to extradite Gotovina. It seemed that Sanader was surprised with the decision while Mesic thought it was expected since EU connected negotiations with Gotovina's appearance in the ICTY.

Mesic and Sanader asked all relevant administrative bodies, including intelligence units, Ministry of Interior, State prosecution, to accelerate search for the ICTY fugitive Ante Gotovina in line with their jurisdiction.⁵¹² They again stated that according to information they had Gotovina was not in Croatia but in light of the pressures from EU they wanted to take again all measures. They expressed full and undivided readiness for the transfer of the remaining fugitive. Jean-Claude Juncker, prime minister of Luxembourg and president of the EU said that Gotovina had to be in The Hague for

⁵⁰⁹ <http://www.vjesnik.hr/html/2004/12/18/Clanak.asp?r=tem&c=1>

Pregovori pocinju 17. Ozujka [Negotiations open on 17 March]

⁵¹⁰ <http://www.vjesnik.hr/html/2005/01/20/Clanak.asp?r=tem&c=1>

HINA news agency

⁵¹¹ <http://www.vjesnik.hr/html/2005/02/01/Clanak.asp?r=van&c=2>

Rehn tvrdi da je Gotovina u Hrvatskoj, Sanader iznenadjen, Mesic nije. [Rehn claims Gotovina is in Croatia]

⁵¹² <http://www.vjesnik.hr/html/2005/02/02/Clanak.asp?r=unu&c=1>

Mesic i Sanader traže poturu i uhicenje Gotovine [Mesic and SANader ask for the search and arrest of Gotovina]

Croatia to open membership negotiation.⁵¹³ British government appreciated the letter of the Prime minister and president and repeated that Gotovina had to go to the ICTY.⁵¹⁴

In March 2005, Sanader still repeated that they did not know where Gotovina was, and called on him to surrender.⁵¹⁵ He said that Croatia's understanding of full cooperation was showing that everything had been carried out to locate and arrest Gotovina, while some EU members interpreted cooperation only as an arrest. Croatia did everything to locate the fugitive but failed to find and arrest him by 9 March 2005 when Del Ponte gave negative report.⁵¹⁶ She said cooperation was not full and that no new information helped her to make the report positive. She said Gotovina was within reach of Croatian government. They did take measures to freeze his assets and to disable network that helped him but actions were too late and marginal to change the report into positive.

Despite all activities, negotiations did not start on 17 March 2005 and the EU Ministers did not give exact date of opening of negotiations.⁵¹⁷ The UK, the Netherlands, Denmark and Sweden solely relied on the ICTY report and did not take into account Croatia's justifications. Due to the lack of consensus the EU decide to postpone opening of negotiations until it was concluded that Croatia fully cooperates.⁵¹⁸ EU still said the

⁵¹³ <http://www.vjesnik.hr/html/2005/02/02/Clanak.asp?r=unu&c=2>

Gotovina mora u Haag prije pocetka pregovora. [Gotovina to the Hague before negotiations open] HINA news agency

⁵¹⁴ <http://www.vjesnik.hr/html/2005/02/08/Clanak.asp?r=unu&c=2>

Britanska vlada podupire Mesicevu i Sanaderovu zajednicku izjavu [British government supports Mesic and Sanader]

⁵¹⁵ <http://www.vjesnik.hr/html/2005/03/01/Clanak.asp?r=unu&c=1>

Sanader pozvao Gotovinu da domoljublje pokaze u Haagu [SANader called on Gotovina to surrender]

⁵¹⁶ <http://www.vjesnik.hr/html/2005/03/09/> REUTERS

Carla DelPonte presudila: Hrvatska ne suradjuje S Haagom [Del Ponte : Croatia is not cooperating]

⁵¹⁷ <http://www.vjesnik.hr/html/2005/03/16/Clanak.asp?r=unu&c=1>

Pristupni pregovori nece poceti 17.ozujka [Negotiations will not start on 17 March]

⁵¹⁸ <http://www.vjesnik.hr/html/2005/03/17/Clanak.asp?r=unu&c=1>

Pregovori odgodjeni [Negotiations postponed]

doors were open for Croatia and that it was in Croatia's hands and not in the ICTY's the future of integration processes. Sanader refused to change anything in the activities until that point as he said that would mean the government did not do anything before.

The meeting of extended EU troika on Croatia's cooperation with the ICTY was planned for April 2005.⁵¹⁹ The task force on the ICTY-Croatia met separately with Del Ponte and with Croatian delegation led by Prime Minister Sanader on 26 April 2005. Sanader presented six point Action plan aiming at transferring Gotovina to The Hague.⁵²⁰ The points included: raising awareness campaign to show that Gotovina was fugitive; improving credibility and efficiency of intelligence agencies; maintenance of coordination and concerted efforts and legal procedure to force down the network of support to the fugitive; coordination with foreign services and the ICTY; activities to fight organized crime and illegal activities; and preparation of domestic judiciary for the ICTY cases trials. In order to follow up the work on action plan Hidajet Biscevic was appointed assistant state secretary of the Ministry of Foreign Affairs and main coordinator for following up on the Action plan and was solely responsible to the prime minister.⁵²¹ Still Mladen Bajic, state prosecutor was the main coordinator between the ICTY and Croatia.

Despite this detailed plan the Task force concluded that there was no substantial progress and that probably there would be no new developments enough to have positive assessment of cooperation before the EU summit in June 2005. According to the document by the EU Council, Del Ponte maintained her position that Croatia was not

⁵¹⁹ http://ec.europa.eu/enlargement/candidate-countries/croatia/eu_croatia_relations_en.htm

⁵²⁰ An EU diplomat allowed me to view the document but not to photocopy it; this information is based on the notes taken when the document was viewed

⁵²¹ <http://www.vjesnik.hr/html/2005/04/29/Clanak.asp?r=unu&c=1>
Biscevic coordinator za Gotovinu[Biscevic coordinator]

fully cooperating and she stressed that Sanader took seriously her requests for extraditing Gotovina only after the EU withheld the right to open membership negotiations on 16 March 2005. To Del Ponte, this showed that conditionality was necessary for cooperation. Still, she mentioned some positive steps such as personal changes and aggressive actions against the supporting network to Gotovina; the chief of Croatian police and 159 police officers working in Zadar were removed for having been involved in supporting or passing info to the Gotovina support network. Del Ponte repeated that according to her intelligence sources General Gotovina was within reach of Croatian authorities and that full cooperation for her meant either Gotovina in The Hague or detailed information on his whereabouts so as to arrest him.

The new the ICTY report in August 2005 had negative qualifications. The report read, “The failure to arrest high-level accused, such as Radovan Karadzic, Ratko Mladic and Ante Gotovina, despite several resolutions of the Security Council, is of grave concern for the proper administration of justice. Repeated appeals to the Governments and entities in the region and the international community to pursue and arrest them have so far not borne results.”⁵²² The report specifically noted “Croatia, contrary to expectations and despite numerous promises, failed to locate the accused Ante Gotovina.”⁵²³

In October 2005, the EU council meeting decided that Croatia would start negotiations on EU membership. Del Ponte stated that Croatia fully cooperated and did everything to locate and arrest Gotovina.⁵²⁴ She praised Croatian cooperation with giving

⁵²² the ICTY report 2005, <http://www.un.org/icty/rappannu-e/2005/index.htm>, paragraph 182

⁵²³ *ibid.*, paragraph 186

⁵²⁴ <http://www.vjesnik.hr/html/2005/10/04/Clanak.asp?r=unu&c=1>
Hrvatskoj pregovori! [Negotiations for Croatia!]

necessary documents and praised efficiency and professionalism of Zagreb. She said her positive assessment was based on 130 reports that her office received from Croatian departments participating in search for Gotovina and that there were almost everyday communications between her and Mladen Bajic, state prosecutor as well as other contacts with Croatian and international sources.

The Croatian media said that this report made the decision for the EU ministers easier, who were ready to open negotiations with Croatia even in case that Del Ponte only said there had been improvement in cooperation without qualification of full cooperation. Still the provision that negotiations could be stopped if there was no continuous cooperation with the ICTY was still standing. Immediately after EU decided to open negotiations with Croatia, Olli Rehn came to Zagreb. Asked to state what was decisive to make this decision, he said “Absolutely the fact that Carla Del Ponte confirmed that the full cooperation with the ICTY was achieved.”⁵²⁵

It was puzzling that Del Ponte gave positive report in October, while Gotovina was not in The Hague. The answer came in December 2005, after he was arrested in Spain and transferred to The Hague. Addressing the UN Security Council in December 2005, Del Ponte said that on 29 September Croatia demonstrated “indisputable evidence” where Gotovina was.⁵²⁶ She repeated her criteria of assessing cooperation, which was his arrest or providing clear intelligence on his location. Since the intelligence she received constituted what she defined as cooperation she informed the EU that Croatia was fully

⁵²⁵ <http://www.vjesnik.hr/html/2005/10/10/Clanak.asp?r=tem&c=2>
Dobrodošli u Europu ! [Welcome to Europe]

⁵²⁶ Address by Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the former Yugoslavia to the Security Council, 15 December 2005 www.un.org/icty

cooperating. On the basis of this EU decided to open negotiations with Croatia on 3 October 2005.

Del Ponte praised this strategy as effectively combining EU pressure and other international actors in addition to cooperation with national actors, which had to include political will. “The key to success was a combination of international incentives, provided mainly by the European Union’s consistent policy of conditioning EU accession to the full co-operation with the ICTY, and an effective joint operational plan between Croatia and the ICTY.”⁵²⁷ Del Ponte mentioned also that the US provided extra pressure by insisting Croatia extradited Gotovina before joining NATO, but she underscored the EU conditionality as the most significant. She said that the Action plan set out by Croatian prime minister in April started to pay off in late summer. This was a result of hard work of small number of capable and motivated professionals “under the leadership of State prosecutor who had received the proper, strong backing from the political leadership.”⁵²⁸ They were able to guide all other relevant services to the successful completion of the task and she concluded that this combination of political will and operational effectiveness brought positive outcome.

However, the situation in Croatia after the arrest was very sensitive as some started to show their dissatisfaction with the arrest by protesting and causing damage in Zagreb and other cities in Croatia. Sanader asked all to accept the news and to have trust in the government, which knew in each moment what was the best for Croatia and how to achieve that and how to defend the truth about the Homeland war.⁵²⁹ He said that he

⁵²⁷ *ibid.*

⁵²⁸ *ibid.*

⁵²⁹ <http://www.vjesnik.hr/html/2005/12/10/Clanak.asp?r=unu&c=3>

Znat ćemo obraniti istinu o Domovinskom ratu [We know how to defend the truth of the Homeland war]

understood emotions of the people but that everybody should refrain from violence. Some protests in support of Gotovina passed without problems.⁵³⁰ Association of War veterans organized peaceful protests in Split. The protests wanted to show respect to Gotovina and all fighters for Croatia's independence, which was legitimate. A protest in Zagreb did not attract many people, where again homeland war and Gotovina were praised and his arrest was seen by the veterans as revenge of those who did not like what Gotovina fought for.⁵³¹

There were many cases of violence and destruction all over Croatia on the night of Gotovina's arrest. In the region where Gotovina had been born, there were about 30 incidents mainly setting fire, toppling trees and blocking streets, vandalizing waiting rooms and transport stops as well as throwing bottles with explosive substances.⁵³² Some of the activities led to two traffic accidents. There were no injured or fatalities. Zadar police called on citizens to refrain from protests and violence.

On the night of the arrest 11 people were injured protesting in front of the government building⁵³³. Protesters broke two windows on the government building using stones and bottles. The protest turned violent when a cordon of about 100 police officers tried to remove about 500-700 protesters from the square just in front of the government building. The protesters were carrying Gotovina's photos as well as Croatian flags and sang songs of support to the general, whistled and insulted the Prime Minister and government members. The police took 11 people into custody. Protests in support of Gotovina were organized also earlier in the evening on different locations. Protests were

⁵³⁰ <http://www.vjesnik.hr/html/2005/12/12/Clanak.asp?r=unu&c=4>

Skupovi potpore bez izgređa [Protest without major problems]

⁵³¹ <http://www.vjesnik.hr/html/2005/12/12/Clanak.asp?r=unu&c=5>

Slab odaziv u Zagrebu [Low turnout in Zagreb]

⁵³² <http://www.iskon.hr/vijesti/page/2005/12/09/0025006.html>

⁵³³ <http://www.iskon.hr/vijesti/page/2005/12/09/0011006.html>

also organized in Gospic where about 50 veterans and volunteers of Homeland war showed support to the arrested general.⁵³⁴ They called the arrest shameful they wanted to show support from the city that defended itself heroically during the war. Protests were organized in Dubrovnik as well as on the highways around Zadar, Primosten and Kastel where protesters cut off traffic for a while by burning tires on the roads.

Once again this demonstrated how sensitive the issue of arresting those who were viewed at home as heroes and defenders of Croatian independence was. Nevertheless, the government of Sanader had an easier task to appease these dissenting voices as, except the HSP there were no other parties that supported protests, accusations of government and disregard for the ICTY. Responses to the arrest of Gotovina were of two types.⁵³⁵ Ivica Racan former PM and president of SDP said that the arrest was a step in the solution of open problems for Croatia and for Gotovina himself. President of right wing party HSP, Anto Djapic called the day of Gotovina's arrest a very difficult one for Croatia and for all Croatian defenders and for all those who loved and respected the general, but he also said he was sure that Gotovina would prove his innocence before the court. Djapic said HSP asked for Sanader to come to the Parliament and explain the actions of the government in relations to the arrest because he thought it was terrible that the news of the arrest came from Belgrade. Except the calls for the Prime minister to appear before the parliament and explain the developments that led to the arrest, there were no major political problems for the Sanader government.

⁵³⁴ <http://www.iskon.hr/vijesti/page/2005/12/09/0001006.html>

⁵³⁵ <http://www.iskon.hr/vijesti/page/2005/12/08/0274006.html>

8.5 Conclusion

This period showed that how size and time of the rewards accelerated the cooperation of Croatian government in order to finish the cooperation with the ICTY. Sanader's government had a good start as within few months of its term the EU confirmed Croatia as a candidate state, which was a result of the previous government's effort. With such incentive and the final goal of membership very reachable within a short period of time, the government put extra work in finalizing cooperation with the ICTY.

The positions to the EU and cooperation with the ICTY were positive. The public opinion was slightly changing but general attitude was pro-EU. There were no anti-EU or anti-the ICTY blocs in the parliament. The process of cooperation was very centralized, the Action plan made it very clear and specific, all capacities were employed and the coordinator of the Action plan was directly responsible to the Prime minister. Whether there were any individuals within police, military or intelligence agencies who were against Gotovina extradition is difficult to know and what the government did to prevent delay in cooperation because of this is unclear, but the pressure the government put gave results. Therefore, it was not only the position in favor of cooperation that was important, political will was only a part of the process, and operational activities are the crucial element. However what is the most significant factor for the success of Sanader's policy on the ICTY was that did not have strong opposition within the parliament that would bloc the activities. Most of the parties, except the HSP, were supporting the government on this and that gave the government freedom not to fear potential loses at the elections but to work on implementing its policies.

Chapter 9- Conclusion

Starting from the existing literature on the EU influence on domestic politics, the thesis attempted to broaden the scope of the literature by analyzing one candidate and one potential candidate country; and offer better understanding of the process of transition in Eastern Europe in parallel with the ongoing EU accession. The focus was specifically on identifying what factors help or hinder fulfillment of specific political conditions for EU membership. The actors were examined in how they react to external pressures and incentives in light of their party interests within the domestic political scene.

The thesis argues that the EU conditionality was a crucial incentive for some policy choices in the countries investigated here. This is in accordance with the reviewed literature. However, the thesis challenged the liberal/illiberal dichotomy that is used in the literature as one of the main domestic factors that determines compliance. This refers to the positions of some authors mentioned above, for example Schimmelfennig who distinguishes between parties that already share values and principles on which the EU is formed and those that are more nationalist or conservative;⁵³⁶ or Vachudova who defines liberal democracies as political systems where institutions were elected democratically, state respects judicial limits of the system and liberties of their citizens.⁵³⁷ Namely, the idea is that since international organisations, and EU especially is interested in socialising applicant countries into accepting the EU norms, the countries that already have liberal

⁵³⁶ See for example: Frank Schimmelfennig, Stefan Engert and Heiko Knobel, *International Socialisation in Europe: European Organizations, Political Conditionality and Democratic change* (Palgrave: 2006).

⁵³⁷ Milada Anna Vachudova, *Europe Undivided: Democracy, Leverage and Integration After communism*, (Oxford University Press :2005), p. 3

characteristics would pass easier through this transition, i.e. power costs would be less for these countries. Except for the first periods in both countries, where the regimes of Milosevic and Tudjman at times overstepped the powers of their positions, the rest of the governments examined were democratically elected, were respecting democratic rules and were sharing basic principles of the EU, which they wanted to join, but still there were problems with compliance.

Thus, the thesis proposes that there are some more specific factors that are more influential in terms of responding to EU incentives, and go beyond this broad distinction between liberal and illiberal. The main argument is that the policy change depends on the interplay between the political actors and the constant change of balance of power among them within the boundaries of the interests of the parties in power. Thus, in addition to external factors of size and timing of the rewards, the thesis identified other factors such as threat of incumbent government losing power, attitudes of the incumbent government towards the EU and the conditions (in these particular cases cooperation with the ICTY), partisan veto players and institutional obstacles. These were analysed in different time periods according to different governments in power. The outcome of the cooperation with the ICTY for both countries is summarized in tables 9 and 10 below.

Table 9: Serbia -summary of factors and outcome of cooperation with the ICTY

Serbia	No threat of losing power	Government attitude towards ICTY	Institutional veto points	Partisan veto players	External rewards/ pressures	Outcome of cooperation
1993-2000	positive	Negative	negative	negative	negative	No cooperation
2000-2003	positive (until extradition of Milosevic)	<i>Positive</i>	negative	<i>positive</i> (until assassination)	positive	Cooperation

2003-2008	positive (until EU suspended negotiations)	<i>Negative</i>	positive	<i>negative</i>	negative (except during 2005)	No cooperation
2008-	High	High	High	High	High	Cooperation

Table 10: Croatia -summary of factors and outcome of cooperation with the ICTY

Croatia	No threat of losing power	Government attitude towards ICTY	Institutional veto points	Partisan veto players	External rewards/ pressures	Outcome of cooperation
1993-2000	Positive	negative	negative	negative	negative (after 1995)	No cooperation
2000-2003	Negative	negative (after indictments for Homeland war started arriving)	positive	negative	positive	No cooperation
2003-2008	positive	Positive	positive	positive	Positive	Full cooperation

For the first two periods in was mainly non-cooperation with the ICTY, but as the regime was controlled by one leader in both countries the cooperation could have shifted if the leaders decided to do so. All factors mentioned above have been negative. The size and timing external rewards were negative as both countries did not fulfil minimum democratic conditionality that was set. In addition both countries were involved in military operations within their territory, Croatia actions ‘Storm’ and ‘Flash’ in 1995, and Serbia in Kosovo in 1999. They were both sanctioned for such behaviour by being suspended from EU related integration processes (e.g. Croatia from PHARE) and were also under sanctions. Moreover, Serbia was in 1999 under military sanction, i.e. it was bombed by NATO allied forces. This meant that there were very low external incentives to cooperate in terms of visible rewards. However, sanctions could have potential led to

cooperation because they put too much strain on the government and could provoke popular unrest and thus help the opposition take over. Still, Serbia continued to ignore the ICTY and Croatia kept communication with it but only in order to show that the Croats were the victims and thus could not be tried by the ICTY. Naturally attitudes towards the ICTY and the EU were negative and with both regimes holding monopoly of all political institutions, it was no surprise that there were no institutional mechanisms for cooperation with the ICTY. Croatia though passed a law on cooperation in 1996, but in 1999 passed a resolution that the court had no jurisdiction over the actions in the Homeland war. With their authoritarian style both governments had no real threat of losing power to the opposition as they always had more than comfortable majorities in the parliament, and their were more charismatic leaders and enjoyed popular support than any of the opposition leaders. In short, the period for both countries was marked by negative values of all factors which led to no cooperation.

The second period was much more interesting for both countries. It was characterised by mixed veto players, based on the classification presented in table 4. For Serbia it meant strong parliamentary majority but fragmented government made of many parties. For Croatia the number of veto players was also mixed with coalition government and relatively strong parliamentary majority. What is especially interesting is that the following period for Croatia 2003-08 was mixed again, with the strong unified but minority government of the HDZ. Thus it seems that the position of the government in Croatia formed in 2000 was stronger than that of the government formed in 2003. However the later government made full cooperation with the ICTY possible, which the former never managed to do. This is the best demonstration of the factor on power costs.

What made the HDZ government more free to choose options it wanted was the fact that there was no strong opposition to the cooperation with the ICTY in the parliament. To the contrary, except for the extreme right wing parties which were in minority in the parliament, all of the parties shared the aim of joining the EU and accepted that that included cooperation with the ICTY. The government of 2000 led by SDP, had the HDZ to its right which was one of the most vociferous parties against cooperation that mobilized associations of war veterans and other who opposed the cooperation with the ICTY and in this way made it more difficult for the government to make tough decisions on extraditions of indictees. During the HDZ government the opinion polls showed decline in the EU support and some of it was related to the ICTY cooperation. But this did not influence government position because there were no strong opposing parties to mobilize the dissenting citizens.

Attitudes of both governments in Croatia of 2000 and 2003 were positive towards the EU and ICTY. Size and timing of rewards was very tempting. During Racan's term in office Croatia signed the SAA and applied for EU membership. As soon as Sanader took over in 2003, the EU confirmed the candidate status and set the date for opening up of negotiations. These were all very strong rewards. However, as explained above Racan's government had a serious threat of losing power. Governing coalition was breaking due to the cooperation with the ICTY. The other party in the coalition government - HSLHS was closer to the HDZ position on cooperation with the ICTY than it was with the SDP. Racan could not find a balance between cooperation with the ICTY and the ICTY indictments of generals that participated in the Homeland war. General Gotovina was indicted during Racan's government, as well as two generals (Bobetko and Ademi),

which created lot of debate within Croatia as it was regarded as an attempt to criminalize Homeland war. As a consequence the government did not extradite any of them, Ademi went voluntarily but the cooperation with the ICTY was completely negative. Having the HDZ to its right to mobilize the public contributed to the lack of cooperation with the ICTY. Once Sanader government came to power, they immediately accepted cooperation, there were voluntary surrenders of Markac and Cermak, but also the government made all efforts to located General Gotovina who was at large for four years. The ICTY prosecutor stated that cooperation was full and described Sanader's government as politically intelligent and one that does not give in to the pressures of the daily politics. Nevertheless, this was possible because there were fewer partisan veto players, it was unitary government and did not fear break up of coalition or the loss of support in the parliament. All of the parties that were opposition to the HDZ were for EU.

In short, Sanader's government had strong external incentives, positive attitudes to the ICTY and EU, no major veto players or institutional veto points to prevent cooperation and no threat to lose power which lead to full cooperation. Racan's government on the other hand had high values for all factors except for threat to losing power and more partisan veto players. Thus, as tables 9 and 10 show both governments had potential for incremental change but this potential was fully used in Sanader's government and was prevented in Racan's due to the partisan veto players in his government with the HSLs deciding not to support ICTY cooperation and opposition parties mobilizing voters against the ICTY.

In Serbia, the second period of mixed constellation of power had a potential for incremental change and Prime Minister Djindjic used his role as the chief of the

executive to make some difficult decisions and give an impetus to the cooperation with the ICTY. His insistence on extradition of Milosevic, which was done on the basis of the Serbian government's decree was seen by many as unconstitutional, and unlawful. The coalition began to fall apart with DSS eventually leaving DOS. In addition such move of the government provoked some unrest among the forces that used to participate in war operations during Milosevic and eventually led to the assassination of the prime minister. This in turn led to a halt on cooperation as it became clear that some elements of the society who have access to arms were against cooperation, or some political actors mobilized them to such actions. Therefore, although the external incentives were high during Djindjic's government (country was being re-admitted to most international organisations, EU membership was a clear option if the conditions were fulfilled, donors' conference was another financial incentive) and attitudes of the government were positive to the EU, there were still partisan veto players that prevented the creation of institutional structure for cooperation. These were not only seen in the federal level which blocked passing a law on cooperation with the ICTY, but also within the governing coalition as the DSS was growing impatient with the pragmatic style of the prime minister favoring easy solutions at the expense of rigid legality. Once again, the partisan veto players prevented cooperation despite the incentives and the proactive role of the Prime Minister, leading to no major improvement in cooperation with the ICTY after the extradition of Milosevic.

The next government of Serbia in 2003 was led by Kostunica, who used the halt in cooperation with the ICTY after the assassination of the former Prime Minister, as a reason to continue such policy and to justify it as continuation of previous

government's decision. This was only disguising his and his party position that the ICTY was not real legal institution and that only voluntary surrenders would be accepted. The policy did not change much from no cooperation. However, this was not due to the fragmented government and small margin in the parliamentary support, but it had more to do with the position of the government of Kostunica not to cooperate with the ICTY actively, but only encourage voluntary surrenders. It is still unclear what motivated voluntary surrenders of indicted generals from the army and the police, since 14 of them surrendered between end of 2004 and middle of 2005 leading to the improvement of relations with the EU and opening up of the negotiations on the SAA. However, as there were no volunteers among the most wanted Karadzic and Mladic, the cooperation slid back to no cooperation leading to the suspension of negotiations in May 2006. In this case the EU rewards which were quite considerable, and also the credible threat of withholding the rewards in case of non-compliance, but it did not outweigh the government's position not to arrest and extradite indictees. Thus government attitudes and partisan veto players that supported it determined the outcome of cooperation which by the end of the second Kostunica's term in office became complete no cooperation, despite some voluntary surrenders in the middle of the term. The focus shifted once Kosovo proclaimed independence in February 2008, EU members recognized it and Kostunica and the DSS believed this meant that if Serbia accepted the SAA it also accepted independence of Kosovo. This was not in any way implied by the EU but was interpreted in this way by the DSS. It was impossible for the government to cooperate when there were fundamental disagreements on the future of Serbia within the EU.

The new government still had many veto players due to the fragmented government and weak support in the parliament but, as soon as the new government was formed in July 2008, one of the most wanted indictees Radovan Karadzic was arrested. The values of the timing and size of rewards were increasing as after the forming of the new government the EU restarted negotiations on the SAA. The government took the positive view to the cooperation and to EU integration. The value of the factor on institutional obstacle was positive as well because there were no legal obstacles for cooperation, major ministries were held by the DS which was for cooperation with the ICTY and partisan veto players were minimised by staffing relevant bodies for cooperation (such as the Secret service) with the DS supporters and loyal to the president Tadic. All this meant that all factors for cooperation were favourable and thus led to the successful cooperation with the ICTY and extradition of Karadzic. It is still unclear why General Mladic is not yet arrested if all of the factors are ripe for it. One explanation could be, as Del Ponte said after Gotovina was arrested, that it was not necessary only to have political will but also professional expertise necessary for locating indictees. If we assume that there are no partisan veto points among the staff who works on the arrest, then it is only a technical issue of locating this most wanted fugitive.

In short, tables are only generalization of all factors and could be misleading because during the periods some factors changed their value and it is always combination of factors that leads to certain outcomes. What is most important here is to show that cooperation was determined by the factors: attitudes and partisan veto players. This is most clearly seen in the second and third period. Kostunica's government was against cooperation and despite having no institutional obstacles and despite having EU support

during one period of the term in office, these incentives were not enough to change the policy. For Djindjic government it is clear that positive attitude to cooperation, despite institutional obstacles, led the government to find a way to extradite Milosevic. Naturally, high external incentives helped this, but the decisive factors were attitudes as it helped to overcome institutional obstacles.

For Croatia what is clearly seen is that attitudes towards the ICTY were decisive. EU incentives do not work when the government has negative attitudes towards the ICTY, and even if it supports cooperation, if the partisan veto players are strong and it could lead to the loss of power, the outcome is usually no cooperation. Thus, position of the government are decided on the attitudes towards the ICTY, i.e. whether in principle the head of government believes there should be cooperation but also if the distribution of veto players is such that it does not threaten the government to lose office. It should also be important to note that the positions could be different towards the ICTY and towards the EU. Kostunica was always in principle against the ICTY but was for EU integration. However, this changed once EU countries recognized Kosovo and Kostunica took a position that relations with the EU would undermine territorial integrity and sovereignty of Serbia. Consequently, he became less inclined to continue with EU integration until the issue of Kosovo was settled.

What this shows is that these factors and the hypotheses derived from them were examined as they interacted. Thus, it was emphasized that EU rewards and their timing are important but if the government is against the EU and especially against the ICTY, the incentives only cannot lead to cooperation. It was also demonstrated that institutional veto points prevented cooperation, but all these could have been overcome if partisan

veto players agreed to create mechanisms for fulfilling the criteria (in this case cooperation with the ICTY). Therefore, partisan veto players and institutional veto points are closely connected. It refers also to the hypothesis that stronger anti-ICTY bloc leads to less likelihood of cooperation, which has been confirmed in all cases and this anti-ICTY bloc can prevent institutionalisation of the cooperation. It is significant to underscore that partisan veto players can be found within the government coalition as in the opposition. The hypotheses on fragmentation on decision making process for cooperation and which party holds positions relevant for cooperation, are both referring to partisan veto players. When the decision making process is fragmented different coalition partners within government or other political actors could take different positions and thus influence cooperation. The hypothesis on public opinion was relevant especially when the government was under threat of losing power to a party that had the opposite position on the ICTY, otherwise the government attitudes towards the ICTY was decisive.

To sum up, these cases demonstrated that the key to cooperation was not whether the government was liberal or illiberal, but whether it had the room to maneuver within the domestic day-to-day politics, constrained by the relative constellation of power of the main political actors. In short, the thesis established that external incentives were crucial to motivate governments to fulfill sensitive political conditionality of cooperating with the ICTY. However, they only worked if the government believed the incentives were in accord with its ideology and principles and if the domestic political distribution of power was not limiting the government policy choices due to the fear of loss of power or lack of control of all actors involved in the fulfillment of set conditions.

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