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## **EU Enlargement Politics: Explaining the Development of Political Conditionality of ‘Full Cooperation with the ICTY’ towards Western Balkans**

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### Summary

In the midst of the Kosovo crisis in 1999 the European Union (EU) pledged itself to draw the Western Balkan region closer to the perspective of full integration into the EU. While the EU has firmly committed itself to the eventual membership of the Western Balkan countries it has set a unique membership condition requesting ‘full cooperation with the ICTY’ prior to opening accession negotiations with some of the countries in the region. This essay tries to unravel why this condition has been developed and how to explain its somewhat differentiated use. The approach taken is a theoretically informed analytical discussion in the form of a qualitative case study on Serbia and Croatia from the point of view of the European Council. The empirical data presented is partly novel, partly borrowing from past scholarly undertakings and suggests that both rationalist and constructivist meta-theories can yield valid explanations on why the EU holds tight on its unique membership condition, but also why Croatia seems to be closer to EU membership than Serbia. The essay relies heavily and advances substantively on the two meta-theoretical frameworks which it embodies in the empirical data presented.

*Key words:* European Union enlargement, EU enlargement politics, ICTY conditionality, Croatia, Serbia, rationalism, constructivism, theoretically informed, problem-oriented approach



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## 1. Introduction

In January 2007 the European Union (EU) enlarged to a union of 27 Member States when Bulgaria and Romania joined. At the same time the EU has opened accession negotiations with Croatia, recognised the Former Yugoslav Republic of Macedonia as a candidate and started the negotiations on a Stabilisation and Association Agreement (SAA)<sup>1</sup> with Montenegro, Bosnia & Herzegovina and Serbia – all of which are countries in the Western Balkans region. While the EU has firmly and repeatedly reiterated its commitment to the eventual membership of the Western Balkans countries, it has set a condition of ‘full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY)<sup>2</sup>’ prior to commencing accession negotiations with some of the countries in the region. The commitment to upholding principles of international justice has clearly become a prerogative for the EU in its policy of enlargement<sup>3</sup> in the Western Balkans region.

Apart from few exceptions, such as the study by Haggard *et al.* (1993), a bulk of the existing literature on EU enlargement politics has been devoted to the macro-political context (Grabbe and Nicolaïdis 2001; Friis 1998a, 1998b; Smith K. 2005, 1997; Schimmelfennig 2001; Sedelmeier 2000) and a bulk of these have focused on the eastern enlargement. At the same time relatively little attention has been afforded to substantive EU enlargement politics – such as to explaining the development of the EU political conditionality of ‘full cooperation with the ICTY’ in the Western Balkans enlargement process. Such a caveat in the existing literature calls for a further empirical study on substantive EU enlargement politics.

<sup>1</sup> The SAA is akin to Europe Agreements signed between the EU and the eastern enlargement applicants in the early 1990s (Smith K. 2005).

<sup>2</sup> Officially titled ‘the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991’, respectfully. The essay also refers to this condition as the ICTY condition.

<sup>3</sup> In this essay enlargement is not understood narrowly as mere geographic widening, but ‘a process of gradual and formal horizontal institutionalization of organizational rules and norms’ (Schimmelfennig and Sedelmeier 2002, 503). Following this viewpoint enlargement is perceived as a process which (i) takes place before and after the actual accession of a country to the EU, (ii) expects the applicant country in question to adapt its national legislation in line with the rules of the ‘EU club’, and (iii) spreads the EU legislation and institutional structures beyond the borders of the current Member States (*Id.*). The use of this understanding will not benefit any theory over another but merely allows analysing an enlargement process which is short of the actual membership.

### *1.1. Scope and Focus of Research*

This essay is a theoretically informed analytical discussion aimed at explaining the development of EU membership conditions, and in particular the unique condition requesting full cooperation with the ICTY from a number of the Western Balkans countries.

Firstly, countries directly applicable include Serbia, Montenegro (since its independence in June 2006), Croatia and Bosnia & Herzegovina. Yet, the scope of the essay is limited to the decisions made in the European Council and temporally to the establishment of the ICTY in 1993. Territorial scope is limited to the Western Balkans region and more precisely to the EU candidate country of Croatia and to the potential candidate country of Serbia.

Secondly, coupling the use of two inherently dichotomous meta-theories together aims ultimately at discovering the conditions under which interests, ideas or identities matter, yet, at the same time recognising the apparent pre-eminence of inter-state bargaining in the EU enlargement politics and, in particular, in the European Council meetings. Whereas constructivism is used on its own, the rationalist approach utilises the liberal-intergovernmentalist theory. Moreover, the approach taken is something akin to a problem-oriented approach advocated by Jachtenfuchs (2005) and is combined with an analytical discussion in the form of a qualitative case study. It thereby evades putting the two theoretical 'alternatives' against one another and instead aims to use them both in conjunction to benefit from a broader theoretical analysis.

In an attempt to structure the debate on EU enlargement politics Schimmelfennig and Sedelmeier (2002, 504-8) introduce four main dimensions<sup>4</sup> of EU enlargement politics and call for theoretically informed empirical studies on the policy dimension of the EU enlargement. The approach taken in this study utilises the work made by Schimmelfennig and Sedelmeier (2005) but remains purposefully EU-centred and thereby excluding consideration of other possible dimensions of EU enlargement politics.

For scholars of International Relations, and those engaged in theorising the EU integration, the debate between rationalism and constructivism poses nothing new (Risse 2000). A serious problem arises, however, in attempting to match these two approaches against each other. Being short of a substantial theory, neither of them can directly produce empirically testable expectations about observable outcomes (Haas 1971, 26; Rosamond 2000; Jachtenfuchs 2005, 279). Some scholars have gone as far as suggesting that

<sup>4</sup> The four dimensions are: the enlargement politics of (1) the applicant state; (2) EU Member States; (3) an assessment of the actual impact of enlargement on both the EU and (4) the applicant state.

constructivism and rationalism are becoming the defining poles of International Relations theory (Katzenstein *et al.* 1998, Pollack 2001, 236). Yet, just as the blind men all touched a different part of the elephant in an effort to find out what it looked like (Puchala 1972), so too are many of the contemporary theories to European integration addressing differentiated interest while examining the same issue. Despite this, rationalism has clearly outweighed constructive approaches in the amount of scholarly contributions and has established itself firmly as a classical integration theory (Jachtenfuchs 2005, 280).

Thirdly, and finally, it is arguably the European Council Conclusions where one should look for the most authoritative reference of the term ‘full cooperation with the ICTY’ as the European Council stands at the highest political level of the EU (Dinan 2005, 225). With respect to Croatia and Serbia, Table 1 shows the frequency of references to the ICTY condition in the presidency conclusions of the European Council since 1993 (the year when the ICTY was established). Whereas not all references to Croatia and Serbia have included a mentioning of either the ICTY or the full cooperation condition, reference to the latter has been used more often (in absolute terms) with respect to Serbia (12 references) than to Croatia (8 references). Yet, whereas half of the references to Croatia as a country have also included a mentioning of the ICTY condition, the same is true in only 43 percent of the cases with respect to Serbia. Nevertheless, both countries show a consistent use of the ICTY condition since 1993, although Serbia has clearly been a major preoccupation of the European Council throughout the years.

A number of questions can be asked about the development and use of the ICTY condition. Among these is why the EU decided to develop such a condition to begin with and why the EU incorporated it as an addition to the general membership conditions towards some of the states of the Western Balkans. As Table 1 shows, further questions include why the EU has held so strongly to this unique condition throughout the years, yet at the same time maintained a slightly tougher stand on Serbia than on Croatia. Thus, are there empirical grounds for differentiating between Croatia and Serbia, and if so, can one explain these through the prevailing theoretical approaches? These are precisely the types of questions attempted to answer in this essay by means of a qualitative case study on Serbia and Croatia. The context within which the discussion takes place is through meta-theoretical discussion.

The essay is organised in the following manner: (1) introduction and brief outlook on the past studies, (2) a general discussion of the sources and background of political enlargement conditionality in the context of the ICTY and EU enlargement politics, (3) introduction to the theories in the context of enlargement politics and the ICTY condition, (4) discussion of the

development of the ICTY condition in the context of an empirical case study on Serbia and Croatia, and (5) conclusion.

*Table 1: Frequency of Conditionality in European Council Conclusions*

Year	Croatia			Yugoslavia / Serbia		
	Ref	ICTY	Condition	Ref	ICTY	Condition
1993	2	0	0	2	0	0
1994	1	0	0	2	0	0
1995	1	1	0	2	1	0
1996	1	2	1	2	2	1
1997	0	0	0	1	0	0
1998	1	1	0	2	2	1
1999	1	0	0	3	1	0
2000	2	1	1	3	1	1
2001	2	1	1	2	2	2
2002	0	0	0	1	0	0
2003	2	1	2	3	2	3
2004	1	1	1	2	0	1
2005	0	1	1	1	1	1
2006	2	1	1	2	2	2
2007*	0	0	0	0	0	0
<b>Total</b>	<b>16</b>	<b>10</b>	<b>8</b>	<b>28</b>	<b>14</b>	<b>12</b>

‘Ref’ stands for the number of times the country in question was mentioned in the European Council Conclusions that year. ‘ICTY’ refers to the number of times the ICTY was mentioned that year. ‘Condition’ shows the number of times the ‘full cooperation with the ICTY’ condition was used that year. Note: References to the Western Balkans region in general have been understood to refer to both Serbia and Croatia, respectively.

\* The year 2007 only includes the period until April 20th 2007.

### *1.2. European Union Enlargement: Theories of Conditionality and Past Studies*

To date, the EU’s powers of attraction have been overwhelming and as an organisation the perceived membership benefits are beyond doubt (Smith K. 2003a, 136; cf. Rosecrance 1998). To this extent the EU enlargement has been characterised as the most powerful foreign policy tool available for the EU (Smith, K. 1998; Tsoukalis 2005, 240; Zielonka 2006). This was especially so in the context of the eastern enlargement which was perceived as the EU’s principal means to spreading democracy and security in Eastern

Europe (Moravcsik and Vachudova 2005, 198; Smith K. 1998, 71; Smith K. 2004, 1-2; Smith K. 2005, 271).

Scholarship on International Relations has traditionally paid little attention to the prospects of foreign and security policy cooperation – such as the politics of EU enlargement – in Europe under the auspices of an international institution (Keohane 1984; Oye 1986; Grieco 1988 and 1996). At the same time existing theories on International Relations and foreign policy analysis have been utilised either directly or in a modified form as the framework for analysis. Attempts to treating the EU as *sui generis* have led to developing new theories better suitable to understanding the processes of cooperation and decision-making in the European Union (e.g. Haas 1968; Lindberg 1963; Hoffman 1966; Moravcsik 1994). Similarly, in more contemporary academic literature one may find that there is a growing body of literature that looks at the dynamics of decision-making in the EU (Wallace, 2005), the politics of EU enlargement (Schimmelfennig 2001; Sedelmeier 2005b; Smith, K. 2004; Wiener and Diez 2004) as well as the exercise of political conditionality by the EU (Smith, K. 1997); nevertheless, the bulk of the existing literature has treated these subjects as separate processes and none has discussed the issue of the ICTY condition.

Despite some empirical research on particular areas of EU policy-making (Smith K. 1997 and 2006) there is an inadequate understanding of the decision-making process at the European level with respect to the development of the EU membership conditions. This inadequacy revolves around questions of the dynamics of enlargement as the EU's most effective foreign policy tool, how the EU arrives at common policies on particular enlargement policies (and fails to do so on others), why the Member States agree on certain policies but disagree on others, and what other facts influence their opinions. As the present essay is theoretically informed and focused on the European Council at least some of these inadequacies may be attested.

## *2. Political Conditionality and the EU Enlargement Politics towards the Western Balkans*

This section looks into the sources and background of the development of political conditionality in general and towards the Western Balkans in particular as well as the role of the ICTY in this respect.

The political membership conditionality imposed by the EU on some of the Western Balkans countries has its roots in the early 1990s, yet it was not until the Feira European Council meeting when all the so-called Stabilisation and Association Process (SAP) countries' potential candidacy was officially reckoned (Rodin, 2006). The EU has negotiated Trade and Cooperation

Agreements with the newly independent states in the Western Balkans, and in the new millennium it has started negotiations on SAAs as a distinctive policy framework directed solely on the Western Balkans countries. The SAP includes a number of political obligations on human rights, democracy, rule of law and, indeed, full cooperation with the ICTY and encapsulate the EU's long-term engagement in the region and is directly linked to the prospect of EU accession (see, e.g., the SAA on Croatia, 29 October 2001). Yet, when it comes to the Western Balkans, there is arguably much more at stake than mere membership conditions (Schmidt, 2007). As Vachudova (2003, 141) argues, the EU is the single most important international actor in the Western Balkans region and thereby in a unique position of promoting ethnic reconciliation, democratisation and economic revitalisation.

### 2.1. ICTY

Being established by the United Nations Security Council (UNSC) Resolution 808 in 1993 the ICTY is both temporally and territorially constrained. Temporally it may only deal with atrocities which occurred in the territory of the Former Yugoslavia since 1 January 1991 (UNSC Resolution 808) until peace was finally restored. Similarly, it is territorially limited to consider cases from countries located in the Western Balkans only.

Both the aforementioned limitations have naturally set constraints to the EU's ICTY condition as well. In accordance with Article 29 of the Statute of the ICTY all states (which are members of the UN) are obliged to cooperate with the ICTY 'in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law'. Despite being established by the highest possible international authority - the UNSC, the ICTY is heavily dependent on state cooperation for the effective functioning and fulfilment of its mandate (e.g. Report of the ICTY to the UN General Assembly 1997, 43-5). The ICTY is not only financed by states but also relies on their cooperation in arresting, detaining, surrendering and transferring the accused individuals (Article 29 of the Statute of the ICTY).

In light of international law (and despite being under any obligation to do so) the development of the ICTY condition by the European Council has surely been based on an internationally valid reason. Yet, as the ICTY can only try individuals it is somewhat at odds with the ICTY condition which is aimed at sovereign countries. This is why alternative reasons for the development of the ICTY condition are better explained through the traditional means of developing political EU membership conditions.

Respect for human rights was coupled with the ICTY for the first time in the Madrid European Council of 16 December 1995 which pledged to work 'boldly and rapidly' to ensure respect for human rights and the work of the

ICTY. Yet, it was in the Florence European Council of 21 June 1996 when the first mentioning of the condition of full cooperation with the ICTY appeared. Although separate from the EU enlargement politics, the Florence European Council underlined the need for all parties to fully cooperate with the ICTY and officially established the voluntary monitoring role of the EU in this respect.

## 2.2. Sources of EU Political Enlargement Conditionality

Scholars have defined the EU foreign policy, and thus indirectly the enlargement politics as well, as ‘the capacity to make and implement policies abroad that promote the domestic *values, interests* and policies of the European Union’ (Smith, H. 2002, 8; emphasis added).<sup>5</sup> Nevertheless, there is no commonly agreed list of norms and values explaining the contents of the political EU membership conditions. Understanding the wide array of values and interests shared by the EU Member States might help grasping the reasons for developing and imposing such conditions.

Membership conditions can be seen as a way to protect the EU’s cherished values and interests from radical changes brought by membership expansion (Smith K. 2003a, 108). According to Hughes *et al.* (2004, 25) conditionality is a ‘gate-keeping mechanism embodying clearly identifiable and generally understood norms, rules and institutional configurations that are applied consistently and with some continuity over time to regulate the entry of new members’. Articles 6 and 49 of the Treaty on European Union (TEU) maintain that whilst any European state may apply to become a member of the EU they must also respect the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law (Leben 1999, 70).<sup>6</sup> Hence, the sources of political membership conditions can be

<sup>5</sup> Arguably the EU Member States also share certain substantial values and interests. Scholars have illustrated these values and interests through the EU’s uncontested power in trade policy (Meunier and Nicolaidis 2005, 248) and by being a strong normative power in global politics (Manners 2006, 81).

<sup>6</sup> Distinct from what is traditionally viewed as ‘international conditionality’ (Hughes *et al.* 2004, 13-5) the EU accession criteria, as they stand today, have their basis in essentially three broader principles. Firstly, the principle of ‘Europeanness’, a condition found already in the founding treaties of the EC (namely Article 237 TEC), was for a long time the only formal criterion for EU membership. This principle is today codified in Article 6 (1) of the TEU. Secondly, subsequent to the Copenhagen Declaration by the European Council meeting in Copenhagen in 1993, a decision to enlarge was made together with introducing criteria for the eventual EU membership of the Central and Eastern European Countries (CEECs). The third accession criterion, which was defined as late as in the Helsinki European Council of 11 December 1999, is the requirement of good neighbourliness (Smith K. 2003a, 118; Smith K. 2003b, 161).

traced back along the evolution of the EU's approach on human rights and fundamental freedoms and the principles of liberty and democracy.

As argued by scholars such as Sedelmeier (2006) and Grabbe and Nicolaidis (2000), the EU's role as a promoter of human rights and democracy in international politics was not only reflected in the process of the eastern enlargement but was also one of its distinct sources. Other scholars (Smith K. 2003a, 98-9; Alston and Weiler 1999, 10) have taken a step further on tracking the sources of political membership conditions. Karen Smith (2003, 99), for example, stipulates that although the founding treaties of the EU - namely the European Coal and Steel Community, the European Atomic Energy Agency and the European Economic Community - did not make explicit reference to the role of the EU in protecting human rights, the assertion of human rights and democracy was already present in the aspirations of Greece, Portugal and Spain to join the EU in the 1970s. Indeed, as Menéndez (2004) notes, the underlying values for liberal democracy shared among Member States have been present as an implicit EU membership condition in each of the EU's enlargement rounds.

### *3. Theoretical Approaches to EU Enlargement Politics and Political Conditionality*

This section introduces and examines two meta-theoretical approaches – rationalism and constructivism – to explain the development of political membership conditionality, and in particular the requirement for full cooperation with the ICTY, towards the Western Balkans countries of Croatia and Serbia. It advances by first laying down the main characteristics of each theoretical approach and thereafter by examining how they approach EU enlargement politics in general as well as the development of a particular political EU membership condition and its differentiated usage.

#### *3.1. Rationalist Ontology and Liberal Intergovernmentalist Theory*

The roots of liberal intergovernmentalist assertions of EU integration emerged from the scholarship of Andrew Moravcsik (e.g. 1998) who attempted to theorise European integration as a two-level game (Rosamond 2000, 136). Relying heavily on the core assumptions of realist thinking of International Relations and borrowing elements from classic intergovernmentalism, Moravcsik's liberal intergovernmentalism has been characterised as an application of rationalist institutionalism (Schimmelfennig 2004).

As intergovernmentalism assigns Member States an adamant role in the European integration process (Hoffman 1966) it is preoccupied with the

strategic bargaining between states in Brussels. Furthermore, whereas intergovernmentalism relies heavily on a state's self-perception of its relative position in the state system as a basis for national interests (Rosamond 2000, 137), liberal intergovernmentalism applies the model of two-level game and thereby defines national interests as a result of domestic politics (Moravcsik 1993).

### 3.1.1. Approach on EU Enlargement

Although liberal intergovernmentalism is traditionally perceived as a 'grand theory' seeking to explain the major steps towards European integration (Moravcsik 1998; Moravcsik and Nicolaidis 1999; Schimmelfennig 2004), its theoretical impetus has been applied in efforts to explain EU enlargement (politics) as well (Moravcsik and Vachudova 2005; Moravcsik 1998, 164-220; Mattli 1999; Sedelmeier 2005a, Schimmelfennig 2001, Smith K. 2004).

In perhaps one of the earliest theoretically informed studies on specific substantive policy areas Haggard *et al.* (1993) examines the patterns of interdependence and the intergovernmental bargaining between Eastern Europe and major western powers using *inter alia* realist approach. As to particular enlargement rounds Moravcsik and Vachudova (2005, 206) maintain that looking at the eastern enlargement there is 'little reason to believe that enlargement runs counter to the interest of either existing or new members' who simply act in accordance with their respective economic and geopolitical positions and relative bargaining power. Given the existence of a fundamental asymmetry of interdependence, which results in relatively higher benefits to the applicant countries as opposed to the EU Member States, and a strong dependence on the EU markets, the candidates are in a disadvantaged bargaining position (Moravcsik and Vachudova 2005, 201). The political consequences of an increasing power asymmetry between the candidates and the EU are evidenced by an increasing number of membership conditions (Vachudova 2005) which the candidates are better off accepting than by facing a possible exclusion from the EU (Schimmelfennig 2004).

The point of view of the third countries can also matter although in the case of Croatia and Serbia it seems to matter relatively little. The rationalist logic posits that the prevailing power asymmetry between the EU and the outsider state can be explained by the differences in gross national product (GDP) between the applicant countries and the EU Member States. As Table 2 shows, the GDP of the EU Member States is substantially higher than either Croatia's or Serbia's, which both account for less than 1 percent of the GDP of the current EU Member States.

Table 2: GDP and Asymmetric Interdependence

Enlargement	GDP applicant / GDP of EU members	GDP (per capita) applicant / GDP (per capita) EU members
UK, IRE, DK	20%	79%
Greece	2%	48%
Spain, Portugal	7%	42%
EFTA	8%	115%
CEEC	5%	14%
Croatia	0.3%	1.3%
Serbia	0.2%	0.6%

Idea and data based on Moravcsik and Vachudova 2005 (on past enlargements) and the International Monetary Fund, World Economic Outlook Database, April 2007 (on Serbia and Croatia).

Similarly, GDP per capita of Croatia accounts only 1.3 percent of the EU average, and Serbia's even less. Both Serbia and Croatia show strong power asymmetry when comparing against past EU enlargements as well. These findings allow postulating that the two countries have relatively little to say in the process of EU enlargement and in the development of the ICTY condition. Nevertheless, a somewhat higher GDP of Croatia (42,456)<sup>7</sup> in comparison to Serbia (31,589) can be interpreted to mean that Croatia could exercise greater power *vis-à-vis* the EU than Serbia. Naturally, these findings are but rudimentary means to unravel the differences in the standing of Croatia and Serbia in the enlargement process, but nevertheless show the logic behind the rationalist argumentation in explaining why countries can proceed differently towards EU membership.

For a liberal intergovernmentalist the preferences on particular EU enlargement policies (such as the ICTY condition discussed in this essay) reflect the geographical position of the Member States (Schimmelfennig 2004). The 'drivers' and 'brakemen' of the eastern enlargement, for example, could be largely positioned based on their geographical proximity with the candidates, as well as by existing cross-border trade and capital movements (Moravcsik 1998, 26). Thus, for liberal intergovernmentalists the international interdependence increases with geographical proximity, giving rise to (material) economic gains, but also through geopolitical considerations of political influence (Schimmelfennig 2004) concerning not only economic matters but issues of stability and security (i.e. geopolitics) as well.

<sup>7</sup> GDP (in billions US dollars) for both Croatia and Serbia is based on International Monetary Fund, World Economic Outlook Database, April 2007.

### 3.1.2. Reasons for Developing (ICTY) Conditionality

On a meta-theoretical level liberal intergovernmentalism assumes rationalism as its ontological basis and stresses (material) benefits, such as market access and political stability, as causes for particular EU enlargement policies (and enlargement in general). In the European Council meetings the process of bargaining for such policies is subject to side payments, manipulation of incentives among EU members and shifting costs to new members and/or candidates.

Hence, the rationalist approach to the Member State's enlargement preference formation can also be used in explaining the Member State's preferences for particular substantial enlargement policies. The ICTY condition preferences are determined by the expected individual costs and benefits to individual Member States whereby maximisation of net benefits will induce favourable EU enlargement policy decisions (Schimmelfennig and Sedelmeier 2002, 510). Rationalist approach expects Member States to favour both developing and holding tight to the ICTY condition when such is likely to improve their security environment and induce general political stability or envisage future economic benefits. Naturally, one would expect the states with highest geographical proximity and/or closest economic ties with such a country to be more inclined to disfavour the development of conditions which are likely to postpone or hinder the furtherance of enlargement (as economic gains are higher, the deeper and faster the phase of enlargement is).

### 3.1.3. Conditions

It is possible to arrive at some core conditions to explain the likelihood the EU is expected to develop the ICTY condition. In this respect the strong emphasis on the 'major steps' in European integration the pre-eminence of European Council-based decisions and its formal decision-making rules are highlighted.

Theorising issues of enlargement politics fit naturally with liberal intergovernmentalism when one considers the fact that enlargement and the development of the ICTY condition are both primarily intergovernmental processes (Dinan 2005, 219).<sup>8</sup> Given that the European Council decision-making is predominantly based on unanimity (e.g. Dinan 2005; Hix 2005), the formal decision-making rules requiring accession and association treaties being ratified in national parliaments as well as given the prerequisite of acquiring a consent from the European Parliament (although at the end stage of

<sup>8</sup> This is not to undermine the European Commission, and in particular the DG Enlargement, but these simply fall outside the scope of this essay.

enlargement), the outcomes of EU enlargement policy-making is more than a function of interstate bargaining in the European Council meetings. Firstly, no EU enlargement policy is expected to come about if any of the Member States finds it less preferable than the *status quo*. Yet, as this essay utilises the *outcomes* of interstate bargaining on the EU enlargement policies (instead of the particularities of the underlying policy-making process), it acknowledges that, in line with the rationalist reasoning, such are often lowest-common denominator outcomes. Secondly, taking into account the relative - i.e. unequal - bargaining power of each Member State, the outcome of negotiations in the European Council can be assumed to result in an agreement if the bargaining power of Member State expecting to suffer net losses is nevertheless sufficient to gain compensation through side payments. Alternatively, the weaker state will face the threat of being excluded (Schimmelfennig and Sedelmeier 2002, 513).

As Schimmelfennig (2004) describes, the rationalist framework of liberal intergovernmentalism is an agency theory requiring explanation for actor preferences and collective outcomes and where actors' actions are based on rational choice calculations of utility maximisation under given circumstances. The rationalist framework of liberal intergovernmentalism would thereby seek to explain the development of the ICTY condition as a collective outcome of interdependent and strategic rational state choices made in an intergovernmental forum of the European Council. Akin to the 'club theory', favourable decisions to developing particular EU enlargement policies are likely to take place in situations where both the EU Member States and the applicant state incur higher benefits from enlargement than the marginal costs (Schimmelfennig and Sedelmeier 2002, 512).

### 3.2. *Constructivism*

Constructivist premises, too, can be used in explaining the development of the ICTY condition on Croatia and Serbia. In fact, some scholars have argued that a non-rationalistic framework might be better suited for explaining the EU decision-making regime in the EU's Common Foreign and Security Policy (CFSP) matters whereby norms and values may have a more significant role than the rationalist assumptions on the impact of formal institutional rules would expect (Jørgensen 1997).

Whereas the rationalist approach seeks to explain development of the ICTY condition on the basis of efficiency maximisation and optimising the regulatory scope of the EU policy, constructivists emphasise purposive, norm-guided action and pursue policies coalescing with legitimatising obligations of EU identity, values and norms. As a meta-theoretical attempt to connect traditional International Relations theories to some sociological ex-

planations of enlargement conditions, constructivism questions the ontological basis of rationalist premises of individualism and materialist utility-maximisation (Rosamond 2000, 171). Hence, the basis for constructivist argument stems from the structural environment within which decisions are made. Here the assumptions of path dependency have a strong role: it relies on the idea of established formalities and routine practices explaining the possibilities of the policy actors (Rosamond 2000, 174).

### 3.2.1. Reasons for Developing the ICTY Condition

Following the arguments of constructivist scholars such as Schimmelfennig, Jørgensen and Sedelmeier, the development of the ICTY condition on Serbia and Croatia in the process of EU enlargement cannot be explained by individual cost-benefit utility calculations based on fixed state preferences and relative bargaining power (e.g. Schimmelfennig 2005b, 3). Instead, what is more likely a reason for such conditions having taken place is found in an interplay between social identities, values and norms of the key actors in the EU enlargement politics. Yet, the constructivists cannot, and do not, refute the fact that decisions on (political) conditionality are made in an intergovernmental setting of the European Council.

Based on constructivism EU enlargement politics is generally shaped by ideational and cultural factors (Schimmelfennig and Sedelmeier 2002, 513). In this way the causes of developing political membership conditions stem from the shared institutional and constitutive norms (Sedelmeier 2006). Opposed to rationalists, the sources of interests and identities of actors are socially constructed, constant to change and endogenous to interaction based on material positions and relative bargaining power (Rosamond 2000, 172-3; Knutsen 1997, 281; Pollack 2001; Christiansen *et al.* 1999).

Yet, constructivist theories may neither explain all issue areas of EU foreign policy (Pollack 2001), nor even all issues relating to enlargement (Smith K. 2004, 181), but as a meta-theory it offers a different ontological approach to explaining the formation of interests and preferences among the actors in EU enlargement politics. As opposed to rationalist logic of consequentiality, constructivists apply logic of appropriateness (or arguing) and thereby refute the liberal intergovernmentalist depiction of the bargaining in the EU's CFSP as inherently an intergovernmental process (Christiansen *et al.* 1999; Jørgensen 1997). Constructivist approach strives for consensus by convincing opponents through arguing and challenging the validity of their opponents' preferences (Schimmelfennig and Sedelmeier 2002, 515). Consequently, in a given situation a policy-decision should ideally be based on the collective identity, values and practices of the EU, as well as its formal rules and norms. In this respect Member States' preferences are not

fixed, as liberal intergovernmentalism would argue, but subject to alteration during the process of arguing.

Despite the formal institutional rules of the European Council and the Council of Ministers within which the formal decisions on developing political membership conditions are made, constructivists would argue that rationalist interpretations fail to recognise the structural environment in which the decisions are debated with Member State representatives. Constructivists highlight the diverse function and role of the actors in this process and accept that actors' identification with the Community values and norms may vary both among Member States but also among Community actors, such as the European Commission and the European Parliament. Moreover, adherence to Community values and norms can therefore be expected to be higher among Community actors, rather than Member States' governments, as the latter can be expected to be influenced by competing national and international pressures and identities (Schimmelfennig and Sedelmeier 2002, 514). Similarly, one may expect variance between different groups of policy-makers 'depending on their functional and organizational positions' (*Id*).

### 3.2.2. Approach on EU Enlargement

The eventual policy-making outcomes on political conditionality and EU enlargement at large can be expected to be in line with the Community norms and values in as long as there is no major disagreement among the policy-makers on the unitary standards of such norms or values on a given enlargement condition preference. Therefore, opposed to liberal intergovernmentalist approach, a constructivist would expect a 'low degree of variation among preferences and conflict among Member State actors' (Schimmelfennig and Sedelmeier 2002, 514) due to the effects of socialisation at the systemic level of EU policy-making.

Following the constructivist logic on the understanding of enlargement, both the speed and depth of enlargement, or horizontal institutionalisation, to non-EU countries are directly related to the extent of shared values, norms and collective identity of the EU. In other words, 'the higher the degree of community and the better the cultural and normative match, the faster and the deeper the process of horizontal institutionalization' (Schimmelfennig and Sedelmeier 2002, 515). Hence, the EU institutional expansion to non-EU countries can be described as a function of adapting to the shared norms and values of the EU. In addition, the underlying argument for constructivist approach is that the EU enlargement is ultimately a value and norm-driven phenomenon (Schimmelfennig 2005b, 173 and 189).

Table 3: Constructivist approach to EU Enlargement

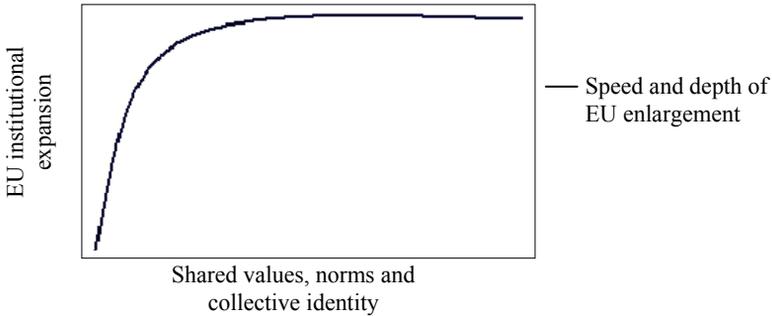


Table 3 describes the constructivist approach to EU enlargement as a horizontal asymptote whereby the speed and depth of enlargement to a particular country can be expected to increase subject to adherence to the shared values, norms and collective identity of the EU Member States. The EU enlargement is an interactive process of the applying state on one side of the spectrum and the current EU Member States on the other side. For enlargement to take place both sides must satisfy that the particular membership conditions are met. According to Schimmelfennig (Schimmelfennig 2005b, 173) ‘states that share the collective identity and have adopted the values and norms of [the EU] will also seek to become members of [it].’ The EU, in turn, ‘will admit those states that have adopted the community values and norms and are therefore regarded as legitimate members’ (Schimmelfennig 2005b, 189). As to developing the ICTY condition towards Croatia and Serbia, for constructivists it is detected through empirical evidence and explained by the adherence to the EU’s liberal norms and values and collective identity (Skålnes 2005, 229).

### 3.2.3. Conditions

To constructivists identities (i.e. constructions of nationhood and statehood) shape interests and therefore also the EU enlargement policies (Gstöhl 2005, 39; Wendt 1994, 385). Similarly, constructivists tend to ignore those theories which misrepresent the role of collective identities and their impact on interstate relations (Wendt 1994, 391). According to Risse (2001, 201) national identities are context-bound and will therefore create reluctance for deeper or faster enlargement should the identity be threatened by the prospect of enlargement. Yet, for constructivists the attitudes and interests may change over time when the old concepts underlying the identities change or become obsolete (Gstöhl 2005, 39). Should a particular Member State’s at-

titude toward a given EU enlargement policy change, this, to constructivists, is a sign of prior changed national identity (Gstöhl 2005, 40).

#### *4. Empirical Evidence: Cases of Croatia and Serbia*

The discussion in this section aims at elaborating the development and differentiated use of the ICTY condition through empirical evidence whilst analysing them through the theoretical arguments of the previous section.

In the midst of the Kosovo crisis in 1999 during the German EU presidency, the Council of Ministers adopted a common position in Cologne where the EU pledged itself to draw ‘the region closer to the perspective of full integration of these countries into its structures through a new kind of contractual relationship, taking into account the individual situation of each country, with a perspective of European Union membership on the basis of the Treaty of Amsterdam and once the Copenhagen criteria have been met’ (European Council 1999a, Common Position, para. 72). Despite making no explicit reference to the ICTY condition, the necessity of fulfilling the political membership conditions in general was implicit through the Copenhagen Principles.

In the European Council pledges and demands referring either directly to the ICTY condition or using the language of political conditionality have consistently been used since the creation of the ICTY for both Croatia and Serbia – as is evidenced in Table 1<sup>9</sup> – and the ICTY condition has become a key accession partnership priority. Moreover, while all countries in the Western Balkans have the prospect of becoming members of the EU – an objective endorsed by the Feira European Council of 19 June 2000 and later confirmed by the Thessaloniki European Council of 19/20 June 2003 – the EU has opted for an individual approach to the Western Balkan enlargement.

##### *4.1. Background on Croatia*

Croatia applied for EU membership in February 2003 and, following the Commission Opinion on Croatia’s application for EU membership in April 2004, the Brussels European Council of 17/18 June 2004 decided to give a go ahead for opening accession negotiations on the condition that Croatia will ‘maintain full cooperation with the ICTY and take all necessary steps to ensure that the remaining indictee [Gen. Ante Gotovina] is located and transferred to The Hague’ (European Council 2004, Presidency Conclusions, para. 35). Half a year later the European Council of 16/17 December 2004

<sup>9</sup> Eight times with respect to Croatia and twelve times to Serbia, as Table 1 shows.

decided that 17 March 2005 was to be the date of opening the negotiations with Croatia and reiterated the condition that General Gotovina is transferred to The Hague; nevertheless, as Gotovina remained at large, negotiations were postponed on the last minute in March 2005 (European Council 2005, Presidency Conclusions).

Finally, on 3 October 2005 Croatia's applicant status was officially recognised. This took place on the same day as the ICTY Chief Prosecutor Carla del Ponte announced that Croatia now cooperated fully with the ICTY (BBC News, 4 October 2005). General Gotovina was subsequently arrested in Spain on 7 December 2005 and brought before the ICTY to stand trial.

In terms of contractual relations Croatia's process towards EU membership was launched already during the French EU Presidency in November 2000. The presidential and legislative elections held in Croatia in early 2000 had arguably signalled a move towards democracy as a green light was shown to Croatia's EU membership aspirations. As a first step in the EU enlargement process the negotiation of the SAP was launched at the Zagreb Summit in 2000. The final declaration to the Zagreb Summit reiterated the demand for Croatia to respect its international obligations with regard to the ICTY (Final Declaration, Zagreb Summit 2000, para. 2). The SAA on Croatia, which entered into force four years after its signing in February 2005 and which does not include any reference to the ICTY condition, establishes official contractual relations between the EU and Croatia until the eventual accession takes place in future.

#### 4.2. *Background on Serbia*

The start of the EU enlargement towards Serbia can be traced back to the late 1980s and the fall of communism in Europe. Yugoslavia was included, *inter alia*, in the Council Regulation on economic aid to certain Central and Eastern European countries (i.e. the PHARE programme), but was subsequently removed at the start of the 1990s upon the outbreak of war. Until then Yugoslavia had arguably been the most western of the East European countries (Smith K. 2005, 275). Serbia's route to the EU was closed during the wars fought in the Western Balkans in the 1990s.

An official pledge for eventual EU membership was finally made in the late 1990s. In 1999 a Council common position officially extended the prospect of EU enlargement to Serbia once it had fulfilled the Copenhagen political membership criteria (European Council 1999a, Common Position, para. 7). Combined with reference to explicit criteria such a commitment by the EU in the midst of the Kosovo crisis was aimed at repeating what had been successfully applied to the CEECs (Smith K. 2005, 285), i.e. to offer a carrot to encourage reforms as well as ending the conflict in the Balkans.

In 2000 the Zagreb Summit reiterated the promise of including Serbia to the SAP on an individual basis and signalled the prospect of eventually signing of an SAA. The European Commission was assigned the task to work on a feasibility study with a view to negotiating directives for an SAA (Final Declaration, Zagreb Summit 2000). Finally, in the Feasibility Report of 12 April 2005 Serbia and Montenegro was deemed sufficiently prepared to negotiate an SAA.

Looking at the current situation, the European Council of 18 June 2006 (and reiterated again on 15 December 2006) stopped the negotiations with Serbia until it fully cooperates with the ICTY. The European Commission had suggested calling off the SAA negotiations in May 2006 (European Commission 2006a, Progress Report on Serbia, 5). In the European Commission's recent communication the prospect of Serbia's eventual EU accession was tied with meeting the condition of full cooperation with the ICTY (European Commission 2006b, Enlargement Strategy and Main Challenges 2006-2007, 14). Following the parliamentary elections held in Serbia in spring 2007 and the new government in place, the SAA negotiations resumed again on 13 June 2007 (BBC News, 7 June 2007) – despite the fact that the ICTY's main indictees, General Mladic and Dr. Karadzic still remained at large.

#### *4.3. Development and Use of the ICTY Condition: Theoretical Analysis*

As established in section 3, geographical proximity of the countries *vis-à-vis* the EU can be used to define theoretical explanations for the development of the ICTY condition. Similarly, the existence of EU liberal norms and values as a reflection of the EU standards on its core values and norms can also be used in explaining the Member State attitudes towards Croatia and Serbia in the question of the development and use of the ICTY condition.

##### *4.3.1. Rationalist / Liberal Intergovernmentalist Approach*

It is useful to look into the opportunities for economic gains based on geographical proximity of the EU Member States *vis-à-vis* Croatia and Serbia. Geographical proximity is what Moravcsik (1998, 26) describes as a 'proxy variable', determining ultimately the national preferences due to differentiated impact of a Member State's geographical locations in creating cross-border trade and investment opportunities (Schimmelfennig 2005a, 144).

Table 4 describes the opportunities for economic gains based on trade whereby each Member State's share of EU trade with Croatia is compared

with its share of the EU economic output. Should the liberal intergovernmentalist prediction hold true, one would expect the countries having a disproportionately high share of trade to be geographically closest to Croatia, and subsequently to have more favourable opinion of Croatia's membership in the EU and/or favour more lenient conditions for its membership.

*Table 4: EU Member State Shares of Exports to Croatia in 2006 (Million Euro) and EU Economic Output*

Country	Export share	EU Output share
<i>Disproportionately high share of exports</i>		
Sweden	3.6%	2.7%
Czech Republic	1.9%	1%
Italy	36.5%	12.9%
Slovakia	1.2%	0.4%
Hungary	2.6%	0.8%
<i>Proportional share of exports</i>		
Denmark	0.5%	1.9%
Greece	0.5%	2.1%
Austria	9.6%	2.2%
Germany	16.4%	20.2%
France	3.2%	15.5%
Cyprus	0.7%	0.1%
UK	2.9%	16.5%
Spain	1.1%	8.5%
Finland	0.2%	1.5%
Portugal	0.1%	1.4%
Slovenia	13%	0.3%
Malta	1.7%	0%
<i>Disproportionately low share of exports</i>		
Luxembourg	0.1%	0.3%
Ireland	0.4%	1.5%
Netherlands	1.4%	4.6%
Belgium	0.9%	2.7%
Lithuania	0.1%	0.2%
Latvia	0.1%	0.1%
Estonia	0.1%	0.1%
Poland	1.7%	2.4%

The shares of exports have been divided into three categories. The countries with disproportionately high or low share of exports have 25 % difference in 'Export share' compared to that country's share of EU output (i.e. 'EU Output share') calculated in percentage points. The idea is borrowed from Schimmelfennig (2001). The data on Croatia is based on the Republic of Croatia Central Bureau of Statistics. 'Output share' is calculated from GDP per capita, current prices in 2006 per EU member State from the EU total output in 2006 (Eurostat data).

Table 4 sheds some, although not fully straightforward, light for the rationalist expectations as the disproportionately high share of exports by the Czech Republic, Slovakia and Hungary exemplifies. The three countries being part of the CEECs that entered the EU in 2004 have all been traditionally in favour of the entry of new Member States from the Western Balkans as well as are all geographically closest to Croatia of the 2004 entries.

In addition, the disproportionately high loading on Italy is also further proof for rationalist expectations. Italy is directly bordering Croatia and has the highest share of exports (36.5%) of the countries compared. At the same time Table 4 shows somewhat conflicting outcomes as Austria, a country also bordering Croatia and whose insistence of including Croatia into the membership negotiations in the European Council of June 2004 (as a trade off to opening membership negotiations with Turkey) scores only proportionally in terms of shares of exports. Same is true with Slovenia whose export share is as much as 13 percent of total export to Croatia but which nevertheless scores only proportionally when compared against its EU output share. Similarly, Sweden as a Nordic country shows disproportionately high share of exports against rationalist expectations.

At the other extreme Table 4 posits the small and relatively distant countries (Luxembourg, Ireland, the Netherlands and Belgium) with disproportionately low share of exports. Similarly, of the 12 new CEECs that entered the EU in 2004, those that are geographically furthest from Croatia are also having a disproportionately low share of exports.

Yet, although the estimates in Table 4 offer modest support for rationalist expectations, this finding becomes somewhat blurred when conducting a similar study using foreign direct investment (FDI) as a measure in place of trade.<sup>10</sup> Table 5 shows that when using FDI in place of trade the above findings can no longer be substantiated. With respect to Croatia none of the countries having disproportionately high share of exports in Table 4 do so with respect to FDI in Table 5. Furthermore, none of the countries directly bordering Croatia has a disproportionately high share of FDI with Croatia.

Yet, in somewhat support of rationalist expectations Hungary, Italy, Slovenia (all being countries directly bordering Croatia) and Croatia's close neighbour Austria are all toward the higher end of the proportional share of FDI – in addition to accounting for more than half of the total FDI to Croatia. Similarly, the disproportionately low share of FDI for countries relatively distant from Croatia, namely Sweden, Ireland (and Slovakia) does indicate that geographical proximity may have some interpretative power.

<sup>10</sup> This is also necessary in order to produce comparable data between Croatia and Serbia as no data with respect to export shares on Serbia was found by the author.

Table 5: EU Member State Shares of Foreign Direct Investment to Croatia and Serbia in 2006 and EU Economic Output

Country	FDI share Croatia	EU Output share
<i>Disproportionately high share of FDI</i>		
Netherlands	8.8%	4.6%
<i>Proportional share of FDI</i>		
Hungary	4.4%	0.8%
Italy	15.5%	12.9%
Austria	28.0%	2.2%
Cyprus	1.4%	0.1%
Slovenia	4.9%	0.3%
Malta	0.3%	0.0%
Luxembourg	7.4%	0.3%
Germany	18.9%	20.2%
Belgium	1.1%	2.7%
Spain	0.6%	8.5%
Denmark	0.2%	1.9%
France	2.5%	15.5%
Czech Republic	0.7%	1%
UK	4%	16.5%
<i>Disproportionately low share of FDI</i>		
Sweden	0.8%	2.7%
Ireland	0.4%	1.5%
Slovakia	0.1%	0.4%
<i>Others</i>		
Latvia	-	0.1%
Greece	-	2.1%

Country	FDI share Serbia	EU Output share
<i>Disproportionately high share of FDI</i>		
Germany	26.5%	20.2%
Netherlands	6.3%	4.6%
Slovakia	0.6%	0.4%
Latvia	0.3%	0.1%
<i>Proportional share of FDI</i>		
Austria	15.2%	2.2%
Hungary	7.1%	0.8%
Greece	27.0%	2.1%
Slovenia	5.9%	0.3%
Cyprus	11.3%	0.1%
Belgium	0.2%	2.7%
Italy	1.5%	12.9%
UK	4.0%	16.5%
Luxembourg	0.3%	0.3%

Country	FDI share Serbia	EU Output share
<i>Disproportionately low share of FDI</i>		
France	4.7%	15.5%
<i>Others</i>		
Sweden	-	2.7%
Denmark	-	1.9%
Ireland	-	1.5%
Spain	-	8.5%
Czech Republic	-	1%
Malta	-	0.0%

The shares of FDI have been divided into three categories. The countries with disproportionately high or low share of FDI have 25 % difference in ‘FDI share’ compared to that country’s share of EU output (i.e. ‘EU Output share’) calculated in percentage points. The idea is borrowed from Schimmelfennig (2001). The data on Croatia is based on the Republic of Croatia Central Bureau of Statistics. The FDI figures on Serbia are based on data released by the National Bank of Serbia, the Department of Economic Analyses and Research. FDI for Serbia is converted into euros from USD based on the exchange rate on 31.12.2006 at <http://www.forex.com> (exchange rate: 0.7761). ‘Output share’ is calculated from GDP per capita, current prices in 2006 per EU Member State from the EU total output in 2006 (Eurostat data). ‘Others’ refers to cases to which not all data is available.

Table 5 also shows the EU Member State shares of FDI with Serbia and in doing so allows a comparison between Serbia and Croatia. Disappointingly for the rationalists, the geographical proximity fails to account as a palatable explanation as Hungary - the sole neighbouring country of Serbia in the dataset - fails to show disproportionately high share of FDI. The same is true when looking at countries relatively close to Serbia (namely Italy, Austria and Greece): despite having a combined FDI of more than 40% of the total FDI to Serbia, they nevertheless score only proportionally when compared against their respective EU output share.

#### 4.3.2. Constructivist Approach

For constructivists the commitment to community norms and values is a necessary – as well as the only – requirement for an eventual enlargement to take place (Schimmelfennig 2005a, 154). Looking at the wide array of the EU membership conditions that apply to the Western Balkan countries the link to Community values and norms is evident.

Croatia has signed an SAA, applied for EU membership, been awarded a candidate status and successfully started accession negotiations with the EU. To constructivists all these signal Croatia’s stronger commitment to Community values and norms in comparison to Serbia. To test whether Croatia

can be distinguished from Serbia in terms of commitment to EU values and norms, Table 6 presents a compilation of empirical data from two sources, namely the recent Freedom House study 'Freedom in the World 2007' and 'Polity IV Country Reports'. Table 6 illustrates a so-called 'Norms, Values and Identity Index' (NVI-Index) which is a combined average of countries' individual scores on Political Rights (PR), Civil Liberties (CL), Democratic Score (DS) and Polity and is used to indicate adherence to European values, norms and identity. In addition to Croatia and Serbia the countries used in Table 6 are all current EU Member States.

A number of conclusions can be drawn from Table 6. Firstly, it is evident that Croatia, with scores higher than Serbia on each individual variable, is superior to Serbia in terms of adherence to European values and norms. Secondly, as the scorings on Croatia, and even more so Serbia, in comparison to the current EU Member States show an evident discrepancy, this offers empirical proof to the constructivist approach to enlargement where the speed and depth of enlargement is a function of adherence to European norms, values and identity. In addition, as the scores for Bulgaria and Romania are similar to Croatia and Serbia (in comparison to the EU Member States) it offers further proof for the constructivist approach as these were the countries last to accede to the EU (in January 2007) and can thereby be expected to have a lower adherence to the EU norms and values.<sup>11</sup>

For rationalist approaches to the development of the ICTY condition the abovementioned findings do not play a significant role as adherence to Community norms and values is 'at best a necessary condition for enlargement' which in the absence of economic or security gains do not create a positive incentive for favouring enlargement by disfavouring particular enlargement policies (Schimmelfennig 2005a, 153).

Interestingly, based on the countries' individual scores in PR and CL one may find that those countries which have been members of the EU prior to the eastern enlargement have almost consistently higher scores. Similarly, Serbia and Croatia both score below the EU median in all individual variables.

<sup>11</sup> It is not the intention of constructivists to advocate that the longer a country has been a member of the EU the higher its adherence to European norms, values and identity (hence the NVI-Index). On the contrary, the variables used in Table 6 are those which are traditionally considered to having been in the interest of especially the Nordic and relative small Member States in the CFSP (Arter 2000; Laatikainen 2003). In line with this assumption Sweden, Finland (both Nordic Member States) and Luxembourg (one of the smallest Member States) have a maximum NVI-Index score (closely followed by the Netherlands, Denmark, Austria and Ireland).

Table 6: Norms, Values and Identity Index

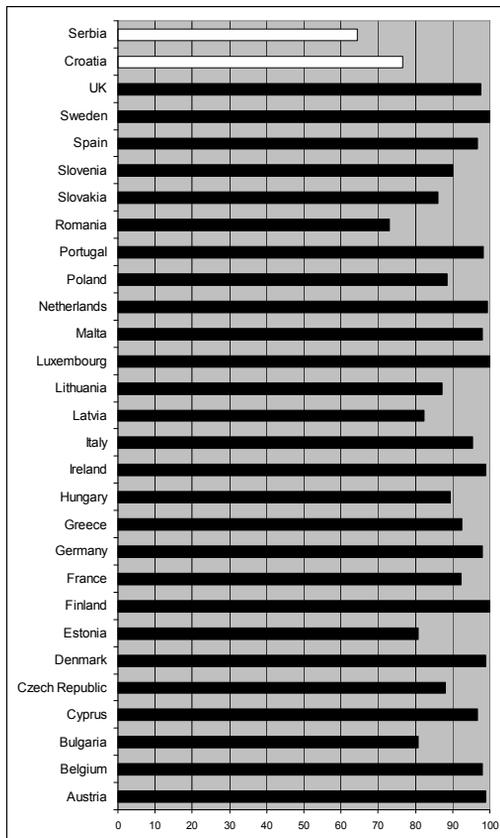
Country	PR	CL	DS	Polity	FI	NVI-index
Austria	40	58	-	10	Free	98.9
Belgium	39	58	-	10	Free	98.1
Bulgaria	36	51	20.5	9	Free	80.8
Cyprus	38	57	-	10	Free	96.7
Czech Republic	37	55	15.75	10	Free	88.0
Denmark	40	58	-	10	Free	98.9
Estonia	39	56	13.75	6	Free	80.7
Finland	40	60	-	10	Free	100.0
France	38	55	-	9	Free	92.2
Germany	39	58	-	10	Free	98.1
Greece	37	51	-	10	Free	92.5
Hungary	37	56	14	10	Free	89.3
Ireland	40	58	-	10	Free	98.9
Italy	39	53	-	10	Free	95.3
Latvia	36	53	14.5	8	Free	82.2
Lithuania	36	54	15.5	10	Free	87.1
Luxembourg	40	60	-	-	Free	100.0
Malta	39	59	-	-	Free	97.9
Netherlands	40	59	-	10	Free	99.4
Poland	38	54	15	10	Free	88.6
Portugal	40	57	-	10	Free	98.3
Romania	30	45	23.75	9	Free	72.9
Slovakia	37	54	13.75	9	Free	86.1
Slovenia	38	54	12.25	10	Free	90.0
Spain	38	57	-	10	Free	96.7
Sweden	40	60	-	10	Free	100.0
UK	39	57	-	10	Free	97.5
<i>Croatia</i>	<i>35</i>	<i>49</i>	<i>26</i>	<i>9</i>	<i>Free</i>	<i>76.5</i>
<i>Serbia</i>	<i>29</i>	<i>47</i>	<i>26</i>	<i>6</i>	<i>Free</i>	<i>64.4</i>
<b>EU Median</b>	<b>39</b>	<b>57</b>	<b>15.25</b>	<b>10</b>	<b>Free</b>	<b>96.7</b>
<b>EU Mean</b>	<b>38.1</b>	<b>55.8</b>	<b>17.6</b>	<b>9.6</b>	<b>Free</b>	<b>92.8</b>

Political Rights (PR) is based on the total score in three sub-categories containing a total of 10 variables: Electoral Process (3 variables), Political Pluralism and Participation (4), and Functioning of Government (3), and is identical to the methodology used in the Freedom House 'Freedom in the world 2007' survey. Civil Liberties (CL) is grouped into four sub-categories containing a total of 15 variables: Freedom of Expression and Belief (4 variables), Associational and Organizational Rights (3), Rule of Law (4), and Personal Autonomy and Individual Rights (4). Each variable in PR and CL is awarded points on a 0 to 4 scale where 0 is the smallest degree of PR or CL present. Democracy Score (DS) is an average of ratings for Electoral Process (EP); Civil Society (CS); Independent Media (IM); National Democratic Governance (NGOV); Local Democratic Governance (LGOV); Judicial Framework and Independence (JFI); and Corruption (CO). The DS is based on the *Nations in Transit* study by the Freedom House. The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The 2006 ratings reflect the period January 1 through December 31, 2005. The Polity Index is from the 2005 *Polity IV Country Reports* and ranges from 0 to 10, ten being the highest possi-

ble score. Freedom Index (FI) is a combined measure for PR and CL and it can range from 'not free', 'partly free' to 'free'. All countries tested are considered 'free' in the Freedom House data. Norms, Values and Identity Index (NVI-index) is calculated from each country's score on PR, CL, DS and Polity as proportions against the respective maximum score. The missing scores on DS and Polity have been disregarded in the calculation. The index ratings are based on a scale of 0 to 100, with 0 representing the lowest level of adherence to the EU norms, values and identity. Countries are presented in an alphabetical order. Apart from the NVI-Index the idea is based on Schimmelfennig (2005a).

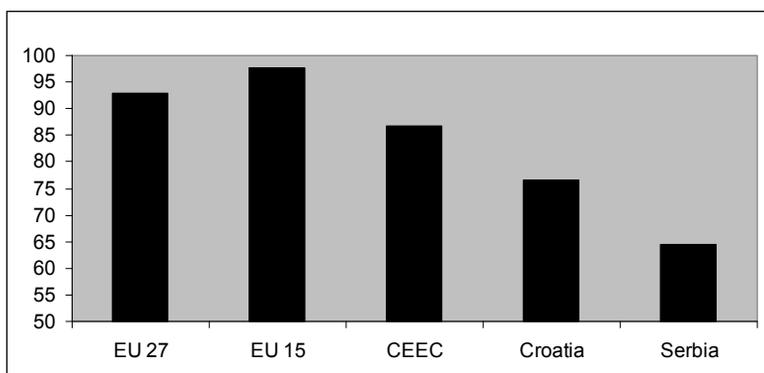
Based on Figure 1, which presents the data from Table 6 in a different form, one may see the individual countries' scorings on the NVI-Index. With the only exception of Romania (NVI-Index of 72.9), which scores slightly lower than Croatia (NVI-Index of 76.5), both Croatia and Serbia have a significantly lower NVI-Index in comparison to the EU Member States.

Figure 1: NVI-Index: individual countries



This finding is even more pronounced against the comparison to the EU median and mean values of the NVI-Index (see Table 6) which both are above 90. Surely the constructivist explanation to the development of the ICTY condition can be substantiated as both Croatia and Serbia are far behind in terms of adherence to EU norms, values and identity and thereby instigating Member States to favour a stricter set of EU membership criteria.

Figure 2: NVI-Index: groups of countries



Differentiated application, too, can be explained by the constructivist approach and the NVI-Index. Figure 2 shows the scorings on the NVI-Index of groups of countries (based on an average NVI-Index score). The scores on EU-15 countries (the EU Member States prior to the eastern enlargement) are highest in comparison to either the current EU-27 Member States or the CEEC which entered the EU in 2004 and 2007. Croatia has a score somewhat close to the average of the CEECs whereas Serbia's NVI-Index score is far below even the CEEC's average. Constructivist approach would interpret this finding as further evidence in explaining why the Member States have sought to develop the ICTY condition towards both countries, yet why the European Council has taken a somewhat harsher stand on Serbia (as indicated in Table 1 and through Croatia's evidently higher standing in the enlargement process).

## 5. Conclusion

While the number of EU Member States has risen from the six original founding states in 1952 to 27 countries since January 2007, so too has the number of conditions of becoming a member increased. The condition of 'full cooperation with the ICTY' is unique to the Western Balkans region,

yet has its sources in the general framework of the EU political enlargement conditionality. As a part of political enlargement conditionality it has its roots in the framework of norms, values and interests which can today be found in the Copenhagen Principles as well as codified in Article 6 (1) of the TEU. In future, however, the ICTY condition can hardly become a generalised condition of EU enlargement due to its particular nature of being limited to the former Yugoslav countries in the context of the ICTY.

This essay has utilised and compared both rationalist and constructivist meta-theories in explaining the development of the EU political conditionality of full cooperation with the ICTY towards Croatia and Serbia. The theoretical discussion has formed the backbone of the essay and is reflected upon in the analysis of the empirical data. Whilst acquiring two theoretically informed explanations for the development and differentiated use of the ICTY condition, this essay has aimed at discovering a wider and more conclusive explanation by treating the issue at hand as a joint empirical problem instead of competing alternatives.

The rationalist and liberal intergovernmentalist predictions face significant difficulties when testing the theory against empirical data. In analysing the liberal intergovernmentalist assumptions against the empirical data of FDI geographical proximity fails to divide the EU Member States as expected. When using trade, however, it is possible to meet the rationalist expectations on Croatia. In the light of the past studies it is in the examination of intergovernmental decision-making settings, such as the European Council, where rationalist ontology and liberal intergovernmentalist theory has proven convenient, just as evidenced by the scholarly undertakings on the eastern enlargement; nevertheless, the decision to develop the ICTY condition examined in this essay cannot be adequately explained by the rationalist arguments as the empirical evidence does not conform to the materialist assumptions of cost-benefit calculations and geographical proximity.

Yet, where rationalism proves convenient is in explaining the idea that the ICTY condition is an exercise of power politics by which the EU aims getting Croatia and Serbia to do what they would not otherwise do. It confirms that one of the underlying characteristics of EU membership conditions is a presence of power asymmetry and neither Croatia nor Serbia has much to say in the development of the conditions for their EU membership. This asymmetrical interdependency is further pronounced when comparing Croatia and Serbia against past enlargement rounds.

Whereas liberal intergovernmentalism views the EU enlargement process as an eminently Member State led phenomenon, the constructivist approach has successfully challenged this assumption by looking at the entire process through the impact of informal rules, norms and values. The empirical evidence confirms the constructivist expectations and advocates that, while

there has been a somewhat harsher stand on Serbia by the European Council, this is explainable by Serbia's 'distance' from the norms, values and identity of the EU Member States. Similarly, the empirical findings validate the constructivist explanations to the development of the ICTY condition to begin with. Croatia is clearly more EU 'ready', and this shows in its faster application process as well.

The constructivist approach fails to explain the EU enlargement politics solely on its own as material interests from time to time have shown to explain better the underlying change in attitude towards a particular enlargement policy. Yet, as there is no alternative comprehensive EU integration theory that would incorporate both ideational and material factors (i.e. constructivist and rationalist ontology), it is warranted to use both approaches hand in hand when examining the EU enlargement politics from a substantial policy point of view.

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