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“Rolling Up the Sleeves”¹

How EU policy towards Serbia and Montenegro acts as the glue that holds the State Union together?

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Abstract

The most powerful tool of EU foreign policy in dealing with potential candidate countries (and beyond) is that of political conditionality. The successes of this policy, as well as its spectacular failures, have been largely well documented by the political science research community. Far less research, however, goes into explaining the scenarios where the EU goes “beyond conditionality” (Teokarevic 2003) in its dealings with potential candidates for membership in the EU. The goal of this paper is to explain the extremely intensive and pro-active EU involvement in the drafting of the Constitution of Serbia and Montenegro and the subsequent attempts by Brussels to determine the future nature of the union between these neighboring republics. In answering this question the paper looks at the history of EU’s involvement in the region and attempts to provide a theoretical framework that can best provide the explanation for the motivation of EU’s policy makers to utilize such a direct strategy of involvement that goes far “beyond conditionality”.

The conclusions of this paper are that EU went “beyond conditionality” in dealing with Serbia and Montenegro on two levels: functional and theoretical. On the functional level, EU did not employ the principle of conditionality per se. Instead of placing conditions on Serbia and Montenegro and then cajoling the two to settle their differences (both pre-State Union agreement and post-Action Plan), EU actually went in and was actively involved, “beyond conditionality”,

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in resolving problems that arose from the weak State Union (harmonizing the financial systems, parliamentary referendum crisis, independence referendum rules clarification and public declarations supporting the State Union). On a more theoretical level of foreign policy preference formation, conditionality had been replaced by 'high politics' (similar to the cases of Romania, Bulgaria and Macedonia). This can be explained both by a bureaucratic/institutional approach that draws upon neo-functionalism and the constructivist approach, in particular in terms of how the EU constructs its foreign policy preferences. The case of Serbia and Montenegro, which because of its volatility is probably the most important accession case, shows us that high politics indeed rule out in the end of the day and that the EU is read and willing to "look the other way" on a number of its own conditions, for the sake of *realpolitik*.

Introduction

In a 2000 *Economist* article, the European Union's main external relations focus and task for the near future were understood as "the avoidance of another war in the Balkans, which remains all too real a possibility." As main evidence of the possibility of another such war, the *Economist* article proposed that "several signs suggest that his [Milosevic's] next war could be fought over Montenegro."² The article goes on to suggest that the best way to prevent such a war would be to support the independently minded Montenegro. In defense of the *Economist*, that article was written well before the October 2000 democratic revolution that toppled the Milosevic regime. However, what the *Economist* article and many observers since have missed is that one of European Union's main foreign policy objectives had *always* been the prevention of war. The very impetus for the *creation* of the European Union was the fear of another war, not in the Balkans though, but rather one between France and Germany.

In general terms, this paper expands on the ability/willingness of the EU to project such a reconciliatory goal in Serbia and Montenegro and subsequently in the wider region of Western

² "The Next Balkan War." *Economist* 4/1/2000 Vol. 355 Issue 8164

Balkans. In particular, the goal of this paper is rather modest: to explain the extremely intensive and pro-active EU involvement in the drafting of the State Union Constitution and eventual “running” of Serbia and Montenegro. It is argued here that the former and the latter are closely related, as the Western Balkan “peace project” requires exactly that form of intensive interaction that often requires the EU to willingly undermine its own conditions and sometimes even look beyond them.

In elaborating such a pro-active approach we will have to dwell into the history of the EU’s involvement in the region and also try to assess the EU policy makers’ motives in utilizing such a direct strategy of involvement that goes “beyond conditionality”³ dynamics evident in the Central Eastern European countries’ (CEEC) accession process. This paper is an attempt to introduce the logic behind the dynamic of EU interaction that goes “beyond conditionality” into the lexicon of the EU enlargement studies.

The Constitutional Charter of the State Union of Serbia and Montenegro would have been an impossibility had it not been for the “very prominent role played by the EU” whose “proactive role in the constitutional engineering of Serbia and Montenegro far surpasses the policy model known as conditionality,” as argued by Teokarevic.⁴ To try to explain such EU involvement in Serbia and Montenegro and how it may have gone “beyond conditionality” we try to explain a theoretical framework that explains such a policy preference (Part I). To empirically test this theoretical model we will analyze how the EU has enacted its conditions in Serbia and Montenegro (Part II) and then attempt to offer some reasons for why it has gone “beyond conditionality” (Part III). However, it should be noted that the question of “why” EU

³ “Beyond conditionality” is a concept first introduced by Jovan Teokarevic who uses it in his article on this same subject matter, “EU Accession and the Serbian-Montenegrin Constitutional Charter” that appeared in the Winter 2003 edition of the *Romanian Journal of Political Science*.

⁴ Jovan Teokarevic, “EU Accession and the Serbian-Montenegrin Constitutional Charter,” *Romanian Journal of Political Science* (3 - 2 Winter 2003): 45-46.

went beyond conditionality in Serbia and not in some other countries is difficult to answer completely.

I. Dynamics “Beyond Conditionality” – Theoretical Framework

It is necessary to situate the use of conditionality, or in this case the idea of going “beyond” it, in terms of theory. Schimmelfennig and Sedelmeier (2005) identify three models of how countries adopt the rules of the EU and in essence get “Europeanized”: external incentives, social learning and lesson-drawing. They note that the success of democratic conditionality depends in large part on the initial conditions in the candidate countries concluding that EU’s influence is the strongest in the fragile and unstable democracies, noting Serbia explicitly as an example of such a case.

In this paper, however, we are primarily trying to assess the EU motivations for pro-actively involving itself in the elaborate tasks of constructing a state constitution and even forgoing its own conditions in order to advance the eventual contractual relationship based on those very conditions. Which theory then best explains such a pro-active EU dynamic? This question needs to be explained from both the perspective of the EU and the specific country in question.

A unique dynamic exists in special cases where conditionality alone is insufficient or domestic variables call upon for a different mechanism of Europeanization. Schimmelfennig and Sedelmeier argue that democratic conditionality is “likely to be ineffective in the case of failed states, primarily those affected by severe ethno-political conflict, such as many successor states of Yugoslavia. In the latter cases, the EU would need to go *beyond reinforcement by reward* and

use both coercive and *supportive strategies to have positive impact*.⁵ This paper thus looks at one example where conditionality alone does not suffice. The case of EU involvement in resolving the Serbia and Montenegro constitutional impasse is an explicit example of the EU using such “supportive strategies...beyond reinforcement by reward... to have a positive impact” and is an empirical contribution to the theoretical dynamics uncovered by Schimmelfennig and Sedelmeier’s seminal contribution to the study of European Integration. While Serbia and Montenegro is largely (entirely?) an example of the EU using “supportive strategies” one would not need to look much farther/further east to find “coercive strategies” as well, the main example being Lukashenko’s government in Belarus.

Schimmelfennig and Sedelmeier argue that the export of rules and *democratic conditionality* do not lend to being explained through social learning and lesson-drawing. Our analysis largely agrees with that assessment, although from the EU perspective we will prove that “lesson-drawing” does explain interacting with Serbia and Montenegro “beyond reinforcement by reward”, especially when seen from the historical examples of “learning” from the previous Balkan conflicts. The EU therefore has considerable interests to act so pro-actively in Serbia and Montenegro and has also “learned” to do so.]

II. How the EU Acts “Beyond Conditionality”

The country created by the 2003 Constitution was dubbed by commentators as “Solania”⁶ and in many ways had been plagued by constitutional problems from the very start⁷ (including

⁵ Schimmelfennig and Sedelmeier 214, emphasis added.

⁶ Julie Kim, *Serbia and Montenegro Union: Prospects and Policy Implications*, CRS Report for Congress, February 2, 2005. Accessed on April 26, 2005 <http://www.fas.org/sgp/crs/row/RS21568.pdf> page 1.

⁷ Problems also range from the “... division of ambassadorial posts between Serbia and Montenegro, especially those postings which are seen as most important or attractive destinations...” to “The supreme court of Serbia and Montenegro, for example, still has neither its own premises nor a clearly-defined set of powers.” Delevic-Djilas

the bizarre case of the national anthem⁸). For example, the President of the State Union was also the Vice-President of the Democratic Socialist Party (DPS), the pro-independence party of the Montenegrin Prime Minister Milo Djukanovic.⁹ The EU went “beyond conditionality” by actively involving itself in the day to day running of the State and in actively trying to preserve the State Union. To illustrate how the EU acted in such a pro-active manner that relied on more than just mere conditionalities we will look at five empirical examples: the negotiations of the Serbia and Montenegro Constitutional Charter, the Federal Parliament election crisis, the “twin-track” approach to economy, the Montenegro referendum and the ICTY conditionality. These examples will provide empirical support for Professor Teokarevic’s assertion that the “EU will have to be engaged to an extraordinary degree in its [Serbia and Montenegro’s] day-to-day workings for years to come, to give the nascent Union state even a chance of survival.”¹⁰

1. Negotiations of the Serbia and Montenegro Charter

At the meeting of the EU-FRY Consultation Task Force held in Belgrade in July 2002, it was made clear to the two republics that coming up with a Constitution was a “requirement to the completion of the feasibility study.”¹¹ Therefore, from the onset of EU’s policy towards pro-

“External debt is 11.6billion USD, or about 140% of GDP.” Woehrel, Steven Woehrel, *Serbia and Montenegro: Current Situation and US Policy*, January 18, 2005 Accessed on April 26, 2005 <http://www.usembassy.it/pdf/other/RL30371.pdf> page 10.

⁸ Under Article 4, the State Union is assured having an anthem. A proposal to unite the two anthems of the Republics in one amalgamation (much alike the current Italian anthem) did not go over well, despite the need to come up with a solution before the 2004 Summer Olympics in anthem. In the end, the Serbian Orthodox Patriarch opposed the Montenegrin part of the anthem, “Oj, svijetla majska zoro” because it was composed by Sekula Drljevic, a supposed “neo-Nazi and a pagan”, according to the Patriarch Pavle. Slobodan Kostic, “Boze Zore,” *Vreme*, August 12, 2004.

That at the Olympics, Serbia and Montenegro was represented by the “Hey Slavs”, the old anthem of Tito’s Yugoslavia, illustrates the difficulty of getting compromise between the two Republics on even the most mundane of Constitutional arrangements.

⁹ He has recently identified Serbia and its government, as *the* Republic that is standing in the way of EU progress. Vera Didanovic, “Tuzibaba I oponenti,” *Vreme*, December 2, 2004.

¹⁰ Teokarevic 39.

¹¹ Teokarevic 44.

democracy Belgrade government, the onus was placed on having a unified constitution and one state. The Charter was officially adopted on January 2003, following the signing of the Belgrade Agreement on March 14, 2002. It is largely acknowledged that “the fact that the long negotiations between Belgrade and Podgorica were positively concluded at all was due, to a large extent, to the promise and prospect of membership in the EU and to the direct participation of the EU in the negotiating process.”¹²

Nathalie Tocci argues that the EU negotiated Belgrade Agreement and the eventual Constitutional Charter both “explicitly stated that EU integration was the very *raison d’être* of the State Union... [suggesting that the] State Union was a prerequisite (or at least a catalyst) for integration in to the EU, and that the EU integration would represent the essential glue keeping the common state together.”¹³ Tocci argues that while the EU was simply a framework in Cyprus, in Serbia and Montenegro “the Union was instrumental both as an actor and as a framework.”

“In 2002, the Union stepped up its involvement, mandating High Representative Javier Solana to mediate an agreement. Solana’s direct intervention was considered by some in the region as excessively intrusive. But few dispute the fact that without it the agreement may not have been reached. In Brussels, the Belgrade agreement was generally considered one of the first concrete successes of the Common Foreign and Security Policy.”¹⁴

The involvement of the EU went well “beyond conditionality” and it subscribes to the dynamic of “*supportive strategies...beyond reinforcement by reward... to have a positive impact*. The EU first sought pro-actively to identify the state with which it was to have contractual relationships, seeing as Montenegro at the time operated as an independent entity.

¹² Teokarevic 40.

¹³ Tocci 563.

¹⁴ Tocci 562. – Teokarevic argues a similar point when he states that ““The agreement required considerable effort on the part of the EU – both in public and behind the scenes, including active shuttle diplomacy by Javier Solana.” Teokarevic 42.

The involvement of Solana and his signing of the Constitution points to the unprecedented level of EU involvement. Once Serbia and Montenegro was identified, the conditionalities to be followed by it in its relationship with the EU were laid by the Council.¹⁵

2. The Federal Parliamentary Election Crisis

To further illustrate the problems of reaching consensus one has to only look at the federal parliament crisis caused by the Republic of Montenegro not wanting to spend money on the Parliamentary elections (which according to the Constitution were supposed to be held in February 2005 - Article 20) since it intended to hold a referendum on independence in May 2006. The crisis was finally averted on April 7th, 2005 through negotiations between the officials of Montenegro, Serbia and Javier Solana. The decision was made to hold the Federal Parliamentary Elections alongside the Republican Parliamentary Elections. The Federal MPs would have their mandates extended until those Republican election dates, although with Montenegro independence the Federal Parliament ceases to exist.¹⁶ This again points to the extent to which the EU was involved in the very day-to-day constitutional problems.

¹⁵ “The main priorities identified for Serbia and Montenegro including Kosovo relate to its capacity to meet the criteria set by the Copenhagen European Council of 1993 and the conditions set for the Stabilization and Association process, notably the conditions defined by the Council in its conclusions of 29 April 1997 and 21 and 22 June 1999, the content of the final declaration of the Zagreb Summit of 2 November 2000 and the Thessaloniki agenda” - Council Decision 2004/520/EC 14 June 2004 on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Resolution 1244 of 10 June 1999. *Official Journal of the European Union* 26.6.2004. L 227/21 – Similarly The Council Regulation that replaced PHARE and OBNOVA aid programs with CARDS noted in the Article 2 that “The Main purpose of the Community assistance is to support participation by the recipient countries in the stabilization and association process.” - Council Regulation (EC) No 2666/2000 of 5 December 2000 *Official Journal of the European Union* 7.12.2000. L 306/3

¹⁶ Milan Milosevic, “Pisak briselskog voza,” *Vreme*, April 14, 2005. – To further elucidate this crisis and its implications one should consider that the “Serbian legal expert Momcilo Grubac told the Belgrade daily Politika that representatives to the Serbia and Montenegro parliament ‘no longer have legitimacy because their term in office has expired. They can keep meeting, but their decisions will not be legitimate... But the president of the Serbia and Montenegro Constitutional Court, Montenegrin lawyer Blagota Mitric, argues that the representatives’ mandates last until the next elections. He added that for legitimacy’s sake Serbia and Montenegro should regulate the postponement of elections with a special law or by amending the Constitutional Charter.” Jovanovic.

3. The “Twin-Track” Approach to Economic Integration

According to Delevic-Djilas, “the EU remains attached to the concept of the State Union of Serbia and Montenegro and wants the SAA to be concluded with this overarching entity.”¹⁷ To prove the extent of EU’s commitment to the now defunct State Union, we need only to examine EU’s decision to incorporate a “twin-track” economic approach to Serbia and Montenegro, without which the State Union would have not been able to receive the positive Feasibility Study.

The Council outlined the “principles, priorities and conditions” on which the EU-Serbia and Montenegro partnership was to be conducted made explicit references to the need to “dismantle existing and avoid new obstacles to the state’s internal market”¹⁸ This was then one of the main, if not *the* main conditionality of the EU towards Serbia and Montenegro. However, at the September 4th 2004 EU foreign ministers’ meeting in Maastricht, the ministers hinted at the need to utilize the “twin-track” approach to financial integration with the EU.¹⁹

The problem with the two economic systems lay in the fact that since 1998 Montenegro had pursued its own financial policy and the question of synchronizing the agricultural tariffs with those of Serbia became especially difficult.²⁰ However, legally both the Council Decision 2004/520/EC and the Article 3 of the Constitutional Charter referred to the “harmonization of the economic systems of the member states in line with the principles and standards of the European

¹⁷ Delevic-Djilas, Milica. “Comment: On the Twin-Track Highway to Europe.” *Institute for War and Peace Reporting* December 24, 2003. http://www.iwpr.net/index.pl?archive/bcr3/bcr3_200412_534_3_eng.txt - Similar point was made by Javier Solana in his meeting with Montenegrin Prime Minister Milo Djukanovic when he “reiterated that the EU’s framework for a European perspective for Serbia and Montenegro remains the Belgrade Agreement and the Constitutional Charter. He stated that the road towards Europe will be better and faster together rather than separate.” Gallach, Cristina. “Javier Solana, EU High Representative for the CFSP, met with Milo Djukanovic, Prime Minister of Montenegro.” EU Commission’s Delegation to SCG Website March 3, 2005. Accessed on April 25, 2005 <http://www.eudelyug.org/en/news/news/final20050303/final20050303.htm>

¹⁸ Council Decision 2004/520/EC June 14 2004

¹⁹ Igor Tintor, “A Two-Track State,” *Transitions Online* September 13, 2004.

²⁰ Vladimir Medjak, “Twin-track approach towards Serbia-Montenegro,” *Institute for War and Peace Reporting* http://www.iwpr.net/index.pl?archive/bcr3_200412_534_3_eng.txt

Union.”²¹ Finally and officially, at the Council of Ministers’ meeting in Luxembourg on 11-12 October 2004, the “twin-track” approach was officially adopted.²² This approach illustrated the near impossibility of synchronizing agricultural tariffs²³ between the two Republics and the commitment of the EU to somehow and at some point conclude the SAA with Serbia and Montenegro as a whole, even if it meant negotiating the two economic annexes separately.

Market synchronization was clearly a condition imposed by the EU, but it shoved it aside in the face of common sense and *realpolitik*, especially since economic harmonization will *have* to be achieved before the eventual accession to the EU. The actual negotiations for the SAA opened officially in Belgrade on October 10th, 2005, right as the EU Commissioner for Expansion, Olli Rehn promised with the conclusion of the positive Feasibility Study in April of 2005.²⁴ It is evident that the EU pushed through all the obstacles, most imposed by *its very own* conditionalities, in order to start negotiations in the fall of 2005.

4. The Montenegro Independence Referendum

Montenegrin government had not received much moral support from the EU for its drive towards independence, at least not since the fall of the Milosevic government. On 25th February

²¹ Article 3 *Constitutional Charter of the State Union of Serbia and Montenegro*. Ministry of Foreign Affairs Website Accessed on April 26, 2005 http://www.mfa.gov.yu/Facts/const_scg.pdf

²² Communication Strategy of the Republic of Serbia about the Stabilization and Association Process of the State Union Serbia-Montenegro, Government of the Republic of Serbia European Integration Office December 16, 2004 Accessed on April 25, 2005, <http://www.seio.sr.gov.yu/code/navigate.asp?Id=74> page 4.

²³ A clarification on the agricultural tariffs may be of use here. “Tariffs are on average several times higher in Serbia than in Montenegro... In Montenegro, the most frequently applied tariff rate is 1 per cent (41 per cent of all products) as well as 3 per cent and 5 per cent (15 per cent of products each) and 0 per cent (12 per cent of products). In Serbia, the tariffs that are most frequently applied are 1 per cent (33 per cent of products), 10 per cent (23 per cent of products) and 5 per cent (17 per cent of products). The two highest tariff rates (20 and 30 per cent) are applied to over 20 per cent of products and the lowest tariff rate – 0 per cent- is quite insignificant (applied to 0.1 per cent of products)... This disparity is especially pronounced for agricultural products. The average nominal tariff for food amounts to 16.7 per cent in Serbia, 3.1 per cent in Montenegro and 5.2 per cent in the EU.” Daniel Gross et al, “On the Cost of Re-establishing Yugoslavia: First Estimates of the Economic Impact on Montenegro of Establishing a Customs Union with Serbia,” *Southeast European and Black Sea Studies* 4(1) (January 2004): 123-124.

²⁴ “EU otvorila vrata za SCG.” *B-92 Online* April 26, 2005 Accessed on April 26, 2005 http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=04&dd=26&nav_id=167222

2005 Javier Solana publicly opposed the 22nd February proposal by the Montenegrin government which would have created a union of two independent, internationally recognized republics. Solana indicated that such a change would “push away” Serbia and Montenegro from EU accession.²⁵ In a meeting with PM of Montenegro Djukanovic, Solana reiterated that “the road towards Europe will be better and faster together rather than separate.”²⁶ Solana had also indicated that separating one country from another would not be a “simple matter” and that it would not be sufficient to have a “majority of one person”²⁷, a clear reference to the very tight independence polls.²⁸ Meanwhile, the EU negotiated Article 60 of the State Union Constitution affirms that the Republic that decides to leave the Union would not inherit the international personality of the State Union of Serbia and Montenegro. Essentially, this means that Montenegro will have to apply for membership in all international organizations now that it has chosen the path to independence (save for in WTO where Serbia and Montenegro have applied separately).

Furthermore, the constitutional changes made on April 7th, 2005 also referred to the referendum rules outlined in Article 60. The changed article called for a greater role of the EU as well as maintaining a “European standard” in conducting the referendum. This “European Standard” was then formulated by the Solana appointed envoy Miroslav Lajcak of Slovakia and involved a very stringent demand of having a 55% majority of a 50% voter turnout vote for independence. The Montenegrin Parliament finally adopted this formula on 27th February 2006

²⁵ Igor Jovanovic, “Ex-Ex-Yugoslavia: A Virtual Country,” *Transitions Online* March 2, 2005.

²⁶ Gallach.

²⁷ Drashko Djuranovic, “Plan Protiv Referenduma,” *Monitor* Accessed on April 25, 2005
http://www.monitor.cg.yu/arhiva/a_756_01.html

²⁸ “The most recent polls [October 2004] show 41% supporting independence, 39% against and 20% undecided.” “Semi-independent.” *Economist* 4/10/2004 Vol. 371 Issue 8370 - In March of 2005 the public “opinion poll conducted by the independent Center for Democracy and Human Rights (CEDEM) in Podgorica, around 44 percent of polled Montenegrins advocate an independent Montenegro, 40 percent want the state union to survive, and the rest plan to abstain from the referendum.” Jovanovic *Transitions Online*

and organized a referendum, which passed with the very slight 0.5% margin, under its rules on May 21st.²⁹ The EU has thus been very pro-active in trying to maintain the State Union of Serbia and Montenegro. The Lajcak Formula favored the anti-independence camp significantly, to the point where it was not clear whether it was even a democratic proposition. Of great concern was a situation where a majority between 50-54.9% would have voted for independence and yet the EU imposed rules would have forced Montenegro to preserve the State Union.

5. The ICTY Conditionality

The EU had published a positive Feasibility Study *and* rushed the negotiations of the SAA despite the fact that the US³⁰ and the Human Rights Watch NGO³¹ had in January of 2005 condemned Serbia's lack of cooperation with the ICTY. Serbia's responsibility to the ICTY is clearly one of the conditions underlined by the Feasibility Report and will need to be fulfilled before membership talks begin. On February 27th 2006 the EU gave Serbia until the start of the second round of SAA negotiations (April 5th, 2006) to hand over the Bosnian Serb General Ratko Mladic. However, on March 31st 2006, the EU again relented and eased pressure on Serbia with a decision *not* to suspend the SAA negotiations.³² Finally, after delaying punitive action for almost two full years, the EU finally suspended the SAA negotiations in May of 2006. However, almost instantly Javier Solana made it clear that the arrest of Mladic was NOT a condition, but

²⁹ Nedjeljko Rudovic, "Montenegrins Accept EU Referendum Rules", *Institute for War and Peace Reporting* Accessed on April 6, 2006 http://www.iwpr.net/?p=brn&s=f&o=260118&apc_state=henpbrn

³⁰ "For Fiscal Year 2004, Administration did not issue the certification and therefore a portion of FY2004 aid to Serbia (estimated at \$16 million) was suspended. As recent as January 2005, the Administration announced that because there had been "no improvement" in Belgrade's cooperation with the tribunal, the US would withhold an additional \$10 million." Woehrel 14.

³¹ "The government is unwilling to cooperate fully with the International Criminal Tribunal for the former Yugoslavia and efforts to prosecute war criminals before domestic courts are inadequate." *Country Summary Serbia and Montenegro*, Human Rights Watch January 2005 Accessed on April 25, 2005 <http://hrw.org/english/docs/2005/01/13/serbia9859.htm>

³² Matic, Tanja, "EU Grants Serbia More Time Over Mladic", *Institute for War and Peace Reporting* Accessed on April 6, 2006 http://www.iwpr.net/?p=brn&s=f&o=260114&apc_state=henfbrn260118

rather than cooperation with The Hague tribunal was. Therefore, as soon as ICTY determined that Serbia was cooperating, and not when or if Mladic was arrested, would the talks restart.

This case points to an obvious conflict between the “grand-strategy” supportive strategies favored by Javier Solana and the commitment to the fulfillment of conditionalities practiced by the DG Enlargement. While SAA negotiations were finally suspended in May 2006, it took the EU considerable time to do so and even then only after significant pressure from the ICTY main prosecutor. Even once the suspension took place, Javier Solana made sure to make a public qualification that the Mladic arrest was not the main conditionality, thus further offering a supportive strategy that seeks to make the conditionality less coercive. It is very likely that under pressure from Mr. Solana and the Council of Ministers, the ICTY will eventually give Serbia a positive assessment, whether Mladic is finally captured or not. There is simply too much at stake for the EU and furthermore the above empirical examples point to a pattern of EU pro-active supportive strategy that is unlikely to stop.

III. Why the EU Acts “Beyond Conditionality”

To understand the motives for the kind of foreign policy decisions that the European Union has made in relation to Serbia and Montenegro, we must first assess the history of EU’s involvement in the region (and its lesson-drawing dynamic) and then finally assess the actions and the motives of the EU.

In his main work in International Relations (IR) theory, *Perception and Misperception in International Politics*, Robert Jervis, using case studies from clinical psychology, tries to explain how decision makers “learn” from their past experiences. Jervis concludes that “firsthand experiences”, “generational effects”, “the last war” and “failures” all contribute to how decision-

makers make policy decisions.³³ It is interesting how Jervis's approach can explain EU's involvement in the Western Balkans exactly because there was the "last war" EU had to directly involve itself with, with a "generation" of policymakers that went through it in the "formative years" of the Common Foreign and Security Policy (CFSP) and an involvement that was generally perceived as a gross "failure". This paper is making an argument that the form of interaction EU is undertaking in the Western Balkans goes "beyond conditionality", especially in comparison with the Central Eastern European countries, and to understand to reasons why EU is taking such an approach it is necessary to survey the history of EU involvement in the region, as it is exactly the Balkan Wars of the 90s that are, for better or for worse, conditioning the current EU response.

Interestingly, lesson-drawing from the Balkan conflicts could also be seen as a social constructivist dynamic, especially since it essentially operates under the "logic of appropriateness" identified by March and Olsen and is at the forefront of current constructivist EU integration research as presented by Alexandra Gheciu, Jeffrey Checkel, Michael Zürn and Frank Schimmelfennig in the October 2005 edition of *International Organization*. While these authors concentrate on how states become socialized by European institutions, whether the EU or NATO, and thus how we should bring the "domestic" back into the forefront, our analysis posits that in many ways we should also concentrate on the socialization and social-learning processes of the institutions themselves.

³³ Robert Jervis, *Perception and Misperception in International Policies*, (Princeton: Princeton UP, 1976): 217-282. A note here on Jervis's work may be necessary. It was his intention to clarify how decision makers were in fact often drawing the incorrect conclusions from their past experiences and thus IR theory should not put too much credence in, or at least be highly cautious in using, rational choice. This paper is not making a normative conclusion as to whether the EU is making the "right or wrong decisions" and therefore whether they are learning the "right or wrong" lessons. It is the intent here to use Jervis's research to support the concept of historical events influencing decision makers and fashioning their response for future involvement in similar situation or in the same region. The point here is that EU "learned" something from past Balkan Wars and that "something" is fashioning its response today. Whether the EU learned the right things or whether the current policy is right, is not the scope of this paper, but may be assessed in the policy prescription part of the conclusion.

The difficult lessons of the CFSP formulation throughout the 1990s have essentially “taught” the EU to be pro-active in the region and not wait to act as a peace maker while the conflict is raging, but rather a peace guarantor. So while social constructivism is not used to explain the dynamic of EU involvement in the constitution formulation analyzed here, it might very well explain the underpinning rationale behind such an idea in the first place. It is also important to note that the line separating Jervis influenced theory of lesson-drawing and that of social constructivist “logic of appropriateness” is very blurred. All that a “generational effect” may in the end mean, for example, is a common adoption of a norm of behavior by a particular group of decision-makers, states and/or institutions.

The failure of the European powers to prevent and assuage the Balkan War by agreeing on a common policy towards the newly formed independent countries is largely responsible for the carnage that ensued across the Balkan Peninsula. Despite the warnings of the Arbitration Commission set up by the General Affairs Council of 16 December 1991 that raised serious doubts as to Croatia’s respect for minority rights, the German government placed “immense pressure” on the EC, which eventually recognized Slovenia and Croatia on 15th January, 1992.³⁴ Not only did the EU not follow its own political conditionality relating to minority rights, democracy and rule of law, but the newly formulated European *Union* was proven to be incapable of operating a common foreign policy with any success. EU scholar Desmond Dinan summarizes the effect of the Yugoslav conflict in his *Ever Closer Union*:

“Far from reflecting well on the EU, the Yugoslav war emphasized deep foreign policy differences among member states and showed the limits of EU international action. More than any other event or development since the end of the Cold War, Yugoslavia demonstrated the extent to which ‘the dominant foreign policy reflex in Western Europe [continued to be]

³⁴ Dimitris Papadimitriou, “The EU’s Strategy in the Post-Communist Balkans” *Southeast European and Black Sea Studies* 1(3) (September 2001): 80.

national, not communitarian.’ The EU’s ineffectual involvement also sapped popular support for European integration and for the fledgling CFSP.”³⁵

Although when Robert Jervis speaks of “generational effects” he refers to particular generations of people (such as the May 1968 generation or the 1930s generation), we are taking the liberty here of referring to a “generational effect” on a policy, in this case the CFSP and perhaps in extension subsequently on Enlargement. The CFSP was really in its formative stages, even if only as an idea, in the early 90s and the failure to prevent the Balkan Wars has created a kind of a “generational effect” on European decision makers.

The shift in policy, from one of ‘sticks and carrots’ in terms of aid to one of direct involvement and potential membership, followed the Kosovo crisis and the NATO bombing of Serbia in the spring of 1999, but was also motivated by the complete failure of CFSP to alleviate the armed tensions in the region. Part of the ‘sticks and carrots’ strategy was the July 1996 Community regulation on assistance that created the OBNOVA aid program. While political conditionality³⁶ was applied to this program, the eventual prize was aid, not membership, and thus the states intended to benefit under it did not take it too seriously. Another attempt was the creation of the Stability Pact for South Eastern Europe on May 17, 1999. However, the Stability pact was not even a EU instrument, but rather had “its further development and implementation... vested in the OSCE.”³⁷

The Kosovo crisis, seen as the culmination of utter and complete failure of CFSP (and of the EU’s foreign relations capabilities as a whole throughout the entire 90s), spurred EU into

³⁵ Desmond Dinan, *Ever Closer Union* (Boulder: Lynne Rienner Publishers, 1999): 521.

³⁶“Respect for democratic principles, the rule of law and human rights and fundamental freedoms as an essential element of the application of the entire program.” Council Regulation (EC) No. 1628/96, OJ L 204, 14 August 1996, I (Art. 2) quoted in Christian Pippan, “The Rocky Road to Europe: The EU’s Stabilization and Association Process for the Western Balkans and the Principle of Conditionality,” *European Foreign Affairs Review* (9 2004): 223.

³⁷ Pippan 227.

action.³⁸ In particular, this led to the creation of the Stabilization and Association Process (SAP) and the actual promise of EU accession to the nations of the Western Balkans. While the SAP itself is not evidence of EU involvement “beyond conditionality” it is a step towards it, as it draws its roots from passive conditionality of pre SAP aid agreements which eventually led to the pro-active involvement of the EU in the region with the potential of EU membership as the “carrot”. The history of the EU involvement, and the lesson-drawing dynamic, therefore offers two explanations for its policy making in relation to Serbia and Montenegro. First, it has conditioned the kind of policy EU undertakes (ever increasing in involvement and pro-activeness) and second, it has taught the EU a lesson on preserving nations in their constitutive form and shying from solutions that seek to create more independent states, of particular importance to our specific example under analysis.³⁹

Explanations for leniency of conditions and pro-activeness of interaction are not only found in EU’s preference formation dynamics but also in the domestic politics situation in Serbia. Specifically, the threat of the Radical victory is ever present. The Serbian Radical Party (SRS) led by Vojislav Seselj, now in the Hague facing war crimes charges, won the majority of parliamentary seats in the March 3rd, 2004 Serbian Parliament. However, a minority government of democratic parties, dependant on Milosevic’s Socialist Party of Serbia (SPS) for votes, managed to stave off the radical challenge. Later on that year, Dusan Tadic, the leader of the late-Djindjic’s Democratic Party (DS), barely managed to stave off the surge by the SRS’s Nikolic in the second round of the Presidential elections

³⁸ Papadimitriou 76.

³⁹ Whether this second lesson is the “right” lesson can not be assessed fully at the moment. Serbia and Montenegro is still in existence, but as it will be proven later, it is a very feeble Union. The ultimate decision can not be made until (and if) Serbia and Montenegro becomes member of the EU as one or two countries.

Another important element in the equation is the concern over the resolution of the Kosovo question. Polling results (from end of 2004) indicate *that majority of Serbs do not* favor cooperation with Kosovo Albanians (38%), do *not* favor “any” solution proposed by the UN, including independence (64%), believe that *new Kosovo borders* along ethnic lines are the “only means by which to guarantee long-lasting security” (34%). Even voters of extremely liberal and pro-democratic parties (such as the G-17) overwhelmingly seem to believe that some territorial gains can still be made by dividing Kosovo along ethnic lines. This illustrates the volatility of the Kosovo issue, something that the EU surely understands. It is absolutely necessary to provide pro-democracy parties with international “successes” in terms of their association process as it will soon become apparent that Kosovo will *not* be divided along ethnic lines and will in fact soon become independent, something that the SRS will surely use to its advantage in future political campaigns especially following the independence of Montenegro. Loss of both Montenegro *and* Kosovo will constitute a large loss of territory and thus, in the eyes of many Serbs, of prestige.

The Kosovo issue is also part of the reason why the EU had been so reluctant to support Montenegrin independence, as losing both the territories of Kosovo and Montenegro in such a short period of time would be quite a shock for the public opinion in Serbia. The International Commission on the Balkans in fact suggested that perhaps independence of Kosovo might be easier to swallow if Serbia is offered EU membership. “The necessary precondition for both the Serbian government and the Serbian public is a fast track accession of Serbia to the EU together with international guarantees for the protection of the interests of Kosovo Serbs.... The EU accession process is the only framework that gives Serbia real incentives if not to endorse then at

least to consent to such a fundamental change in the status of Kosovo as independence represents”⁴⁰

What spurs EU to so vehemently and tirelessly work on the preservation of the State Union of Serbia and Montenegro, to go so far “beyond conditionality”? Lessons from history are part of the explanation here. The collapse of the old Socialist Yugoslavia led to incredible carnage and so perhaps the EU policy makers are weary of further destabilization. The 2001 Macedonia example⁴¹, where Macedonia was rushed into the SAP in order to prevent an ethnic conflict was also probably providing the policy makers with an incentive to maintain the State Union until enough momentum had gathered behind its accession to the EU that conflict becomes unthinkable.

Similarly, EU is probably considering wider regional strategy in the Balkans, in particular the domino-effect the independence of Montenegro would have on the Constitutional arrangements in Bosnia or the Kosovo situation. Already Republika Srpska in Bosnia is considering a referendum of its own for independence, which could be much more dangerous than the Montenegrin independence. Another potential motivation could be the fact that the EU does not want to deal with two separate applications, especially after absorbing 10 new members in 2004 and having the issue of “enlargement fatigue” seriously affect the Constitutional referendums in the Netherlands and France in the summer of 2005.

Important to conclude here is that ‘high politics’ take precedent over conditionality, much in the way that Dimitris Papadimitriou argued happened with the Romanian and Bulgarian accession talks post NATO bombing of Serbia in 1999 in his seminal article on the issue “The

⁴⁰ *The Balkans in Europe's Future*. International Commission on the Balkans. Accessed on April 26, 2005 http://www.kbs-frb.be/files/db/EN/PUB_1497_Int_Commission_balkans.pdf page 23.

⁴¹ *The Balkans in Europe's Future*. International Commission on the Balkans. Accessed on April 26, 2005 http://www.kbs-frb.be/files/db/EN/PUB_1497_Int_Commission_balkans.pdf page 28.

EU's Strategy in the Post-Communist Balkans". Papadimitriou's analysis of the change in Commission's assessment of Romania and Bulgaria in October 1999 "had little to do with the process of internal reform... [but rather was the effect of] the geopolitical situation in the Balkans."⁴² In terms of Serbia and Montenegro, the EU's (mis)perception is that the preservation of Serbia and Montenegro is vital for geopolitical/realpolitik reasons and it will seek to preserve the Union through similarly realpolitik/'high politics' means, going above, over, through and beyond traditional concepts of conditionality. Thus we can summarize the EU relationship with Serbia and Montenegro as a "learned/acquired" strategy expressed in policy that goes "beyond conditionality". However, it should be made clear that explaining the "why" is very difficult and this paper only offers an attempt to answer the difficult and seminal question of what makes Serbia and Montenegro such a high priority target for the EU.

IV. Conclusion

Schimmelfennig and Sedelmeier identify states fraught with ethnic divisions, such as Serbia and Montenegro, as being prime targets for "*supportive strategies...beyond reinforcement by reward... to have a positive impact*". From our empirical analysis we have one primary example of EU pro-active involvement on the State Union constitutional level, number of examples of EU helping in the day-to-

⁴² Papadimitriou 85.

day running of that State Union and even cases of the EU trumping its own conditionalities in order to advance the SAA negotiations.

To argue that political/democratic/*acquis* conditionality explains the EU foreign policy in Serbia and Montenegro is to ignore plethora of evidence to the contrary. Spurred by lesson-drawing from previous Balkan conflicts and realizing the geo-political importance of the Western Balkans to its own security, the EU has taken into consideration the precarious and unstable domestic politics situation in Serbia and sought to involve itself pro-actively and vigorously through a policy that goes “beyond conditionality” as first posited and recognized by Teokarevic.

A very important dimension to this topic is the failed Constitutional referendum in France and how it may affect future enlargement. The EU simply must not forego its aggressive, pro-active involvement in Serbia and Montenegro. With the independence of Montenegro and eventual independence of Kosovo the Serbian pro-democracy government will come under incredible stress and the successful association process may be the only bright spot to campaign under. Reforms, which clearly will induce economic hardships on the Balkan nations, cannot be “sold” to the populace through promises of aid alone as the failures of OBNOVA to spur political change clearly illustrate; they must be backed by a firm commitment to an eventual accession. So far the EU has proven to be up to the challenge of offering “supportive strategies” that go “beyond conditionality”. Motivated by carefully formulated and “learned” preferences that lean heavily towards the geopolitical variety, the EU has shed its purely conditional approach and “rolled up its sleeves” in what may just be the greatest, most important and (so far) most successful peace building / democratization project since the end of the Second World War.

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