The impact of ethnicity and the legacy of civil war on degrees of membership in the European Union:
The cases of Bosnia i Herzegovina, Serbia and Croatia

Master Thesis

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Contents

Introduction ............................................................................................................................ 3

Section One: Rule compliance and rational choice .......................................................... 5
  Rule compliance .................................................................................................................. 5
  Explaining compliance: a Rational Choice Institutionalist approach ...................... 7

Section Two: Research design .......................................................................................... 9

Section Three: EU enlargement explained ........................................................................ 12

Section Four: Case Study Analysis .................................................................................. 14

Bosnia i Herzegovina .......................................................................................................... 14
  Bosnia’s road to Europe .................................................................................................... 14
  Ethnopolitics in Bosnia – multiplied by three ............................................................... 17
  The ICTY and EU membership ..................................................................................... 21
  Conclusion ....................................................................................................................... 25

Serbia .................................................................................................................................. 26
  Serbia’s road to Europe .................................................................................................... 26
  Ethnopolitics in Serbia – nationalism and ethnicity ..................................................... 28
  The ICTY and EU membership ..................................................................................... 33
  Conclusion ....................................................................................................................... 37

Croatia ................................................................................................................................. 38
  Croatia’s road to Europe .................................................................................................... 38
  Ethnopolitics in Croatia – enter nationalism ................................................................. 40
  The ICTY and EU membership ..................................................................................... 44
  Conclusion ....................................................................................................................... 49

Conclusion .......................................................................................................................... 50

References ............................................................................................................................ 52
Introduction

While the collapse of the Communist regime in Eastern Europe brought to the surface various cleavages between its former ally countries, what many of them shared was an aspiration to embark on a development model with an end goal of joining the European Union (EU). The EU has served as a reference point regarding the systemic convergence through modernization of the countries in the region (Sadakata, 2006, p. 40). The post-Communist development of the West Balkans, however, has been severely disrupted by the civil wars that shattered the Former Yugoslavia (hereafter referred to as FY) throughout the 1990s.

Wars have substantial consequences for the consolidation of democracy, and have caused demographic, socio-economic and social problems in the new countries (Fink-Hafner and Ladrech, 2008, p. 137). However, what is striking is that not only has their Europeanization process differed from other Central and Eastern European (CEE) countries, but also that among the countries of the Former Yugoslavia a differentiated form of integration has taken place. On the one hand there are countries like Slovenia, a full EU member state, and Croatia, an acceding country set to join in July 2013, and on the other hand, countries like Serbia, a candidate country, and Bosnia i Herzegovina, a potential candidate, which have a long way to go on the path to membership. What are the reasons for these differences? How can we explain such variation in degrees of EU membership given that these countries were part of the same state a mere twenty-two years ago? What factors explain the quick democratic consolidation and compliance with EU conditionality of some FY states, on one hand, and the fragmented, problematic and generally slow Europeanization process of other FY states on the other?

In order to answer these questions, this thesis examines the role of two key factors in determining different degrees of EU membership – the role of ethnicity, and the legacy of civil war in the internal political environment. The effect that these factors have on degrees of membership is tested on three FY countries as case studies – Croatia, Serbia and Bosnia i Herzegovina. While these countries share many characteristics, including a common history and a liberal model of development among others, the focus of this research is to what extent ethnicity and the legacy of civil war, and variation in their role in the accession process, affect the different degrees of the case countries’ EU membership. This
research tests whether the success in overcoming ethnic tensions and the legacies of civil war decreases the domestic costs for compliance with EU conditionality and, hence, positively contributes to an upgrade in EU membership status.

This thesis analyzes each country’s democratization process, its internal political environment, and its Europeanization path in light of the two factors under investigation. It analyzes the European Commission Progress Reports evaluating these countries’ progress in terms of ethnopolitics – the presence of ethnic political parties in domestic politics, – and civil war legacies, translated into cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). The analysis in this thesis has established that ethnicity and civil war legacies play a substantial but differentiated role in Bosnia, Serbia and Croatia’s EU membership bids. While in Bosnia ethnicity has been a major stumbling block in the accession process, cooperation with The Hague Tribunal has been rather smooth. On the contrary, in the cases of Serbia and Croatia, cooperation with the ICTY has directly affected the upgrade in EU membership status. For these two countries, however, the issue of ethnicity, also characterized by nationalistic sentiments, while present in both cases, has not directly constituted an impediment to EU status upgrade.

There are also other country-specific factors which play a role in the accession process. Therefore, if one is to derive conclusive generalizations on what determines costs for rule compliance, it is crucial to look at all the factors and their effects on the degree of EU membership in all FY countries. This thesis will focus on the role of ethnicity and the legacy of civil war in order to fill a gap in research on compliance with EU conditionality in the West Balkans, while acknowledging that these other factors might influence degrees of membership as well.

The first section of this thesis will provide an overview of the literature in the field and will describe the theory used in this research, including a justification for its applicability. The second section will describe the dependent and independent variables, as well as the hypotheses to be tested and the respective indicators used. The third section will briefly explain the process of EU enlargement before going to section four and the in-depth analysis of the three case studies. The last section will conclude.
Section One: Rule compliance and rational choice

Rule compliance

What factors play a role in inducing compliance with EU membership conditionality? The literature on the processes of compliance in CEE states centres on factors that either empower or constrain actors to comply with EU accession requirements. The impact of the European Union on candidate countries’ compliance processes has been examined in light of the domestic political environment of aspiring states as a crucial determining factor (Goets and Hix, 2001; Schimmelfennig and Sedelmeier, 2004; Kelley, 2004; Schimmelfennig, 2007; Grabbe, 2011). The literature further focuses on a number of themes which will be discussed here – external drivers for compliance, the characteristics of the aspiring states, and the nature of EU conditionality – as factors inducing compliance.

Firstly, a significant body of literature on EU conditionality focuses on the external drivers which either induce or hamper compliance. The most widely cited model is that of Schimmelfennig and Sedelmeier (2005) called the External Incentives model. It attempts to explain Europeanization and the effect of EU conditionality’s incentives and rewards on the domestic political environment. In its nature it is a “rationalist bargaining model” (p. 10). Whether the external incentives are effective depends on four factors: the determinacy of conditions, the size and speed of the rewards, the credibility of the conditionality, and veto players and adoption costs (Schimmelfennig and Sedelmeier, 2005, p. 12). The model asserts that external incentives are not sufficient for Europeanization when the costs of domestic adaptation are too high (Schimmelfennig, 2007, p. 131).

Furthermore, Grabbe (2002) identifies a number of other external drivers that affect compliance in the accession process, which she calls levers: access to negotiations and subsequent accession stages, provision of institutional and legislative templates, aid and technical assistance, advice on policy and twinning projects, monitoring and public criticism. According to her, these tools affect the institutional transformation in CEE countries and as a result the ability to comply with EU conditions (p. 256). Another external driver identified by Bohmelt and Freyburg (2012) is compliance behaviour at different phases of the enlargement process (p. 3). The stages they identify are application, recognition as a candidate, opening of negotiations, closure of negotiations, and accession
(p. 5-6). Their research shows that while negotiations are ongoing, states have stronger incentives to comply with conditionality, than once the membership is almost secured, when the incentive for compliance largely decreases (p. 3).

Secondly, the literature also looks at the characteristics of the aspiring states themselves as a factor determining compliance. Vachudova (2005) explains variation in compliance with conditionality in CEE countries with the costs for the governing elites to fulfill the requirements, based on usage of restricted political competition, corruption in the economy and ethnic nationalism for retaining power (p. 72). Furthermore, she points to another factor that determines compliance – the agendas of states which she labels as liberal largely overlap with EU requirements, and that makes it more likely that these requirements will be fulfilled. At the same time, states labeled as illiberal have perceived EU requirements as a threat for the domestic power of the ruling elites and as a result the latter have forsaken the benefits of membership in order to protect their power base (p. 72-73).

Furthermore, Noutcheva and Aydin-Duzgit (2011), in investigating the fluctuations in the rule-of-law reforms within the enlargement process, contend that EU incentives to execute reforms have a positive impact on aspiring states only when political agents on the domestic level and their interests align with the legislative changes advocated by the EU. When this is not the case, the costs of applying rule-of-law reforms become too high and there is no or only patchy reform (p. 61-62). Grabbe (2011) contends that membership incentives frame governments’ agendas also because some aspiring states are prone and willing to compete with other aspiring states (p. 1015).

Thirdly, the literature on compliance investigates the specific nature of the EU and its conditionality as a determining factor. Kelley (2004) compares the effects of membership conditionality with socialization-based efforts, such as social influence and persuasion (p. 426). She estimates that socialization-based efforts on their own cannot effectively influence a state’s domestic policy. As domestic opposition to change in policy coming from the EU grows, it is crucial to include membership conditionality in order to ensure compliance (p. 449). This notion also relates to the EU’s normative power which refocuses away from the EU’s institutions and “towards including cognitive processes, with both substantive and symbolic components” (Manners, 2002, p. 239). In this process the EU’s desire for more legitimacy through imposing its fundamental norms (Manners, 2002, p. 244) has also played a role in the enlargement process. However, regarding norms, some
authors also argue that the EU does not have a strong normative stance in the Western Balkans for example, and this affects the degree to which countries in that region comply with the EU’s requirements (Noutcheva, 2009, p. 1066).

On a similar note, Hughes, Sasse and Gordon (2004) point to the unevenness of EU conditionality translated in the *acquis communautaire*, the body of EU legislation, and claim that the level of detail of the conditions in the different policy areas determines compliance. The “thicker” a certain policy area in terms of explicit rules, the stronger the leverage of the EU to induce compliance, while the “thinner” the *acquis*, the weaker the explicit leverage of the EU (p. 527).

**Explaining compliance: a Rational Choice Institutionalist approach**

The explanations for compliance with EU conditionality discussed above are also relevant to this thesis. However, in seeking to answer the specific question of whether ethnicity and the legacies of civil war have an impact on rule compliance in FY countries, and hence, their degrees of membership in the European Union, the above explanations are insufficient. This section will explain why. It will further suggest a theoretical framework which is better suited to answering the research question.

The external incentives model is the most relevant framework through which to assess compliance but is incomplete for this thesis because it does not account for civil war legacies and ethnopolitics when giving explanations for rule compliance (see above). Only one of its “incentives” – veto players and adoption costs – is relevant to the independent variables, as the impact of the variables is determined partially by the veto players and adoption costs in domestic politics. Grabbe’s (2002) external levers are also insufficient in explaining the impact of the independent variables on degrees of membership. While she acknowledges the importance of institutional transformation for compliance with EU rules, she addresses the accession process largely through the lens of compliance with the *acquis*, while ethnopolitics and civil war legacies go beyond its mere 35 Chapters. Vachudova’s (2005) framework for assessing aspiring states’ compliance based on liberal and illiberal notions is also limited because of its preoccupation with democratization and liberal democratic development, while not accounting for the impact of civil war legacies. In terms of the EU’s normative power and compliance, including the EU’s socialization-based efforts, literature shows that norms have
only been partially successful in explaining the costs for rule adoption and in general appear to be weak in Western Balkan states.

All of these possible explanations fail to grasp fully the specificities of compliance with EU rules in light of ethnicity and the legacies of civil war within the domestic political environment of FY states. Therefore, this thesis will test the importance of these two factors through a more general theoretical framework, namely Rational Choice Institutionalism. The latter is better suited to capture the complexities of the chosen cases for a number of reasons. Rational Choice Institutionalism attributes an important role for institutions in political outcomes. Institutions are understood broadly as collections of structures which “define and defend interests” and which are “political actors in their own right” (March and Olsen, 1984, p. 738). In addition, extensive calculation and a strategic analysis are at the heart of this approach (Hall and Taylor, 1996, p. 944-945), and how political life is organized on the domestic level makes a difference (March and Olsen, 1984, p. 747).

Therefore, in the case of the FY countries analyzed here, Rational Choice Institutionalism most comprehensively encompasses the effect of ethnicity and civil war legacies on the countries’ degrees of membership. This is the case because Rational Choice Institutionalism suggests that actors have a fixed set of preferences and their actions are completely instrumental in order to satisfy these preferences (Hall and Taylor, 1996, p. 944-945). Furthermore, according to this theory, an organizational structure is motivated by the way in which it decreases transaction, production and influence costs (Hall and Taylor, 1996, p. 946). Within this framework, therefore, it will be argued that compliance with accession requirements is the result of a cost-benefit analysis by aspiring states which determines the domestic costs of rule adoption, and these costs are different for the states for different reasons. But what is more, this thesis will investigate whether and to what extent domestic costs for rule compliance, resulting from the cost-benefit analysis, are affected specifically by 1) ethnicity, and 2) civil war legacies. The details of how exactly this research will be carried out is the focus of the next section.
Section Two: Research design

This paper will focus on three of the seven Former Yugoslavian countries. Therefore, the results will be limited in attempting to generalize the conclusions for all FY states. In attempting to account for variations in membership of the current three case countries, the research will also limit itself to testing the most essential indicators for measuring the independent variables while acknowledging that there might be other indicators which could contribute in varying degrees to answering the main research question.

Variables and Hypotheses

The dependent variable (DV) is degree of membership in the European Union. This variable further has three different levels corresponding to the different statuses of aspiring countries within the accession process – potential candidate, candidate country, and acceding country. This thesis will look at one control variable – democratic consolidation, and two independent variables (IVs): 1) ethnicity, and 2) the legacy of civil war.

When accounting for degrees of membership in the EU, it is important to account for democratic consolidation. This is so, because membership in international organizations is seen as an impetus for states which are undergoing democratic transitions, and democratic consolidation is seen as a crucial factor affecting membership (Mansfield, Pevehouse, 2006, p. 138). Therefore, the first hypothesis is: the slower the pace of democratic consolidation in a state, the less likely it is to provoke an upgrade in its membership status.

The first central insight that this thesis will test is to what extent ethnicity plays a role in aspiring states’ cost-benefit analyses for compliance with EU conditionality, thereby affecting the degree of their EU membership. In order to assess ethnicity as a factor affecting the accession process, I will look at the presence of ethnopolitics, and I will use ethnic political parties in domestic politics as a proxy. There are a number of reasons for this. Chandra (2011) defines an ethnic party as being “the champion of the particular interests of one ethnic category or set of categories” (p. 155). What further characterizes such parties is that they always exclude a certain group (p. 155), hence their starting point is preferential treatment of some ethnic groups over others. Such preferential treatment directly conflicts with a key EU accession requirement enshrined in the so-called Copenhagen criteria for membership.
Therefore, it can be expected that the presence of such parties creates a political environment where certain actors oppose the EU’s rules. This, in turn, is likely to increase domestic costs for compliance with these rules for governments in the aspiring countries. Thus, the second hypothesis is: the more a state’s domestic politics are characterized by the presence of ethnic political parties, the less likely it is to provoke an upgrade in its membership status.

The second central insight that this thesis will test is to what extent the legacy of civil war is an important factor determining degree of EU membership. This thesis will focus on one factor which is directly connected with civil war legacies – responding to international post-war obligations regarding criminal justice, in particular relations with the International Tribunal for the Former Yugoslavia (ICTY). This cooperation has become a condition for EU membership for the FY countries, and opposition to it on the domestic level can be viewed as increasing the domestic costs for compliance for governments. Therefore, the third hypothesis is: the more the legacy of civil war affects domestic politics of a state, the less likely it is to provoke an upgrade in its membership status.

Methods

The method of research used will be case studies and this thesis will use the “most similar” cases design whereby the cases are quite similar in many respects (see next paragraph) apart from the IVs, and this can account for the cases reaching different outcomes concerning the DV (George and Bennett, 2004, p. 81).

The case countries will be Croatia, Serbia and Bosnia i Herzegovina. Croatia is an acceding country which will join the Union in July 2013; Serbia is a candidate country; Bosnia i Herzegovina is a potential candidate. Having been party to the conflicts in the Former Yugoslavia in the 1990s, within the same period of time, they have reached different levels of development which translates into different degrees of membership in the EU. The three case countries were chosen because of a number of shared characteristics – a liberal economic model of development, a democratization agenda, important geo-strategic positions, common history, similar political organization, aspirations to join the EU, and a similar EU conditionality framework. Holding these similarities constant will help highlight the extent to which the independent variables – ethnicity and the legacies of civil war – affect the dependent variable, namely, different degrees of EU membership.
Operationalization of variables and data collection

Democratic consolidation will be measured using data from Freedom House’s Nations in Transit country reports. The democratic score given to each country is derived from seven indicators – national democratic governance, electoral process, civil society, independent media, local democratic governance, judicial framework and independence, and corruption. The democratic score is an average of the ratings in the different categories which are tracked in a given year. The scale is 1 to 7, with 1 being the highest level of democratization, and 7 being the lowest (Nations in Transit Report: Methodology, 2012). Furthermore, the Amnesty International annual reports on the case countries will also be used to measure democratization. As the latter will not be examined in detail but will serve as a control variable, only the overall scores will be taken into account.

As for the influence of ethnopolitics, this is tested in terms of the presence and influence of ethnic political parties in the selected FY countries. The analysis investigates whether ethnopolitics have an effect on degrees of membership, by looking at the European Commission (EC) Progress Reports on these countries and investigating how/whether ethnic tensions in the internal political environment reflect in these reports and, as a result, on an eventual upgrade in membership status.

Regarding cooperation with the ICTY, this research will again investigate the EC Progress Reports and specifically those sections where cooperation with the ICTY is monitored. Tracing the process of cooperation with the ICTY will test whether costs for compliance with EU rules have increased or diminished as a result of cooperation with or opposition to the ICTY.
Section Three: EU enlargement explained

This section will briefly explain the EU enlargement process. This is necessary in order to better understand the case countries’ paths to accession and to place them in the larger context of Europeanization and EU integration.

The criteria for accession in the EU – the Copenhagen criteria agreed upon in 1993 – are laid out in the Treaty of the European Union. These are: guaranteeing democracy and the rule of law, a functioning market economy, and the ability to implement the obligations of membership. Furthermore, there are 35 policy areas called chapters that form part of the body of rules of the EU – the “acquis communautaire” with which candidate countries need to comply in order to join. While the EU rules within the chapters are not negotiable, the conditions and the timeframe for adopting, implementing and enforcing the rules are determined on an individual basis. Within the negotiations other issues, such as financial and transitional arrangements are also discussed. The European Commission is the institution which monitors progress, gives guidance and provides regular reports on the accession process.\(^1\)

The accession process as defined by the EU consists of three main stages – designation of a candidate status, opening of formal negotiations to comply with accession criteria, and formal joining of the Union granted by decision of the EU Council reached unanimously. For the Western Balkans, however, there has been a special process set up – the stabilization and association process (SAP) – which aims to stabilize the countries, help in their transition to a market-based economy, promote regional cooperation, and eventually offer EU membership.\(^2\) In addition, the SAP includes specific agreements (Stabilisation and Association Agreements) which are individually tailored to aspiring Balkan countries to establish a free trade area, mutual political objectives and economic cooperation.\(^3\) Financial assistance is carried out through the framework of the Instrument for Pre-accession Assistance (IPA) which was

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1. The EU’s conditions for membership can be found here: [http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm](http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm)
2. The steps towards membership in the EU can be found here: [http://ec.europa.eu/enlargement/policy/steps-towards-joining/index_en.htm](http://ec.europa.eu/enlargement/policy/steps-towards-joining/index_en.htm)
established in 2007 as the common instrument for funding and support for both potential and candidate countries. It replaced former instruments, such as Phare, ISPA and SAPARD⁴.

The prospect of membership, the so-called “potential candidate” status is granted as a first step when a country sets on the road to become a candidate for EU accession⁵. The EU also puts considerable effort in promoting regional cooperation and guides the countries of the West Balkans towards membership. This cooperation includes addressing common challenges, for example, energy shortages, cross-border criminality, transport and infrastructure, pollution, etc. Other initiatives include public administration, environment, energy, justice and home affairs, and education⁶.

Currently, Croatia has the status of an acceding country (to formally join the EU on 1 July 2013). Candidate countries are the Former Yugoslav Republic of Macedonia, Iceland, Montenegro, Serbia and Turkey. Albania, Kosovo and Bosnia i Herzegovina have the status of potential candidates⁷.

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⁴ Description of the IPA can be found here: [http://ec.europa.eu/enlargement/policy/glossary/terms/ipa_en.htm](http://ec.europa.eu/enlargement/policy/glossary/terms/ipa_en.htm)

⁵ The steps towards membership in the EU can be found here: [http://ec.europa.eu/enlargement/policy/steps-towards-joining/index_en.htm](http://ec.europa.eu/enlargement/policy/steps-towards-joining/index_en.htm)

⁶ Regional cooperation within the enlargement process is explained here: [http://ec.europa.eu/enlargement/policy/regional-cooperation/index_en.htm](http://ec.europa.eu/enlargement/policy/regional-cooperation/index_en.htm)

⁷ The current status of aspiring states can be found here: [http://ec.europa.eu/enlargement/countries/check-current-status/index_en.htm](http://ec.europa.eu/enlargement/countries/check-current-status/index_en.htm)
Section Four: Case Study Analysis

Bosnia i Herzegovina

This chapter will go in depth in the first case of Bosnia i Herzegovina and will analyze to what extent the country’s domestic costs for rule compliance are affected by ethnicity and the legacies of civil war. In the case of Bosnia, this chapter will illustrate how the persistent ethnic tensions within the country and the inability of state and international institutions to reach political consensus on the domestic level have been the reasons behind the protracted offer for a candidate status. This section will firstly give a brief overview of the political developments in Bosnia since the end of the war in the mid-1990s and the relations with the EU within the democratization process. The second section will look into the presence of ethnopolitics as a factor determining the degree of membership in the EU by analyzing the EC progress reports between 2006 and 2012. The third section will analyze the relationship between Bosnia and the ICTY by again looking at the EC Progress Reports from the same period, and will evaluate whether this relationship played a role in the delay in offering a candidate status to Bosnia.

Bosnia’s road to Europe

Bosnia’s road to democracy and to Europe began with the signing of the Dayton Peace Accords which put an end to the war in Bosnia lasting between 1992 and 1995. The country was divided into two entities: a Croat-Bosniak Federation (Federation of Bosnia i Herzegovina) taking up 51% of the country’s territory, and the Serb Republic called Republika Srpska with the remaining 49% (Belloni, 2009, pp. 358-9).

The Dayton Agreement created the basis of the Bosnian consociational democracy. This translates into power sharing among political elites, proportionality in government, veto rights guarantees, and communal autonomy. Thus, the result was “a complex institutional structure composed of one state, two entities, three peoples, an estimated 3.9 million citizens, and five layers of governance led by 14 prime ministers and governments, making Bosnia the state with the highest number of presidents, prime ministers, and ministers per capita in the entire world” (Belloni, 2009, pp. 359). While the consociational system was necessary to convince the warring parties to put down their weapons, it has later created space for intense competition which largely undermines interethnic compromise (Belloni, 2009, p. 360). This
complexity has resulted in no electoral or political incentives to cooperate between the three ethnic groups, nor any integrative elements, such as common institutions (Tzifakis, 2012, p. 132).

In addition, within Dayton, an Office of the High Representative (OHR) was set up in order to monitor the civilian aspects of the settlement and their implementation. The OHR increasingly attained more legislative and political powers, called the Bonn powers, in 1997 (Belloni, 2009, pp. 359). These powers allowed taking action against persons who violate the legal commitments under the Dayton Peace Agreement, or its implementation. The Bonn powers were used more than 800 times over the following ten years. As a result, the international mission was transformed from providing assistance to the parties on the local level into an international protectorate (Belloni, 2009, p. 362).

Ever since 2000, when the Stabilization and Association Process (SAP) for Bosnia i Herzegovina was launched by the EU and strengthened during the European Council meeting in Thessaloniki in 2003 (Juncos, 2012, p. 58), the Union has gradually transformed Bosnia’s peace process to reflect the country’s European integration (Tzifakis, 2012, p. 132). The promise of future membership became the crucial turning point in the European Union’s strategy for the West Balkans, and in particular for Bosnia, where the EU sought not only security through Europeanization, but also improving its reputation after failing to stop the war in the early 1990s (Juncos, 2012, p. 58). The final round of reforms before the signing of the Stabilization and Association Agreement (SAA) began in 2005, and the SAA was signed in June 2008. The SAA, however, has not entered into force yet (Commission Progress Report on Bosnia i Herzegovina, 2012, p. 4). In 2008, the Commission (EC) presented a roadmap for visa liberalization for Bosnian citizens. In 2010 the EC recommended that the latter be exempt from the need to have a visa to enter the EU (Tzifakis, 2012, p. 136). In terms of economic assistance, between 2001 and 2009 Bosnia received 729 million Euros from the EU under the CARDS programme and the Instrument for Pre-accession Assistance (IPA) for economic development, cross-border cooperation, institution building and reconstruction (Tzifakis, 2012, p. 136). For 2012, 107.8 million Euros in financial assistance were allocated to Bosnia.

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Democratization through the enlargement process in South-East Europe has come to be accepted as a peace-building project, whereby the idea that enlargement is the best tool to promote domestic reforms remains largely unchanged. The case of Bosnia, however, with its lack of progress in adopting the reforms, poses a challenge to the power of Europe to transform societies on their road to democratization (Juncos, 2012, p. 59-60). The following section will look at Bosnia’s democratization process by examining evidence from Freedom House’s Nations in Transit report and Amnesty International’s annual report on the country.

Democratic development has been measured extensively by Freedom House in the comparative study of 29 countries’ democratic development in Central Europe and Eurasia called “Nations in Transit”. Its latest edition measuring democratic success in 2011 portrays the countries of the Balkans as stalling in terms of critical reforms and a backslide in some key governance indicators. Bosnia is designated a Transitional Government or Hybrid Regime with a democracy score of 4.36 (Freedom House, 2012).

The Freedom House report on Bosnia i Herzegovina from 2012 (reflecting scores from 2011) portrays a rather grim picture. According to the findings, the democratic score of Bosnia was at its best in 2007 and has been deteriorating slightly in the years since. And while the overall score in 2012 is better than in 2003, according to the report, political elites in Bosnia still lack a common vision for the future of the country and no domestic political consensus exists. What is more, the situation has further deteriorated because of the political deadlock following the elections in October 2010, whereby as a result no democratic reforms or progress towards EU and NATO membership took place in the following year (Freedom House, 2012).

Amnesty International’s annual report on Bosnia i Herzegovina reveals similar results. The organization which monitors respect for human rights across the world also attributes the October 2010 elections to the continuous and pertaining nationalist rhetoric taking place in the country. War crimes prosecution continued but according to the report progress remained generally slow while civilian war victims were still being denied access to reparations and justice, resulting in undermining democratic consolidation.

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Ethnopolitics in Bosnia – multiplied by three

On the background of Bosnia’s democratization process this section will examine the role of ethnopolitics in the internal political environment and how that translates in the EU’s conditionality for membership and the (eventual) upgrade in Bosnia’s EU membership status.

When it comes to ethnic diversity, it is important to point out from the outset that whether a country is divided on ethnic lines needs to be complemented by how it is divided – the depth of the divisions and the extent to which they have spilled over into the domain of politics (Coakley, 2009, p. 265). In that sense, when talking about Bosnia, its constitution dating from the Dayton Peace Agreement in 1995 which has identified the three ethnic groups as the only legitimate “constituent peoples” and has divided the country into entities based on ethnic identity (Belloni, 2009, p. 360), it is hard to separate ethnicity from politics in the country. It can be argued that the international administration with its far-reaching legislative and executive powers has further politicized ethnicity. The international community has viewed nationalist political parties as corrupt because they represent and negotiate on behalf of an ethnic constituency, and that is perceived as conflicting with public interest. However, this is in fact the essence of the politics of representation and it is inevitable that elected politicians are a reflection of social divisions (Chandler, 2006, p. 96-97).

Because of the institutional settlement which almost exclusively depends on international supervision, the positions of national elites have been weakened, there is insecurity on all sides, there is no local control or ownership of the process, and eventually no trust in public institutions (Chandler, 2006, p. 97). In such a climate, the persistent popularity of ethnic political parties is not surprising. But does that presence have an effect on the accession process and the degree of Bosnia’s EU membership? And what has been the EU’s leverage in the country’s development? The next sections will lay out the political landscape in Bosnia since Dayton, will investigate the role of the EU on the domestic political environment, and by using data from the EC progress reports will analyze whether and to what extent ethnopolitics has affected Bosnia’s prospects of membership in the European Union.

Bosnia – the political landscape

Nine months after the signing of the Dayton Peace Accords the first post-war elections took place whereby each ethnic group had its representative party, which controlled nearly all sectors of society, win decisively in its corresponding region. The Serb Democratic Party
(SDS) was dominating in Republika Srpska, the Croatian Democratic Community (HDZ) had its power base in Herceg-Bosna (areas with Croat majority), and the Party of Democratic Action (SDA) had its grip on the areas with Bosniak majority. The victory in the first elections of each of these parties resulted in the same parties responsible for the war remaining in power and retaining their ethno-nationalist agendas (Gromes, 2009, p. 97).

The post-war internal political environment of Bosnia has been problematic for a number of reasons. Firstly, as mentioned earlier, the presence of political forces based on ethnic identity results in a complex power sharing arrangement, including the entity veto (blocking of institutions based on “national interests” of the three ethnic groups). These have become enormous obstacles for decision-making in Bosnia and for pushing reforms in the context of European integration (Incentives for democratization, 2011, p. 1806). Since Dayton, the entity veto has been used to stop legal proposals and the Republika Srpska has been the actor most prone to pursuing its own ethno-national interest by invoking its right of the veto, and instigating antagonistic politics and polarization (Dzihic, Wieser, 2011, p. 1811).

Secondly, frequent elections following the Dayton Agreement have failed to substantially diminish the influence of ethnic political parties (Dzihic, Wieser, 2011, p. 1806-7). Throughout the following decade, the influence of the main parties has diminished to a certain extent thanks to the international peacekeeping mission and its efforts in this regard (Gromes, 2009, p. 100). While in 1996 the SDA, SDS and HDZ received altogether 36 out of 42 seats in the Bosnian House of Representatives, this number was diminished to 15 in 2006 (Gromes, 2009, p. 101). Nevertheless, politicians in Bosnia still use nationalist rhetoric rather than discourse on the country’s common future as an EU member state, thus illustrating the lack of interethnic dialogue, limited opportunities for reconciliation and a “politics of fear” (Brijavac, 2011, p. 404). What complicates the situation is that these parties cannot be rejected, since they were democratically elected by citizens (Brijavac, 2011, p. 404).

Lastly, while institution-building and formal rules have taken place, implementation has been overlooked and the unwillingness of local elites to implement reforms has resulted in very limited success. All of these have had negative effects on EU rule compliance in the country (Dzihic, Wieser, 2011, p. 1806-7).
**Bosnia and Brussels**

Throughout the post-war years all of the main political parties have presumably begun to commit to the final aim of accession to the European Union. However, this has largely remained rhetoric and has increased tension in the country (Dzihic, Wieser, 2011, p. 1812). The problem can be illustrated as a zero-sum game, whereby nationalist elites are elected because of support from their respective groups and there is no incentive to introduce cross-ethnic appeals. Furthermore, without such incentives for cooperation, popularity is achieved through the defense of the national group and through presenting others as enemies (Belloni, 2009, p. 360).

The situation described above has resulted in the EU’s substantial focus on consensus politics which entails that political leaders need to show commitment to engage in a constructive dialogue with one another before the country can be considered for an upgrade in its accession status (Vasilev, 2011, p. 53). The consensus principle is not part of the Copenhagen criteria but rather an ad hoc principle that the EU has had to develop to address the contingencies of some Balkan countries (Vasilev, 2011, p. 54). However, the EU has largely failed to promote consensus among the biggest domestic parties (Juncos, 2012, p. 70), which has kept the costs for rule compliance high enough for political leaders to prefer retaining the status quo.

Among reasons for the EU’s failure to allure leaders in Bosnia to accept the domestic costs for rule adoption has been because of very limited instant rewards (Tzifakis, 2012, p. 139). Furthermore, when rewards are given, they are the result of limited or partial compliance, which makes full compliance even less appealing (Tzifakis, 2012, p. 139). This is best exemplified in the process of opening the negotiations for a Stabilization and Association Agreement (SAA) in 2005 which depended on the completion of a number of reforms in the police sector. However, negotiations started after insufficient agreement between the ethnic leaderships and postponement of the most contentious issues for future discussions (Tzifakis, 2012, p. 140-1). In 2008 the SAA was signed even though Bosnia had not advanced in any substantial way the pending issues in the separate entities regarding police matters (Tzifakis, 2012, p. 141). The next section will closely investigate the developments in Bosnia’s accession process.
The EC Progress Reports: 2006-2012

The European Commission Progress Reports have been the most comprehensive accounts for the level of democratization of aspiring countries in the Balkans. After tracing the presence of ethnic tensions as hampering the EU integration process, a number of issues emerge which serve as evidence that ethnopolitics do have an effect on the Europeanization and the membership status of Bosnia. They can be grouped into three main themes – the Constitution problem, the coordination between State and Entity levels, and ethno-nationalist and secessionist rhetoric.

Bosnia’s Constitution dating from the Dayton Peace Agreement does not allow citizens who are not part of one of the three official groups (Croat, Serb or Bosniak) to stand as candidates for the Presidency and the House of Peoples in the Parliamentary Assembly. The European Court of Human Rights (ECtHR) has found this unconstitutional (EC, Bosnia, 2012, p. 8). Since 2006 there have been four separate attempts to amend the constitution but all of them have been unsuccessful because of widespread disagreement between the political actors on what the constitutional reform should entail (EC, Bosnia, 2007, p. 7). The latest attempt was in October 2011 when an Interim Joint Parliamentary Committee had to draft amendments to comply with the ruling of the ECtHR in relation to discriminating on the grounds of ethnic belonging. A Roadmap was produced which conditioned the entry into force of the SAA, and thus an upgrade in the EU membership status, on meeting the conditions. Yet, the first deadline in August 2012 was not met (EC, Bosnia, 2012, p. 8).

Fragmented policy-making among the State and the Entities (the Federation and Republika Srpska (RS)) has been a major issue ever since Dayton and has figured prominently since the first Progress Reports. The RS government has been continuously opposed to transferring new competencies to the State level, including in the SAA context (EC, Bosnia, 2009, p. 8). Obstructionist motions have taken place “towards State-level laws, including European Partnership requirements, in particular by members from the Republika Srpska” (EC, Bosnia, 2009, p. 9). At the same time, the RS established in 2010 an EU Integration Unit in almost all of its ministries and continued to successfully harmonize its own legislation with European standards. The Federation, by contrast, has been less successful because of the complex ethnic interests which have affected governance on the Entity level (EC, Bosnia, 2010, p. 11). Throughout 2011 as well the Parliamentary Assemblies on Entity level have continued to function well (EC, Bosnia, 2011, p. 8). However, the EU’s requirements for strong State-level
governance and the lack of positive developments in this realm have led the Commission to use more pressing language: “An effective coordination mechanism […] remains to be established as a matter of urgency regarding EU matters and the harmonization of EU related legislation” (EC, Bosnia, 2011, p. 10). Even so, no major developments on this issue have ensued since.

Finally, nationalist rhetoric coming from the main political leaders of all three constituent groups has been common and the most fervent discourse has come from the RS who have continuously claimed self-determination rights for their Entity (EC, Bosnia, 2008, p.7). On the other hand, politicians from the Federation have questioned the existence of the RS while claiming that the latter is “the result of genocide” (EC, Bosnia, 2009, p. 8). The Parliamentary Assembly’s work has also been “adversely affected by intransigent and ethnically oriented positions” by various political leaders (EC, Bosnia, 2009, p. 9). In 2010, in light of the coming elections in October of that year, the tendency of parties on all sides to stick to nationalistic rhetoric was reinforced and while RS politicians challenged the integrity of the State, leaders from the Federation frequently related the establishment of the RS to war-time massacres (EC, Bosnia, 2010, p. 8). Nevertheless, it must be pointed out that in the last two reports from 2011 and 2012, there is no mentioning of nationalistic rhetoric in the entire reports, pointing to the fact that even though ethnic tension continued to be present, its presence in political discourse diminished. However, this has not resulted in any motions on the part of the EU to upgrade Bosnia’s membership status, therefore, leading to the assumption that its importance is limited.

The ICTY and EU membership

The ICTY was established in 1993 with two UN Security Council resolutions under Chapter VII of the United Nations Charter. According to Gow (2006), the Tribunal is “perhaps the most ambitious of the precedent-setting initiatives arising from the international involvement in the dissolving Yugoslavia” (p. 56). This section will analyze the relationship between Bosnia and the ICTY in the context of European integration.

Bosnia and the ICTY

In the Bosnia i Herzegovina context, opinions on the effectiveness of the ICTY vary widely. Some believe that it was because of the Tribunal’s actions in removing directly certain figures from the political scene that progress in Bosnia since the mid 1990s has been possible at all
(Gow, 2006, p. 62). Others have been much more critical, claiming that “the international community has expressly and purposefully hindered the post-war reconstruction and development of BiH, Croatia and Serbia because of supposed failures to fully accommodate the demands of the ICTY” (Hayden, 2011, p. 315).

Public opinion about the Tribunal among Bosnians is also diverse. An opinion poll in 2002 in Bosnia found that 4% of people in the Republika Srpska trusted the ICTY, and it had the trust of 51% in the Croat-Muslim region (Hayden, 2011, p. 317). The relationship between the Muslim community and the ICTY is particularly important, as it has pre-determined on numerous occasions compliance with its demands. At first, the Tribunal was perceived as an ally of the Muslim community, as the latter generally assumed that the prosecuted would be Serbs responsible for committing atrocities in the war. However, the ICTY also issued indictments against perpetrators of Muslim origin who committed crimes against Serb detainees which was incomprehensible for Bosnian Muslims because of their conviction that their nation was the victim of genocide (Saxon, 2006, p. 563). This has made the ICTY a “mixed bag” for the Muslim community – on one hand “a beacon of hope” to restore justice, and on the other, “a confusing source of legal judgments and decisions that appear to have little relevance to the actual experiences, perceptions, and feelings of the Muslim community” (Saxon, 2006, p. 564).

ICTY and Brussels

The relationship between Bosnians and the ICTY, and their compliance with the EU’s conditions to cooperate fully with the Tribunal’s prescriptions are an important indicator for dealing with civil war legacies on the road to Europe, and the related costs for compliance in reaching the end goal. Handling the legacy of war crimes was seen as critical for fulfilling the ambitions of Bosnia to fully integrate in the Stabilization and Association Process (SAP) of the EU (Kerr, 2005, p. 326). However, regarding the explicit link that the EU created between accession progress and cooperation with the ICTY, the EU has been quite inconsistent. Firstly, while cooperation with the Tribunal was required, no similar attention was given to developing transitional justice mechanisms on the domestic level. These incomplete policies have challenged the level of support for EU accession and thus the political costs for compliance (Tzifakis, 2012, p. 139). Secondly, it was unclear what the exact criteria are for determining compliance, and thus the progress threshold toward SAP. The EU declared that the Prosecutor of the ICTY needs to assure that full cooperation is taking place, but what the
Prosecutor might deem to comprise full cooperation was not clearly spelled out (Kerr, 2005, p. 327).

Nevertheless, the EU’s emphasis on cooperation in war crimes issues as a condition for accession, has turned this process into not only a symbol of reform, but also “a catalyst for further progress toward the building of a society based on the rule of law and respect for human rights” (Kerr, 2007, p. 380). The main obstacle to cooperation has been the strong opposition of the RS entity whereby not a single person was detained or transferred to The Hague by the RS authorities until January 2005. This has led NATO to identify the RS as Bosnia’s “single largest problem” thereby obstructing further integration both into NATO and EU structures (Kerr, 2005, p. 327).

Clear evidence of how progress in cooperation with the Tribunal leads to progress in the EU accession process took place in 2004-2005. In 2004 two formal apologies were issued by the RS government acknowledging that the “nine July days of the Srebrenica tragedy are a black page in the history of the Serb people” (Kerr, 2007, p. 382). In the beginning of 2005 a number of former officials were transferred to The Hague for trial whereby at the same time the President of the RS pronounced that the “Road to Brussels goes only through The Hague” (Kerr, 2007, p. 382-3). Furthermore, in March 2005 a War Crimes Chamber was inaugurated in Sarajevo, which meant that cases could also take place in Bosnia. These signs of progress were welcomed by the EU and it led the way to open the Stability and Association negotiations in November 2005 (Kerr, 2007, p. 382-3).

**The EC Progress Reports: 2006-2012**

The EC Progress Reports have also substantially covered the issue of cooperation with the ICTY. This cooperation has been traced in the annual reports under the section Regional issues and international obligations. A number of themes emerge in the context of the accession process.

In general, Bosnia has been cooperating quite well with the Tribunal. While in 2006 the Federation was cooperating on a satisfactory level but the RS was not yet sufficiently cooperative (EC, Bosnia, 2006, p. 18), in the following years cooperation “has progressed” (EC, Bosnia, 2007, p. 20) and is “generally satisfactory in most areas” (EC, Bosnia, 2012, p. 21). The behaviour of the RS has caused a number of drawbacks. For example, in 2008 the
ICTY declared that the RS failed to take the necessary actions to re-arrest a war criminal who had escaped from prison in 2007 (EC, Bosnia, 2008, p. 22). Furthermore, in 2009 the Commission pointed to political leadership in the RS challenging the credibility of war-time massacres which involved civilians, and deemed such rhetoric “unacceptable and deeply worrying” (EC, Bosnia, 2009, p. 21).

Nevertheless, the general trend in complying with ICTY prescriptions has been positive. Notable developments have included the arrests of Radovan Karadzic and Stojan Zupljanin in 2008 (EC, Bosnia, 2008, p. 21), the adoption of the National War Crimes Strategy in 2009 (EC, Bosnia, 2009, p. 21) and the re-arrest of the escaped war criminal Radovan Stankovic in January 2012 (2012, p. 21). Another development deemed significant by the European Commission in the Progress Reports has been the international cooperation between Bosnian, Croatian and Serbian prosecutors for exchanging evidence and transferring some war crimes cases (EC, Bosnia, 2009, p. 22). Bilateral agreements on mutual execution of sentences regarding criminal matters and court ruling enforcement were signed in 2010, which has been pointed out as a positive development (EC, Bosnia, 2010, p. 22). Bilateral agreements have expanded to include all former Yugoslavian countries in 2012 but these have not included war crimes cases (EC, Bosnia, 2012, p. 21).

Last but not least, throughout the reports, various conditions have been stressed at different times as crucial conditions for furthering the accession process. In 2007 it was clearly stated that the signing of the Stabilization and Association Agreement (SAA) would require full cooperation with the Tribunal. In 2009 the arrest of Ratko Mladic and Goran Hadzic “remains the Tribunal’s priority” (EC, Bosnia, 2009, p. 21). Another requirement has been the sharing of information and evidence in cases regarding war crimes between Bosnia and Serbia, which “has yet to be signed”. The Commission has designated this to “represent a significant step forward in terms of regional cooperation and the fight against impunity” (EC, Bosnia, 2012, p. 21).

Overall, with time, the amount of space dedicated to evaluating the cooperation of Bosnia with the ICTY within the Progress Reports has been declining, with no major issues pending with this EU condition. Bosnia seems to have been putting substantial efforts to not only assist the ICTY but also to develop local and regional capacities to indict war criminals. Even with the often obstructionist actions of the RS, progress appears to be evaluated as generally good and satisfactory.
Conclusion

The above analysis points to the fact that ethnopolitics has played a substantial role in the delay of Bosnia’s upgrade in membership status. The problem of the Bosnian Constitution, which institutionalizes ethnicity as a prerequisite for citizenship, has persisted and has become a direct impediment to the country’s EU membership process. The weak decision-making on the state level and nationalistic rhetoric have also been obstacles in the accession process. Cooperation with the ICTY, however, has been rather smooth and while it is a condition for membership, Bosnia has generally complied with it and this has not constituted a reason for delaying the upgrade in EU membership status.
Serbia

This chapter will analyze the case of Serbia and the extent to which the country’s domestic costs for rule compliance are affected by ethnicity and the legacies of civil war. The chapter will illustrate how in the case of Serbia relations with the ICTY combined with persistent nationalism have been the root cause for high domestic costs for rule compliance. This section will first give a brief overview of the political developments in Serbia throughout the 1990s and following the fall of Slobodan Milosevic, and the democratization process. The second section will look into the internal political environment, which in this case is dominated by nationalistic politics, as a factor determining the degree of membership in the EU by analyzing the EC progress reports between 2005 and 2012. The third section will analyze the relationship between Serbia and the ICTY by again looking at the EC Progress Reports from the same period, and will evaluate whether this direct legacy of civil war affected a delay in upgrading Serbia’s membership status.

Serbia’s road to Europe

Serbia’s development since the late 1980s until 2000 has been marked by the leadership of Slobodan Milosevic. Enjoying broad popular support and populist legitimacy, Milosevic mobilized a movement based entirely on nationalist sentiments and a general formula of “all Serbs living in one state” (Zakosek, 2008, p. 593). His party, the Serbian Socialist Party (SPS), was a mix of communist ideology combined with a highly personalized power structure (Zakosek, 2008, p. 595). The failure of his expansionist programme, the war costs and the economic embargo, however, substantially weakened his popular legitimacy. The failure to win the war in Kosovo, demonstrated by NATO’s bombing of Belgrade and the establishment of a UN mission in Kosovo in 1999, led to the ousting of Milosevic in presidential elections in 2000 (Zakosek, 2008, p. 597), followed by his extradition to face trial in The Hague at the ICTY in June 2001 (Zakosek, 2008, p. 596).

Following a period of “blocked transformation” (Lazic, Vuletic, 2009, p.988) in the 1990s, the transition to democracy for Serbia essentially began in 2000 (Zakosek, 2008, p. 597). A new economic elite came into existence that was the result of the unification of the opposition parties against Milosevic (Lazic, Vuletic, 2009, p.988). The country’s new constitution was adopted in 2006, putting the party system in a more stable phase. However, this system has been dominated by political themes rather than economic-social ones, instability of the
electoral base, and leadership ambitions of the party leaders to accumulate power (Orlovic, 2008, p. 208).

An important political process largely defining Serbia’s policies until 2006 has been the issue of its union with Montenegro. In 1992 Yugoslavia transformed into the Federal Republic of Yugoslavia (FRY) comprised of Serbia and Montenegro (Macek-Mackova, 2011, p. 620). The two entities nurtured “mutually exclusive ambitions”, leading to aspirations on the side of Montenegro for the creation of two independent states (Macek-Mackova, 2011, p. 620). Following a referendum in Montenegro in 2001, with the assistance of the EU, the two entities signed the so-called Belgrade Agreement creating the State Union of Serbia and Montenegro which came into effect in 2003 (Macek-Mackova, 2011, p. 620-1). However, the two governments of the separate republics had different conceptions of what policies are required in order to achieve political and economic progress (Macek-Mackova, 2011, p. 621). Similar to the situation in Bosnia, the two elites in this consociational arrangement were sticking to their sides instead of negotiating and there were never-ending debates causing constant competition among them (Macek-Mackova, 2011, p. 625). In 2006 there was another referendum in Montenegro, resulting in the establishment of two separate states (Macek-Mackova, 2011, p. 621).

The democratic development of Serbia has also been measured in Freedom House’s Nations in Transit Report. In the 2012 report Serbia’s overall score is 3.64 and it is classified as semi-consolidated democracy (Freedom House, 2012). In the report specific attention has been placed on Serbia’s compliance with EU accession requirements, stressing the importance of arrests of war criminals for furthering negotiations, and the stumbling blocks for Serbia’s membership in the EU, namely with regards to Kosovo. Within the different sections, Serbia’s scores have remained the same for the past two years and slightly better than in 2010. At the same time, important shortfalls have been mentioned, such as the ongoing conflict between two of the main parties challenging governmental stability in 2011, and the decline in living standards, coupled with issues of transparency in financing of political parties (Freedom House, 2012, p. 476).

In its 2012 Annual Report on Serbia, Amnesty International also puts emphasis on Serbia’s EU related developments, particularly the transfer of war criminals to The Hague, and the country’s postponed candidacy for EU membership because of failure to commit to imposed obligations. The failed talks with Kosovo regarding customs agreements and the subsequent
violence resulting in a political crisis in Serbia have been noted as negative developments and a case in point.\textsuperscript{11}

On this background, Serbia’s political landscape within the last two decades has been characterized by two main issues, which have also been its stumbling blocks on the road to EU membership: the “Kosovo” question and cooperation with the ICTY (Orlovic, p. 206). The next section will describe in detail the situation with Kosovo and the nationalistic tendencies in the country, and the implications these have for Serbia’s EU membership in terms of increased or diminished costs for rule compliance.

**Ethnopolitics in Serbia – nationalism and ethnicity**

When it comes to Serbia, politics based on ethnic belonging have been combined with nationalistic policies throughout the past two decades. Regarding the former, within the context of the Montenegro question, ethnic identification was seen as very political: “the way one identified defined one’s stand on independence” (Macek-Mackova, 2011, p. 624). Furthermore, the increasing ethnic character of the dispute between Serbia and Montenegro after 2003 caused political leaders to barricade themselves in their republican institutions, with no coordination regarding economic or financial matters (Macek-Mackova, 2011, p. 624). Nationalist sentiments are continuing even today, to a large extent as a result of the unresolved Kosovo issue (Lazic, Vuletic, 2009, p. 989). Therefore, while acknowledging that nationalism does not entirely fit into the definition of ethnopolitics but rather complements it, it will be analyzed here, as it is an essential characteristic of Serbia’s development and its success (or failure) to progress in the EU accession process. The following section will examine how ethnopolitics and nationalism translate in the internal political environment of Serbia.

**The political landscape**

As mentioned above, the unresolved status of Kosovo has been the bone of contention regarding Serbia’s democratization process ever since the 1999 NATO bombings. Striking an agreement on the conditions of power sharing and supervision between the political leadership of Kosovo and the international community, the UN Mission in Kosovo (UNMIK) and the Kosovo Force (KFOR) set the tone for Kosovo’s future independence (Liotta, 2010,

\textsuperscript{11} Amnesty International’s Annual Report on Serbia from 2011 can be found here: 
p. 84). In 2006 a new constitution was introduced in Serbia, which declared that Kosovo was an inalienable part of Serbia (Ramet, 2011, p. 274), again invoking nationalist sentiments. Kosovo declared independence in 2008 and requested international supervision in the face of the EU and continued NATO presence (Gowan, 2008, p. 1). However, even after the declaration of independence, Serbia has continued to claim sovereignty over Kosovo (Ramet, 2011, p. 282). This has even led to Serbian Prime Minister Vojislav Kostunica withdrawing ambassadors from states that recognized Kosovo which has induced plentiful criticism both from the EU and the US (Gowan, 2008, p. 7).

Another notable feature of Serbia’s internal political environment has been the persistent divisions among the political elites and their diverging policies. Already in the 1990s the democratic opposition was divided because of internal struggles, essentially helping Milosevic stay in power. After a brief moment of unity, whereby Milosevic was ousted, the democratic coalition (DOS) failed to survive and old rivalries among the different parties re-emerged. Dilemmas of statehood have “left scars and identity problems among the democratic parties” resulting in some of them to define themselves in nationalist terms (Massari, 2010, p. 264). Furthermore, the legacy of the Milosevic regime and the urgency that was required to deal with it also induced deep divisions regarding the pace and direction of the reforms (Massari, 2010, p. 264).

How do these characteristics of Serbia’s political environment translate and resonate in the country’s EU membership process? The next section will analyze the relationship between Serbia and the EU in the context of the accession process.

**Serbia and Brussels**

Two issues, already described above, resulting from ethnic and nationalist sentiments, have been major obstacles to Serbia’s EU integration – the relationship with Montenegro until partition, and the Kosovo issue. Regarding the first, the main obstacle for the EU was that it did not face one single negotiating partner but rather was confronted with two actors voicing opposite views (Massari, 2010, p. 263). Initially, the EU warned that if the two entities would split, this would be “a slower train to the EU” (Macek-Mackova, 2011, p. 627). After initially being reluctant to acknowledge the disagreement between the entities on major issues, such as economic harmonization, the EU finally accepted a “twin-track” principle with separated negotiations regarding the economic aspects of the SAA process (Massari, 2010, p. 263).
Regarding Kosovo in the conditionality framework, Serbia and the EU have assumed different positions – while Serbia’s refusal to recognize Kosovo is quite straightforward, the EU’s stance is more complicated (Obradovic-Wochnik, Wochnik, 2012, p. 1159). The EU’s leverage on the Serbia-Kosovo relationship is limited because there is no consensus among EU member states about the status of Kosovo, which can be exploited by Serbia by being framed as "unclear demands and a lack of credibility" (Obradovic-Wochnik, Wochnik, 2012, p. 1160). Furthermore, the questions of Kosovo, and EU membership have occupied polarized standpoints and trajectories in Serbian politics, whereby on Kosovo Serbia’s “no recognition” policy is quite clear and enjoying domestic consent, while EU integration has not enjoyed such clear-cut agreement among the key political parties (Obradovic-Wochnik, Wochnik, 2012, p. 1160).

It is important to point out that Serbia’s attitude regarding EU integration has not always been clear-cut until the arrival of a governing coalition with a pro-European stance in 2008. Since Milosevic was ousted, key Serbian parties have completely disagreed on EU integration, ranging from complete opposition to deeming it not a priority (Obradovic-Wochnik, Wochnik, 2012, p. 1166). As late as 2004, Serbia was able to agree a resolution on EU consensus. Two of the major political parties, however, which together comprised almost 40% of the electorate in the country – the Socialist party (SPS) and the Radical party (SRS) – did not agree on the resolution and refused to sign. The latter party’s leader even went as far as defining the EU as evil, leading to the conclusion that the war-time nationalist parties have largely remained unreformed (Massari, 2010, p. 264).

In addition, while the EU has made substantial effort to establish that Serbia’s accession is not dependent on recognition of Kosovo, an interesting development took place whereby the signing of the SAA with Serbia – a big step in the accession process – came a few months after Kosovo declared independence, even though at this time Serbia failed to comply with ICTY conditionality. This has resulted in the perceived notion among the Serb population that this was a sort of concession to pressure Serbia to recognize Kosovo, and a trade-off – “Europe for Kosovo” (Obradovic-Wochnik, Wochnik, 2012, p. 1164).
In 2010 the process of ratification of the SAA began and in March 2012 Serbia received an upgrade in its EU status and became a candidate country\textsuperscript{12}. In latest developments, on 19 April 2013 Serbia and Kosovo signed an EU-brokered agreement called “First Agreement of Principles Governing the Normalization of Relations” (Human Rights Watch, 2013). This has resulted in the European Commission statement of 22 April 2013 recommending opening EU membership talks with Serbia. The EC’s decision was justified by claiming that “Serbia had taken very significant steps and sustainable improvement in relations with Kosovo” (European Commission, 2013).

The next section will go more in depth regarding the EC’s Progress Reports on Serbia and will analyze to what extent the issues with ethno- and nationalistic politics have become stumbling blocks in Serbia’s EU accession process.

\textit{The EC Progress Reports}

The analysis of the EC Progress Reports on Serbia from the period 2005-2012 will be carried out with a specific focus on ethnopolitics. The analysis seeks to establish whether the presence of ethnopolitics has affected Serbia’s degree of EU membership. Analysis reveals that, overall, the presence of ethno- or nationalistic politics has not hampered substantially the EU accession process. While developments have been thoroughly reported by the EC, they have not formed essential conditions whose fulfillment would bring (or hamper) an upgrade in degree of EU membership.

From the first report in 2005, the EC has identified that incidents against minorities across Serbia, including in the autonomous province of Vojvodina, have occurred but they have not been the result of deliberate government policy (EC, Serbia, 2005, p.21-22). In 2007 the report claimed that ethnically motivated incidents have decreased, with the situation improving in the Vojvodina region, and general stability in Southern Serbia. However, the same report notes about incidents involving incitement and offensive language in the media, the tension between ethnic Albanians and the Serbian population in Southern Serbia, and deterioration in the situation in the Sandzak province because of divisions within the Muslim community (EC, Serbia, 2007, p. 15). These tensions continued throughout 2009 (EC, Serbia, 2009, p. 18). In 2011 the Commission issued an Opinion on Serbia’s application for EU

\textsuperscript{12} The status of all countries in the EU’s accession process can be found here: 
membership (EC, Serbia, 2011, p. 4), whereby the EC noted that religiously motivated incidents have decreased in numbers over the years (EC, Serbia, 2011, p. 26). In addition, the Opinion claimed that the situation in Vojvodina is “good and there has already been a further decrease in the limited number of incidents” (EC, Serbia, 2011, p. 30). In the latest report from 2012, the situation in both provinces was reported to be good and “stable overall” (EC, Serbia, 2012, p. 17). Serbia’s continuous problems with integrating the Roma population, with widespread marginalization and discrimination of the latter throughout the years (EC, Serbia, 2011, p. 32), while quite important as well, is beyond the scope of this paper.

Another issue relating to ethno- and nationalistic politics is connected to the political landscape in Serbia. Two points are worth mentioning. Firstly, in the parliamentary elections from 2007, the 5% general threshold was removed for ethnic minority parties and this resulted in increasing the latter’s representation, leading to the conclusion that, unlike in Bosnia, ethnic political parties are encouraged to participate in parliament, and their presence is marked as a positive development (EC, Serbia, 2007, p. 6). In the 2008 elections out of 21 political parties in parliament, four represented national minorities and constituted a parliamentary group (EC, Serbia, 2011, p. 10). Furthermore, in 2009 the Law on Political Parties was introduced, whereby ethnic minority parties were given an encouraging push by allowing fewer signatures for registration (EC, Serbia, 2009, p. 17). Following this law, a total number of 81 parties was registered, of which 45 were representing national minorities (EC, Serbia, 2011, p. 10). Secondly, throughout the years a political EU consensus has formed in Serbia but this has not been without its problems. The 2007 elections were marked by deep divisions and difficulties to reach an agreement on a common platform, and this political uncertainty impacted on the pace of adopting legislation (EC, Serbia, 2007, p. 7). In the 2008 report the EC cited the use of “offensive and inflammatory language against political opponents” (EC, Serbia, 2008, p. 7), combined with ongoing disputes between opposing political parties, as the cause for the delays and inefficiency (EC, Serbia, 2008, p. 8). However, in 2010 the EC reported stability and “high degree of consensus on EU integration as a strategic priority” (EC, Serbia, 2010, p. 7). In 2012 progress went even further, as the results from the parliamentary and local elections in May of that year resulted in the Serbian Radical Party, opposing the European integration of Serbia, not reaching the threshold for entering the parliament (EC, Serbia, 2012, p. 6).
Regarding the Kosovo issue, it has been prominent in all progress reports throughout the period. Discussions have intensified since Kosovo’s declaration of independence in 2008 whereby Serbia’s response has been to use “legal, diplomatic and peaceful means to contest the declaration” (EC, Serbia, 2008, p. 21). In the 2009 report the EC subtly implied that recognition of Kosovo by Serbia is crucial and the latter’s cooperation “on matters relating to Kosovo is a key European Partnership priority” (EC, Serbia, 2009, p. 21). The same line of rhetoric continued in 2010 as well: “the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people” (EC, Serbia, 2010, p. 18).

In 2011 a number of violent outbreaks with casualties, combined with “frequent inflammatory rhetoric by the Serbian leadership” took place (EC, Serbia, 2011, p. 34). The EU’s demand for cooperation has been integrated into appeals to cooperate with EULEX, the EU rule of law mission in Kosovo (EC, Serbia, 2011, p. 34). In 2012 the EC contended that Serbia exhibited “some progress towards a visible and sustainable improvement in relations with Kosovo, the key priority set out in the Commission’s Opinion on Serbia’s membership application” (EC, Serbia, 2012, p. 19). Following the 2012 elections, the EU concluded that the new leadership in Serbia “needs to continue to engage constructively in the next phase of the dialogue in order to achieve further progress towards a visible and sustainable improvement of relations with Kosovo” (EC, Serbia, 2012, p. 19). However, recognition of Kosovo has never been explicitly stated as a condition for EU membership. The positive impact of the developments in April 2013 described above is expected to be noted in the 2013 EC Progress Report.

The ICTY and EU membership

This section will investigate Serbia’s record in dealing with legacies of civil war, in particular its relations with the ICTY in the context of conditionality for accession to the European Union. The first part will present background information, including the attitudes of Serbian society towards the Tribunal. The second part will investigate to what extent cooperation with the ICTY has become an explicit condition for EU membership, and the third part will analyze the EC Progress Reports and how the Serbia-ICTY cooperation, or lack thereof, has resonated in the Commission’s overall judgment of progress in the country.
As discussed earlier, the work of the Tribunal has been the subject of mixed feelings. On one hand, the court’s positive lessons, such as the creation of an independent judicial institution with its own mode of operation, has been important for former Yugoslavian countries in confronting the crimes committed by their own citizens (Zakosek, 2008, p. 604). This has essentially constituted dealing with the civil war legacies. On the other hand, among the failures of the Tribunal has been the “inability to explain and to communicate its activity to the citizens of the involved post-Yugoslav states” (Zakosek, 2008, p. 604). In the case of Serbia this is particularly relevant when discussing the attitudes of the local population towards the Tribunal.

One of the most important characteristics of the Serbs’ perceptions towards the ICTY has its roots in Serb nationalism during the Yugoslav wars. After Milosevic was ousted the political elite channeled the nationalistic sentiments in a new direction, namely into opposition to the ICTY. The latter was then portrayed as “a political anti-Serb Tribunal” (Saxon, 2006, p. 566). Isabela Steflja (2010) calls this trend “defensive nationalism” which is comprised of “the denial syndrome, victimhood nationalism and the glorification of war criminals” (Steflja, 2010, p. 235). This is best exemplified through public opinion polls. According to an opinion poll in 2002, only 8% of the population expressed “trust” in the ICTY (Freyberg-Inan, Spoerri, 2008, p. 358). A survey in 2002 showed that 80% of 1300 Serbs participating believed that the Tribunal was prosecuting Serbs more vigorously, and some 57% believed that the Tribunal was unjust. In a poll from 2003, only 12% of the Serb population supported the continuation of their government’s policy of extraditing suspected Serb war criminals to The Hague (Steflja, 2010, p. 240-1). In a 2006 poll, just about 15% of the population supported cooperation with the Tribunal “in order to achieve justice” (Freyberg-Inan, Spoerri, 2008, p. 358).

Furthermore, the ICTY has continuously been used and abused by anti-reform parties, particularly in times of elections when they capitalize on the public’s negativity towards the institution (Freyberg-Inan, Spoerri, 2008, p. 360). A framework frequently used by politicians to take advantage of the ICTY’s negative image in Serbia has been the perceived threat to national security fueled by the “collective experience of international conditionality and the threat of international isolation” (Freyberg-Inan, Spoerri, 2008, p. 362). The next section will
investigate the political conditionality posed by the EU regarding cooperation with the ICTY in the context of EU membership.

**ICTY and Brussels**

Cooperation with the ICTY has been identified by the EU as a key condition for Serbia’s membership in the Union. However, until 2008, when a pro-European government came into power, Serbia did not have a clear European strategy and this has largely resulted in slow or at times even non-existing cooperation with the ICTY (Obradovic-Wochnik, Wochnik, 2012, p. 1166-7). The lack of consensus on the domestic level described in the previous section is also a direct result from the issue of cooperation with the ICTY, whereby pro-reform politicians were faced with a dilemma: if they do not comply with Tribunal-related conditions, this costs them support from abroad, but if they do, this can directly cost them support on the domestic level (Freyberg-Inan, Spoerri, 2008, p. 367). In 2005 many war crimes indictees arrived in The Hague on the principle of voluntary surrender and as a demonstration on the part of the Serbs of cooperation with the ICTY. This resumed cooperation also triggered the start of negotiations for the SAA (Orlovic, 2008, p. 216). By the same logic, however, the negotiations were suspended in 2006 because of lack of cooperation with the Tribunal (Orlovic, 2008, p. 216). Consequently, the improved relationship, as confirmed by the ICTY’s Chief Prosecutor, was the main reason to resume the frozen negotiations over Serbia’s SAA (Freyberg-Inan, Spoerri, 2008, p. 366). In 2008, the governing coalition delivered results almost immediately by arresting two long-time fugitives: Zupljanin in June, and Karadzic in July 2008. The last two suspects, Mladic and Hadzic, were captured in May and June 2011 (Obradovic-Wochnik, Wochnik, 2012, p. 1176)

Furthermore, applying conditions and the subsequent denial or delay of the benefits for compliance might also have slowed down the adoption of reforms to support the country’s liberal democratic development. These conditions have also served to isolate Serbia’s pro-reform forces from those international actors willing to actively support the consolidation of democracy, and their associated support (Freyberg-Inan, Spoerri, 2008, p. 366). Not only has discussion about the ICTY hampered policy reforms on the domestic level but pro-reform forces’ agendas have suffered because they have committed to external demands for cooperation which have been perceived as excessive or threatening by many among the Serbs (Freyberg-Inan, Spoerri, 2008, p. 367). Overall, it becomes clear that the demand to fully cooperate with the Tribunal is a key factor in the dynamics “linking conditionality, punitive
international isolation, and difficulties in Serbia’s liberal democratic trajectory” (Freyberg-Inan, Spoerri, 2008, p. 366).

The EC Progress Reports

As with Bosnia, Serbia’s cooperation with the ICTY has been traced in the EC Progress Reports. The issue has been a central determinant for the country’s progress in the accession process. Throughout the reports from the start in 2005 until 2011 it has been stressed that cooperation is “an integral part of the EU’s political conditionality” (EC, Serbia, 2005, p. 22) “including all possible efforts to arrest and transfer indictees” (EC, Serbia, 2008, p. 5) and that “full cooperation with the ICTY remains an essential condition of the EU” (EC, Serbia, 2011, p. 33).

As mentioned above, Serbia’s accession process has been marked with both negative and positive developments. On the negative side, in 2005, for example, the Commission reported that cooperation “is still sometimes obstructed by those in the administration and the army in possession of documents but unwilling to cooperate with the ICTY” and the country “has not yet fully aligned itself with the EU common position on freezing the assets of ICTY fugitives” (EC, Serbia, 2005, p. 23). In 2006 the Report directly stated that Serbia “did not meet its commitments on cooperation” with the ICTY leading to the Commission calling off the negotiations (EC, Serbia, 2006, p. 5). Furthermore, it added that “no progress was made on any of the six remaining fugitives, all of whom have connections in Serbia” (EC, Serbia, 2006, p. 15) and that “there is no guarantee that any high-profile war crimes trials could be conducted in a fair and transparent manner” (EC, Serbia, 2006, p. 16). In 2007, four indictees remained at large but this still led the Commission to declare that “Serbia has not yet achieved full cooperation” (EC, Serbia, 2007, p. 17). In 2009 among the negative comments in the Report were the two remaining fugitives Mladic and Hadzic (EC, Serbia, 2009, p. 19), and the Tribunal Chief Prosecutor’s concern of “negative statements made by senior government officials about the Tribunal’s judicial decisions” (EC, Serbia, 2009, p. 20). Nevertheless, especially since the capture of the last war criminals in the following years, cooperation has been increasing.

Among the positive developments in the relationship between Serbia and the ICTY have been the 2006 waivers for witnesses and access to documentation and archives called “good work” by the Commission (EC, Serbia, 2006, p. 15) which continued in 2007 with the handover of
documents by the reinstated National Council for Cooperation with the ICTY (EC, Serbia, 2007, p. 16). The arrest of Karadzic in 2008 invoked commentaries for “significant progress on improving cooperation” with the Tribunal (EC, Serbia, 2008, p. 21) and in 2009 this cooperation “further improved” (EC, Serbia, 2009, p. 19). In 2010 the Report was extremely positive, citing the ICTY Chief Prosecutor whose report claimed that “no requests remain outstanding” regarding witnesses, documents and archives (EC, Serbia, 2010, p. 18). The EC Report from the same year concluded that overall “Serbia’s international obligations are broadly complied with” (EC, Serbia, 2010, p. 21). In 2011, cooperation was deemed as “greatly improved” and reaching a “fully satisfactory level” (EC, Serbia, 2011, p. 33), and in the 2012 report it “continued to be fully satisfactory” (EC, Serbia, 2012, p. 18).

**Conclusion**

The analysis above suggests that, in the case of Serbia, ethno-politics and the legacy of civil war have had different effects on the EU accession process. While nationalistic sentiments have at times obstructed political consensus on EU integration, this has not been a game-changer for an upgrade in Serbia’s membership status. What is more, in terms of political representation, ethnic parties’ participation has been, in fact, encouraged. However, the issue of cooperation with the ICTY has played a crucial and much more pronounced role in the accession process, directly affecting the negotiations and the membership status. Most recently, this issue has become less of a determining factor but that is exclusively owing to the current fully satisfactory compliance by Serbia.
Croatia

This chapter will analyze the case of Croatia and the extent to which the country’s domestic costs for rule compliance are affected by ethnicity and the legacies of civil war. Croatia is furthest on the road to EU membership – it is currently and acceding country and will become a full EU member state on 1 July 2013. This analysis will trace the accession process and will illustrate how Croatia’s relationship with the ICTY, and its nationalist tendencies have substantially delayed it. The first section will give a brief overview of the political developments in Croatia throughout the 1990s and during the post-Tudjman era, and the democratization process. The second section will look at ethnicity and nationalism on the domestic level as factors determining the degree of membership in the EU by analyzing the EC progress reports between 2005 and 2012. The third section will analyze the relationship between Croatia and the ICTY by investigating the EC Progress Reports from the same period, and will evaluate whether this direct civil war legacy affected the delay in Croatia’s accession to the EU.

Croatia’s road to Europe

In the wars in Yugoslavia Croatia emerged as the clear victor due to its defeat of Serb forces and its success in establishing an independent state (Peskin, 2005, p. 215). In June 1991 Croatia declared independence which ignited the war with Serbia over the Serb population in Eastern Croatia. The war continued until 1995 when two successful military operations (named Flash and Storm) by Croatia’s army regained the lost territories and “paved the way for the country’s emergence as a regional power” (Peskin, 2005, p. 216). For President Franjo Tudjman and his nationalist supporters the independence war – known as the Homeland War – became the centerpiece of the nation-building project. It was also the main source of legitimacy for the ruling party.

Tudjman led the country until December 1999 (Peskin, 2005, p. 218). The subsequent defeat of his nationalist party – the Croatian Democratic Union (HDZ) – in elections in early 2000 transformed politics in Croatia and changed the dynamics of the state’s foreign affairs. The six-party coalition that formed, led by Ivica Racan and his Social Democratic party (SDP), embarked on a road to repair the war-torn economy of the country and re-orient towards the West (Peskin, 2005, p. 219). After a period of isolation in the 1990s, the new discourse focused on the perception that isolation was neither viable nor desirable in the long run, and
that to survive as a state, Croatia should turn towards Europe. The conviction was that if it remained outside, there were risks of economic and political regression, leading to permanent insecurity and fear of defenselessness (Jovic, 2006, p. 93). During the post-Tudjman era the Croatian government also wanted to distance itself from the designated group “Western Balkans” because of the problematic associations that stemmed from that, and wanted to demonstrate its ability to be European (Massari, 2010, p. 265). Finally, membership in the EU began to be seen as the ultimate recognition of the Country as a “normal European state”. Membership was also seen as a “second recognition”, the first being the official independence in 1992, while the second would be a confirmation for Croatia’s democratic credentials (Jovic, 2006, p. 87).

The democratic development of Croatia has also been measured in Freedom House’s Nations in Transit Report. In the 2012 Report Croatia’s overall score is 3.61 and it is classified as semi-consolidated democracy (Freedom House, 2012). In the report specific attention has been given to a number of issues. Firstly, the EU’s positive decision on Croatia’s membership has been classified as a clear progress indicator. However, the report notes that progress towards the EU is still to be internalized by society and institutions on the local level, citing public opinion polls revealing that Croatians are not well informed about their country’s EU negotiation process, or about what that means in terms of rights and democratic standards. Another issue noted by the report is government cooperation regarding war crimes committed in the 1990s which the report deems insufficient, citing a law which does not recognize war crimes investigations targeting Croatia but executed by Serbia. (Freedom House, 2012, p. 164). While anti-corruption efforts have been stepped up and the score under this section is higher than during the previous year, the overall score has only slightly improved over the last few years. Generally, however, Croatia is moving in the right direction towards accession.

In its 2012 Annual Report on Croatia, Amnesty International’s main emphasis is the slow progress in regards to prosecution of war crimes committed during the war between 1991 and 1995, with many crimes remaining unaddressed. While certain efforts by the President and the authorities were noted as attempting to address the wartime past, little action actually took
place on the part of the government, while important political figures contested the judgments of international courts.\textsuperscript{13}

This overview suggests that while Croatia is much further than Serbia and Bosnia i Herzegovina in its EU accession process, similar issues stand out as obstacles to a smooth democratic transition towards EU membership. The next section will turn towards the presence of ethnopolitics and nationalistic tendencies, and the implications these have had for Croatia’s membership in the Union in terms of increased or diminished costs for rule compliance.

**Ethnopolitics in Croatia – enter nationalism**

When it comes to Croatia, the situation is similar to that of Serbia. In the 1990s, the country had the characteristics of a “nationalizing state”, with its perception of the state as an ethnocultural community of and for Croats, as well as demographic, linguistic, cultural, political and economic domination promoted and protected by the state (Koska, 2012, p. 402). The Homeland War was, in the words of Tudjman, the culmination of the country’s “thousand year-old dream” and Croatian nationalists developed an ability to exploit the symbols of the war as political tools (Peskin, Boduszynski, 2003, p. 1123).

In that sense the classical ethnopolitics frame, as observed, for example, in Bosnia i Herzegovina, has played a more limited role in comparison to nationalism which has been markedly present in Croatia. The following section will investigate to what extent nationalistic politics have dominated and continue to be present in the Croatian political scene.

**The Political Landscape**

The Croatian state was created under conditions of aggression and war, and this produced very strong defensive nationalism and national identification (Sekulic, 2004, p. 473). For nationalists in Croatia, the country led an independence war resulting in both a victory but also victimization of Croats for suffering under the Serbs (Peskin, 2005, 216). Croatia in the 1990s has often been described as an “authoritarian populist regime”, “democratic despotism”, and “its party system as unipolar” (Jou, 2010, p. 100). As a result, ethno-religious

\textsuperscript{13} Amnesty International’s Annual Report on Croatia from 2011 can be found here: \url{http://www.amnesty.org/en/region/croatia/report-2012}
divides were a major cleavage, unlike economic issues which did not constitute a significant divide (Jou, 2010, p. 100).

However, by the end of the 1990s, the policies of the Tudjman government had failed (Koska, 2012, p. 403). In 2000, the victory of a center-left coalition government in the Parliamentary elections brought Croatia onto a new road in its democratic consolidation. As a result, the nationalistic rhetoric was replaced by EU integration, which constituted the new national priority (Koska, 2012, p. 397-8). In the following years Croatia developed a “moderate pluralist and not very polarized party system, which is the basis for democratic consolidation” (Zakosek, 2008, p. 600). In terms of its international obligations, as compared to Serbia, Croatia turned out to be more cooperative and responsive. While this has often been criticized by nationalists, it has ultimately proven more beneficial for the national interests and for democracy (Zakosek, 2008, p. 604).

Nevertheless, more often than not, the legacies of the war have been presenting Croatia with a dilemma between fully committing to protect minority rights and human rights, and persistent nationalist sentiments, and this largely defines its relationship with the European Union within the accession process (Roter, Bojinovic, 2005, p. 451-2). The next section will analyze the relationship between Croatia and the EU through the lens of the country’s internal political environment.

*Croatia and Brussels*

When it comes to Croatia’s EU integration, the process can be divided in two distinct periods – the period of the 1990s under Franjo Tudjman, and the period from 2000, with the change in government, to the current moment.

Tudjman’s regime after the Dayton peace agreement became hostile to the idea of Europe and to the EU, and turned suspicious towards supra-national organizations. In addition, as a winner of the wars, Tudjman appeared confident enough to reject the demands of the EU defined in the Regional Approach policy from 1997. He was critical towards Europe for not helping his country during the wars and for not completely supporting the independence. As a result, Croatia changed its constitution and added an article which prohibited membership in any organization which could possibly result in a renewal of Yugoslavia (Jovic, 2006, p. 85-86). The EU’s response was freezing the relationship with Croatia, thus contributing to
Croatia’s unofficial international isolation towards the end of the decade. With the death of Tudjman and the ideological and political shift regarding the idea of Europe, Croatia really only began its EU journey in 2000 (Jovic, 2006, p. 86).

According to Jovic (2006), the prospect of EU membership changed Croatian politics in three aspects. It defeated isolationist nationalism, it brought about consensus on EU integration on the domestic level, which successfully bridged the gap between the different segments of the population, and resulted in a foreign policy orientation much more open to regional cooperation (Jovic, 2006, p. 86). Furthermore, compliance with EU conditions related to Croatia’s identity as a Western and democratic state, while it was continuously emphasized that non-compliance would result in “staying at the Balkan level of closed-minded nationalism and pursuit of archaic interpretations of sovereignty and state interest” (Zambelli, 2010, 1673).

The landmark elections in 2000 brought to the fore a pronounced EU-integration policy and, with some delay, other parties also adopted such a pro-EU orientation (Zambelli, 2008, p. 174). The new discourse could be characterized as pro-European, the country was not hostile to Southeast Europe anymore and it publicly supported the EU membership of all countries in the region (Jovic, 2006, p. 94). Croatia applied for membership in the EU in February 2003 (Fink-Hafner, 2008, p. 172). Shortly after, during the same year, new elections brought back Tudjman’s party, the HDZ. Its leader and new prime minister Ivo Sanader was, however, far from the party’s ideology from the previous years and quickly confirmed his commitment to EU membership, deeming it a priority objective. He also committed to full cooperation with the ICTY (Jovic, 2006, p. 98).

Nowadays, Croatia’s political elites are seeking to project the new image of the state as having little to do with the nationalistic discourse characterizing the 1990s (Koska, 2012, p. 407). Strict conditionality, mainly related to cooperation with The Hague Tribunal, and the resulting internal political environment as a response, however, have resulted in unstable support for EU membership. In September 2004 results from a public opinion poll claimed that only 49% of Croats supported membership, while 41% were against it (Roter, Bojinovic, 2005, p. 451).

On June 1 2004 Croatia was designated a status of a candidate country. After accession negotiations lasting from 2005, on December 9, 2011, EU leaders and Croatia signed the
accession treaty. A referendum in Croatia on January 22 2012 resulted in 66% of voters giving their “yes” to joining the EU. Once ratified by all EU member states, the treaty will grant full membership to Croatia, making it its 28th member state on 1 July 201314.

The next section will go more in depth regarding the EC’s Progress Reports on Croatia and will analyze to what extent ethno- and nationalistic politics have been stumbling blocks in Serbia’s accession process.

The EC Progress Reports 2005-2012

It should be noted from the outset that for the time period in question (2005-2012) Croatia had already largely put behind its nationalistic discourse, which had defined its political environment in the 1990s, as described above. Therefore, it is hardly surprising that almost no evidence can be found in the EC Reports about ethnopolitics and nationalism defining the internal political environment. As noted above, Croatia’s internal EU-consensus and general direction towards EU integration largely subdued the nationalist rhetoric. However, a related issue, which has been a stumbling block for Croatia’s EU aspirations all throughout the covered period, is the issue of ethnic bias towards national minorities.

While the 2004 EC Opinion on Croatia’s EU membership application confirmed that there were “no major problems over assuring the rule of law and respect for fundamental rights”, the rights of minorities, in particular the Serb minority, needed to be addressed (EC, Croatia, 2005, p. 10). According to the 2005 Progress Report, national minorities, Serbs and Roma, continued to be perceived and presented as separate entities as well as far from being an integral part of Croat society (EC, Croatia, 2005, p. 21). The main issues with the Serb minority have been deemed a direct legacy of the war in 1991-1995 and have to do largely with the return of refugees and restitutions of their property (EC, Croatia, 2005, p. 22).

The EC has also stressed on the importance of investigating incidents motivated by ethnic bias. It noted that prosecutions are rare and that not much has been achieved in implementing the Constitutional Law on National Minorities (CLNM) – the landmark document guiding Croat policy towards its minorities (EC, Croatia, 2005, p. 22). The latter’s implementation improved in 2006, including “adequate minority representation” in regional assemblies and eight minority Members of Parliament (EC, Croatia, 2006, p. 11). General perception of

14 A timeline of Croatia’s accession process can be found here: http://ec.europa.eu/enlargement/countries/detailed-country-information/croatia/index_en.htm
national minorities did not change in 2006 and again included negative stereotyping. In the same year, “the number of apparently ethnically motivated attacks against the Serb minority” remained unchanged as compared to the previous year, including also lack of “clear statements condemning ethnically motivated incidents when they occur” (EC, Croatia, 2006, p. 12). The situation remained similar in 2007 as well (EC, Croatia, 2007, p. 13).

In 2008, the Report called for a “long-term strategy to implement the CLNM minority employment provisions”. In that year, for the first time “an ethnic Serb has been appointed to one of the Deputy Prime Minister posts” and the number of reports on ethnically motivated assaults decreased (EC, Croatia, 2008, p. 13). In 2009 the implementation of the Constitutional Law on minorities was deemed “a key Accession Partnership priority” (EC, Croatia, 2009, p. 14). While some positive developments have, indeed, taken place regarding the position of the Serb minority, over the following years the reports have persistently claimed that discrimination continues (EC, Croatia, 2009, p. 15; 2010, p. 14; 2011, p. 12). In 2011 a long-term strategy on minority employment for 2011-2014 was finally put in place and adopted the same year and the “number of reported racist or xenophobic incidents has been fairly limited, in particular compared to previous years” with generally adequate response from politicians and law enforcement (EC, Croatia, 2011, p. 12). In the 2012 Communication on the Main Findings of the Comprehensive Monitoring Report on Croatia’s preparedness to join the EU (2012), progress has been noted, although “the level of employment of minorities in the state administration and judiciary remains below the requirement set by the act” (p. 4).

However, none of the issues described above has constituted a direct obstacle to EU membership. Rather, along with other requirements in the accession process, it has been part of the overall EU conditionality.

**The ICTY and EU membership**

This section will investigate Croatia’s record in dealing with legacies of civil war, in particular its relations with the ICTY in the context of EU accession conditionality. The first section will trace the cooperation with the Tribunal under the different governments over the past two decades in order to better analyze in the second section how EU conditionality for cooperation translated in the domestic political environment. The third section will analyze the EC Progress Reports and how the Croatia-ICTY cooperation, or lack thereof, has resonated in the Commission’s overall judgment of progress in the country.
Croatia and the ICTY

Croatia’s relationship with the ICTY can be divided into specific periods. The first period would be Tudjman’s regime, followed by Ivica Racan’s government between 2000 and 2003, and Ivo Sanader’s policy in the following parliamentary mandate.

Franjo Tudjman’s policy was continuous non-cooperation and criticism towards the Tribunal as an anti-Croat establishment. Furthermore, Tudjman steadily refused to recognize the ICTY’s right to investigate the war crimes committed by Croats during the two successful operations Storm and Flash. Non-cooperation included obstruction of efforts by the investigators to find important evidence, and slow issuing of indictments for Croatian generals. This resulted in an official report to the UN Security Council by ICTY President Antonio Cassese on Croatia’s non-compliance in 1996. In 1999 another report regarding non-compliance was submitted protesting against obstruction of investigations on war crimes committed by Croats (Peskin, Boduszynski, 2003, p. 1124).

The entry of the new government in 2000 and its quick moves towards cooperating with the Tribunal led many to believe that the country’s anti-ICTY policy died with the Tudjman regime. This was also prompted by concrete actions from the new government including the creation of an ICTY liaison office in Zagreb, and a transfer of one Bosnian Croat suspect of war crimes to The Hague (Peskin, Boduszynski, 2003, p. 1125). However, the biggest test for the new government was the Tribunal’s indictments of two Croatian generals in 2001 – General Rahim Ademi and General Ante Gotovina (Peskin, Boduszynski, 2003, p. 1128). Initially Racan’s government reacted with proclaiming it will immediately hand over the indictees. However, Racan failed to move quickly and arrest the generals, allowing for them to escape the authorities (Peskin, Boduszynski, 2003, p. 1130). This has largely been due to the Prime Minister’s attempt at balancing cooperation with the ICTY, and thus good relations with the international community, while at the same time keeping his government together and avoiding to completely alienate the various nationalist groups. The latter had been piling rhetorical attacks which portrayed the indictments as “an attempt to criminalize the Homeland War and cast blame on all Croatians” (Peskin, Boduszynski, 2003, p. 1129). Gotovina’s escape encouraged the nationalist forces and undermined the government, thus showing that nationalists were capable of defying the government policy of arresting ICTY suspects (Peskin, Boduszynski, 2003, p. 1131).
With the return of the HDZ in power in 2003, Ivo Sanader pursued a policy of engagement with The Hague which led to Zagreb fulfilling its obligations to transfer indictees to ICTY custody (Lamont, 2010, p. 1683-4). The crucial change was that instead of forestalling the transfer of individuals itself, the Sanader government complied with arrests and transfers but refocused on contesting the trials within the Tribunal chambers (Lamont, 2010, p. 1685). Essentially, these defiance strategies enabled the government to reframe rule conformity in a way which was consistent with the party’s defence of the Homeland War, and this resulted in compliance with international and domestic incentives, namely the connection between EU accession and ICTY cooperation (Lamont, 2010, p. 1685). The next section will analyze this connection in more detail.

The ICTY and Brussels

Compliance with ICTY requirements as part of EU conditionality for membership has constituted a problem for Croatia all along but this has been a question of more than just policy adjustment and introducing new laws – it needed to address some of the fundamental features defining the Croatian state (Zambelli, 2010, p. 1665-6).

The change of government in 2000 was warmly welcomed by the European Union and was seen as a success in the EU’s policy in the Western Balkans. Croatia hosted the Zagreb Summit and signed the Stabilization and Association Agreement (SAA) with the EU in October 2001 (Jovic, 2006, p. 95-6). The new government reasserted its position that EU membership was the main goal behind the country’s cooperation with the ICTY and defined this cooperation as a national interest (Zambelli, 2010, p. 1668). This development was highly contested by nationalists, which substantially slowed down the implementation of the Agreement, specifically regarding cooperation with the Tribunal. The indictments of Gotovina in 2001 and Janko Bobetko in 2002 became serious challenges for the divided internal political environment (Jovic, p. 95-6). While Bobetko died before being transferred to the Tribunal, the case of Gotovina’s extradition remained one of the major obstacles to the accession of Croatia to the EU and NATO, as well as the cause for a substantial delay in the ratification of the SAA (Jovic, p. 97).

While under Sanader a lot of positive developments for Croatia’s accession took place, cooperation with the ICTY regarding General Gotovina remained the most difficult requirement to fulfill. Due to lack of results on this issue, in 2005 the European Council
postponed the date to start the accession talks with Croatia until that requirement is met. However, a report by ICTY Chief Prosecutor Carla Del Ponte a few weeks later confirmed Croatia’s full cooperation with the court which resulted in the immediate Council decision to begin the accession talks (Jovic, 2006, p. 100-1). In the immediate aftermath of these events in October 2005, opinion polls showed public support for Croatia’s membership in the Union – from 33% it rose to 49.6%, as the EU was not seen anymore as unfair to Croatia and no major anti-European political party existed anymore (Jovic, 2006, p. 102).

The next section will examine the EC Progress Reports from 2005 to 2012 and will evaluate what role cooperation with the ICTY played for the degree of EU membership of Croatia.

**The EC Progress Reports 2005-2012**

Cooperation with The Hague Tribunal has been a major part of the EU’s accession conditionality for Croatia. Along with cooperation with the ICTY itself, the EU also closely monitored domestic war crimes trials in Croatia, as well as regional cooperation among the former Yugoslavian countries in transfer and prosecution of war crimes indictees.

The 2005 Report, citing the EC Opinion of 2004, claimed that cooperation has significantly improved and Croatia was deemed fully cooperating with the ICTY. But also that it is crucial for the country to “take all necessary steps to ensure that the remaining indictee is located and transferred to the ICTY” (EC, Croatia, 2005, p. 10). Further in the report of the same year, cooperation on locating, arresting and transferring Gotovina was deemed “not sufficiently robust to yield significant results” which led to the postponement of the launch of accession negotiations in March 2005 (EC, Croatia, 2005, p. 23-24). Later in the same year, with the stated re-establishment of full cooperation in October, negotiations could begin (EC, Croatia, 2005, p. 24). Domestic war crimes trials have also been monitored. They have been mostly against Serbs, “with little appetite to try Croats” (EC, Croatia, 2005, p. 25) and “Serbs pursued in large numbers for less serious offences while Croats are pursued almost exclusively for killings” (EC, Croatia, 2005, p. 25). Interstate cooperation regarding war crimes with bilateral agreements between state prosecutors from Serbia, Montenegro and Bosnia were marked as positively progressing (EC, Croatia, 2005, p. 25).

Following the arrest of Ante Gotovina in December 2005, the last indictee was transferred from Croatia to The Hague (EC, Croatia, 2006, p. 13). On this subject, the Report noted the
The Croatian government’s “willingness to support his defence” and local authorities’ financial contributions, pointing to the fact that this is “indicative of the general mood that little is said in public discourse about the need to establish the truth about who is responsible for the crimes for which Ante Gotovina and the other Croatian generals are indicted” (EC, Croatia, 2006, p. 14). Nevertheless, regarding domestic war crimes trials “willingness to prosecute Croats for war crimes is slowly increasing” (EC, Croatia, 2006, p. 14). Still, no mechanism existed to end ethnic bias and ensure the application of “a uniform standard of criminal responsibility” (EC, Croatia, 2006, p. 15).

In 2007 Croatia’s cooperation with the ICTY was on the positive side (EC, Croatia, 2007, p. 15), while in 2008 issues with access by the Tribunal to documentation in Croatia triggered an urge by the EC for Croatia’s full commitment to tackling this issue. Regarding regional cooperation, in May 2008 there was a conference on prosecution of war crimes with the chief prosecutors of Croatia, Bosnia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia, but the persistent problems regarding the transfer of cases and extraditing suspects in war crimes cases remained a concern (EC, Croatia, 2008, p. 15). The 2009 Report also stressed the importance of cooperation with the Tribunal on access to important documents (EC, Croatia, 2009, p. 16). The obstacles regarding extradition of suspects in war crimes cases between countries in the region persisted, according to the report, and this “exacerbates the problem of impunity”. Regarding domestic war crimes trials, “a more balanced approach is slowly becoming evident with a greater willingness to prosecute perpetrators irrespective of ethnicity” (EC, Croatia, 2009, p. 9). However, among major obstacles was that in those trials, quite often the “convicted person’s role in the defence of the homeland as a mitigating factor” has been creating “a clear ethnic bias in sentencing for comparable crimes” (EC, Croatia, 2009, p. 9-10). In 2010 access to documentation by the ICTY remained a problem (EC, Croatia, 2010, p. 15). Ethnic bias in domestic war crimes trials continued (EC, Croatia, 2010, p. 8). A positive development was an amended agreement with Bosnia i Herzegovina on mutual enforcement regarding court decision aimed at closing the impunity gap (EC, Croatia, 2010, p. 16).

In 2011, the verdicts at the ICTY against the Generals Gotovina and Markac resulted in protests in various cities across the country and public declarations, including on politically high levels, which, according to the EC “have not been conducive to the efforts to create a
climate in Croatia more fertile for reconciliation and dealing with the legacy of the 1990s” (EC, Croatia, 2011, p. 13).

In the Communication on Croatia’s preparedness for EU membership from 2012 the EC has confirmed Croatia’s cooperation with the ICTY and encouraged the country to intensify its efforts to fight impunity and to facilitate the protection of witnesses. An important note is “Croatia’s firm commitment to supporting the other countries in the region on their path to the EU” combined with the continued engagement in “cooperation on war crimes at the bilateral and regional level and good cooperation between judicial authorities, in particular prosecutors” (EC, Croatia, 2012, p. 4).

**Conclusion**

The analysis above points to a number of conclusions. Firstly, ethnopolitics and nationalistic politics have remained a thing of the past and have not affected the EU accession process directly. However, ethnic bias towards the Serb minority has been quite persistent, including ethnically motivated incidents, lack of employment opportunities, issues with refugee return and housing, and domestic war crimes trials. Nevertheless, these have not constituted a direct threat to Croatia’s EU bid. Secondly, and very much related to the persistent ethnic bias and nationalism, regarding the ICTY, non-cooperation has resulted in delays in the accession process, in particular the delay in launching the accession negotiations in 2005 due to Croatia’s lack of cooperation.
Conclusion

The goal of this thesis was to test two factors – ethnicity and civil war legacies – and their effect on degrees of membership in the EU for three FY countries. A detailed case study analysis in the framework of Rational Choice Institutionalism was carried out and it resulted in a number of conclusions. It has provided evidence both supporting and opposing the three hypotheses for each country.

It can be concluded that democratic consolidation has been an important stepping stone for all three aspiring countries analyzed here. The EU’s requirement for complying with the Copenhagen criteria as a fundamental condition for membership has to a large extent induced the development of the democratic credentials of the examined cases.

The second hypothesis tested the extent to which the presence of ethnopolitics hampers an upgrade in membership status. Evidence for Bosnia has supported this hypothesis as the lack of consensus among the ethnic political parties on the domestic level has directly resulted in the delay to offer the country a candidate status. As for Serbia, while political representation of ethnic minorities has been encouraged, some impediments for cooperation with the EU have largely been the result of nationalistic tendencies persisting after the ousting of Milosevic. These tendencies, however, have not constituted a direct obstacle to the country’s degree of EU membership. Croatia’s EU bid has also been affected by ethnopolitics in a limited manner. As in Serbia, Croatia’s internal political environment has been characterized by nationalistic tendencies which have, however, been largely subdued throughout the first decade of the 21st century. Nevertheless, Croatia’s relationship with the Serb minority on its territory has been closely monitored by Brussels. However, developments in this area did not constitute a direct condition for upgrading Croatia’s membership status.

As for the third hypothesis relating to overcoming the legacies of civil war translated into cooperation with the ICTY, results also differ per case study. While for all three countries cooperation with the Tribunal has been set as an explicit condition for membership, this has affected the case countries differently. In Bosnia, cooperation has been present and has been carried out quite smoothly, with no major obstacles affecting EU membership. In Serbia, by contrast, non-cooperation with the ICTY directly resulted in stopping the accession negotiations, thus becoming a real impediment in Serbia’s accession process. The cooperation in arresting and transferring all Serbs indicted for war crimes during the Yugoslav wars have
also played a decisive role in Serbia’s case. In Croatia, similar to Serbia, non-cooperation has had a direct bearing on the delay in the accession negotiations. Furthermore, other issues including reactions on the domestic level to ICTY indictments and verdicts towards Croatians have negatively affected accession. Nevertheless, unlike cooperation itself, these other issues have not constituted a direct impediment to an upgrade in the membership status.

To conclude, this thesis has established that the two central variables – ethnicity and civil war legacies – play differentiated roles in the case countries’ compliance with EU conditionality. It has also been shown that this is the case because of conditions on the domestic level requiring a cost-benefit analysis by the aspiring states which either prevents or empowers political actors to comply. Thus, political actors’ rationalist calculations regarding ethnopolitics and civil war legacies fit well to explain their compliance (or lack thereof) with EU rules. Consequently, it can be concluded that the rational choice institutionalist framework has served a good purpose in explaining the role of ethnicity and civil war legacies in FY countries’ EU accession processes.

It is important to point out that other politically significant indicators have also affected the case countries’ degrees of membership. For example, in Bosnia, the federal division of the two entities has directly contradicted the EU’s aspirations for centralized government and this has resulted in limited progress. In Serbia, dealing with minorities in its provinces, as well as with the Roma population has constantly been an important area for improving government performance. In Croatia, an issue which has persistently played a crucial role in the country’s accession process has been the border disputes with its neighbours. However, these issues are beyond the scope of this thesis and, therefore, generalizations relating to them cannot be made.

Furthermore, even though the hypotheses were supported to different degrees, they only form part of the overall picture of EU conditionality for countries of the Former Yugoslavia. While this thesis has contributed to a gap in research regarding specific factors affecting West Balkan countries’ degrees of EU membership, further research in this field is needed to determine, first, if the tested factors also affect the rest of the FY countries’ accession processes in the same way, and second, within these processes, what other factors have been crucial in provoking or preventing an upgrade in status.
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