

# Generous or Just? An Introduction to and Examination of the Consequences of Political Conditionality in the Accession of Serbia to the European Union

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## I. INTRODUCTION

The act of adding a state to the European Union (EU) is termed “accession,” and for the countries aspiring to membership, the process can lead to incredible rewards. Yet these rewards must be respected and distributed intelligently because the prospect of accession to the EU is one of the only prizes powerful enough to compel countries to reform. With this responsibility in mind, the EU has already begun to tackle the problems of the next frontier for enlargement: the Western Balkans. How will the EU try to maximize the reform of those countries attracted to the power of membership without alienating them with impossible goals? The answer is conditionality.<sup>1</sup>

The broad principle of conditionality, that a benefit or advancement is tied to a specific condition that must be met,<sup>2</sup> has driven the last two decades of enlargement. However, the legal framework of conditionality has been refined for use in the current wave of enlargement, particularly in the area of political conditions. This Comment will trace the new legal and legislative directions given to potential Member States and how they have evolved to meet the latest challenges in the Western Balkans. First, the broader strategy of EU enlargement will be discussed, including the history of past enlargements up to the current state of enlargement within the EU. Next, the role of political conditionality will be examined, with a discussion of the historical background and crescendo in the so-called Copenhagen criteria. Following that will be a discussion of the realities of the legal framework of conditionality in the context of Serbia’s work towards accession, as an example of the work of the region as a whole. Along with this discussion will be an analysis of how conditionality laws and diplomacy have helped Serbia to reform. Finally, the Comment will conclude with a reflection on the state of political conditionality in the EU accession process and its usefulness beyond the boundaries of the EU.

## II. THE ENLARGEMENT STRATEGY OF THE EUROPEAN UNION

### A. *Historical Background of Enlargement*

How have the EU and its precursor organizations grown since the earliest days of the European Economic Community? How does the EU go about integrating new countries today? Countries aspiring to join the

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1. See EDWARD C. MEYER & WILLIAM L. NASH, COUNCIL ON FOREIGN RELATIONS CTR. FOR PREVENTATIVE ACTION, BALKANS 2010: REPORT OF AN INDEPENDENT TASK FORCE, at v-vi (2002).

2. See *id.*

ranks of the EU over the past few decades have been assigned long-term preparation plans to supervise their “Europeanization,” which will be detailed below.<sup>3</sup>

#### 1. Early Expansions and Central and Eastern Europe Expansions

The steps to a larger Europe have been politically charged and controversial, from the early enlargements of the European Economic Community to the subsequent rounds of enlargements that have included postcommunist democracies, a reunified Germany, and the satellite states of a waning Soviet Union.<sup>4</sup> After enlarging to the north and south, the European Commission turned toward the countries of Central and Eastern Europe for its next enlargement and created a program of “Europe Agreements” (EAs) to help organize those countries’ uncertain paths towards EU membership.<sup>5</sup>

The EAs also comprised an organized legal framework for accession that was split up over a longer period of time than previous accession programs, thereby giving the EU greater opportunities to create a relationship with the acceding countries.<sup>6</sup> By the end of the 1990s, a number of Central and Eastern European countries had entered into their EAs and, with it, vague expectations of future membership.<sup>7</sup> While the EAs were originally conceived as alternatives to promising full membership for the Central and Eastern European countries, by the end of the process, the simple idea of “association” would expand into openness to full membership.<sup>8</sup>

In 1993, the European Council had not yet been clear about what was promised to these interested countries, and thus the Council met in Copenhagen to discuss giving guarantees of membership.<sup>9</sup> In spite of the backdrop of civil war in the former Yugoslavia bordering the proposed enlarged EU, the European Council was poised to set a new direction for enlargement.<sup>10</sup> The defining moment of contemporary EU enlargement occurred in Copenhagen when, in a break with past statements,

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3. ALLAN F. TATHAM, ENLARGEMENT OF THE EUROPEAN UNION 2 (2009).

4. *See id.* at 1-5.

5. *Id.* at 76.

6. *Id.* at 83-84.

7. *See id.* at 77.

8. *Id.* at 83.

9. *Id.* at 87.

10. *Id.*

expansion to Central and Eastern Europe was given the European Council's blessing.<sup>11</sup>

The special pronouncement was for a special situation, as the countries on the horizon would include the first formerly communist countries to accede to the EU. One country that shows the progression of this legal and political enlargement strategy is the country of Slovenia, which had recently emerged from life in the former Yugoslavia and the storm of regional violence. In spite of these handicaps, Slovenia was part of the first enlargement to accept postcommunist countries.<sup>12</sup> Slovenia applied for EU membership in 1996<sup>13</sup> and received its EA in 1999.<sup>14</sup> In between these two dates, the European Council in Luxembourg accepted the European Commission's Agenda 2000 and included Slovenia in the list of countries ready for accession (the so-called "Luxembourg Six").<sup>15</sup> Nearly eight years after applying, Slovenia was granted full membership in 2004.<sup>16</sup> After half a century of communist rule, and alongside a decade of nearby violent warfare, Slovenia succeeded in transitioning into a democracy worthy of the EU within ten years.<sup>17</sup>

## 2. The Current Enlargement Policy

The relative ease and success of enlarging the EU into Central and Eastern Europe paved the way for the next round of enlargement towards Southeastern Europe. In contemplating the next group of countries for membership, EU leaders had to decide, as a matter of policy, whether new candidates would have to satisfy requirements for acceptance that had not applied to prior candidates.<sup>18</sup> While there is still an ongoing argument for consistency in the accession process, the current movement is towards a basic legal framework that is tailored to each new candidate state's special circumstances.<sup>19</sup> This was reflected in the enlargements of 2004 and 2007, though to a lesser extent because those waves of

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11. Note that during prior enlargements, approval of membership was withheld until a much later stage of the process. *See id.*

12. *See* European Comm'n, *Regular Report from the Commission on Slovenia's Progress Towards Accession*, EUROPEAN COMM'N 47, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/slovenia\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/slovenia_en.pdf) (last visited Oct. 14, 2012).

13. TATHAM, *supra* note 3, at 88.

14. *Id.* at 77 & n.38.

15. *Id.* at 91-92.

16. *Id.* at 112; Presidency Conclusions, Copenhagen European Council, ¶ 3 (Dec. 12-13, 2002).

17. TATHAM, *supra* note 3, at 115.

18. *See* RICHARD CAPLAN, *EUROPE AND THE RECOGNITION OF NEW STATES IN YUGOSLAVIA* 176 (2005).

19. *See id.*

enlargement matched membership to countries whose trajectory had been pointed towards democracy, peace, and Europe since their independence.<sup>20</sup> As these countries became Member States they left behind a number of countries whose future acceptance into the EU would not be as straightforward. The future accession of Slovenia's brethren in the former Yugoslavia, for instance, has been set back by decades because of the wars, conflict, and corruption that have plagued the region.<sup>21</sup>

After 2007, the next frontier of EU enlargement was clearly set as the "Western Balkans," a term invented by EU policy makers to mean the group of countries in the Balkan region that had not yet acceded to the Union.<sup>22</sup> At the time of this writing, Croatia is next in line for accession to the EU, which is projected to occur in July 2013.<sup>23</sup> Iceland and Turkey, perennial hopefuls, join the Western Balkan states of Macedonia, Montenegro, and most recently Serbia in earning "candidate" status to the EU.<sup>24</sup> Albania's application remains outstanding, while Bosnia and Herzegovina, as well as the partially recognized state of Kosovo, have "potential" applications for membership.<sup>25</sup> As discussed below, the dialogue between each country and the EU enlargement institutions can be substantially different, reflecting both the special requirements that match each country's unique barriers to membership and the EU's increased focus on creating deeper relationships with each future Member State.

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20. For example, the path of Romania within the last wave of enlargement was based on agreements signed as early as 1974 as well as agreements arising after democracy was restored in 1990. *Agenda 2000—Commission Opinion on Romania's Application for Membership of the European Union*, EUROPEAN COMM'N (July 15, 1997), [http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/romania/ro-op\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/romania/ro-op_en.pdf).

21. TATHAM, *supra* note 3, at 159-60.

22. Includes Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, and Serbia (including Kosovo). It does not include the "Eastern Balkans" of Bulgaria and Romania or the EU Member States Greece and Slovenia and is not coterminous with the former Yugoslavia. STEVEN BLOCKMANS, *TOUGH LOVE: THE EUROPEAN UNION'S RELATIONS WITH THE WESTERN BALKANS* 12 (2007).

23. *Countries Preparing To Join: Croatia*, EUROPEAN COMM'N, [http://ec.europa.eu/enlargement/countries/detailed-country-information/Croatia/index\\_en.htm](http://ec.europa.eu/enlargement/countries/detailed-country-information/Croatia/index_en.htm) (last updated Oct. 10, 2012).

24. Candidate country status means negotiations for accession have begun. *Enlargement Policy: Steps Towards Joining*, EUROPEAN COMM'N, [http://ec.europa.eu/enlargement/policy/steps-towards-joining/index\\_en.htm](http://ec.europa.eu/enlargement/policy/steps-towards-joining/index_en.htm) (last updated Oct. 10, 2012); *Countries Preparing To Join: Check Current Status*, EUROPEAN COMM'N, [http://ec.europa.eu/enlargement/countries/check-current-status/index\\_en.htm](http://ec.europa.eu/enlargement/countries/check-current-status/index_en.htm) (last updated Oct. 10, 2012); Press Release, European Council, Serbia Is Granted EU Candidate Status (Mar. 1, 2012).

25. Potential candidate country status means a country has been promised EU membership when it is ready. *Enlargement Policy: Steps Towards Joining*, *supra* note 24.

## B. Basis for Enlargement in EU Legislation

### 1. Basis in the Treaty on European Union

The mechanism of accession to the EU begins in the language of its Treaty on European Union (TEU), article 49, which reads:

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.<sup>26</sup>

The current article is a combination of three independent provisions from past founding treaties, giving an aspiring country a more streamlined requirement to accept the single modern article in lieu of three separate ones.<sup>27</sup> New to the language of the article is the requirement of the European Parliament's consent to join and the reference to TEU article 2's list of values (containing freedom, democracy, and the rule of law).<sup>28</sup>

### 2. Stabilization and Association Process

For the current slate of Western Balkan countries approaching membership, the old path to accession embodied in the EAs has given way to a more regional Stabilization and Association Process (SAP) that outlines how countries are to become members.<sup>29</sup> In general terms, the SAP represents a specific legal framework to assist a particular country's institutions toward democracy, a market economy, more regional cooperation, and finally, EU membership.<sup>30</sup>

Thus the accession experience of the Central and Eastern European enlargement generation informs the current experience of the Western Balkans, but in certain ways, it has become only superficially relevant to

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26. Consolidated Version of the Treaty on European Union art. 49, Mar. 30, 2010, 2010 O.J. (C 83) 43 [hereinafter TEU].

27. TATHAM, *supra* note 3, at 194 n.3.

28. *Id.* at 194; TEU art. 2.

29. TATHAM, *supra* note 3, at 165.

30. *The Stabilisation and Association Process*, EUROPA, [http://europa.eu/legislation\\_summaries/enlargement/western\\_balkans/r18003\\_en.htm](http://europa.eu/legislation_summaries/enlargement/western_balkans/r18003_en.htm) (last updated June 7, 2010).

the legal standards imposed on the current generation.<sup>31</sup> As an update to the older scheme, the current SAP includes much more stringent conditionality requirements, more requirements specific to individual countries, and more direct and constant involvement by the EU enlargement institutions.<sup>32</sup>

Part of the SAP has been the creation of documents known as Stabilization and Association Agreements (SAAs).<sup>33</sup> The SAAs are direct descendants of the legal language used in the EAs, written during the mid-1990s for the last generation of new Member States.<sup>34</sup> While their organization differs, the SAAs cover a majority of the same legal topics as the EAs, with the notable addition that the SAAs declare regional cooperation as a key objective for each of the aspiring members in the Western Balkans.<sup>35</sup>

In this aspect, the SAAs can be considered the modern evolution of prior accession documents. So while the Western Balkans, the SAP, and the SAAs represent the focus of enlargement for the foreseeable future, there has already been discussion of using the same legal process for any future enlargement of the EU (i.e., to Belarus, Moldova, and Ukraine).<sup>36</sup>

### III. DEVELOPMENT OF DEMOCRACY AND THE RULE OF LAW IN POLITICAL CONDITIONALITY WITHIN EU ENLARGEMENT

#### A. *Historical Background on the Need for Conditionality*

Of particular importance to this Comment is the role that conditionality has played in the accession process, beginning with the first generation of postcommunist countries to accede to the EU. The new need to place conditions on candidate countries arose from the countries' historical background and regional environment, which is detailed briefly below.

After the dissolution of Yugoslavia and the breakup of the U.S.S.R., the state institutions created under dictatorship and communism in Europe had to be replaced, quickly, by new democratic, market-based ones. The speed at which each government achieved the reforms

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31. See ADAM FAGAN, EUROPE'S BALKAN DILEMMA: PATHS TO CIVIL SOCIETY OR STATE-BUILDING? 20 (2010).

32. See *id.*

33. These have been born from the same provision that once instructed the EAs and the European Economic Area discussions. Consolidated Version of the Treaty on the Functioning of the European Union art. 217, Mar. 30, 2010, 2010 O.J. (C 83) 144.

34. TATHAM, *supra* note 3, at 169.

35. *Id.*

36. *Id.* at 197.

necessary for accession was governed as much by differences in circumstances as by a state's willingness to change. The speed of Slovenia's accession, for example, was due in part to its citizens' desire to distance themselves from their former Yugoslav colleagues, but also in part to the country's per capita GDP, which "was double that of Serbia proper, three times the size of . . . Bosnia and eight times that of Kosovo."<sup>37</sup> In situations like Slovenia's, the other countries of Central and Eastern Europe and the Western Balkans began to feel the pull of accession—the amazing power to magnetically align the institutions of a nation towards improvement. Milan Roćen, Montenegro's Foreign Minister, said, "[I]t would have taken his country ten years to reform as much as it has done in the last year in the absence of the pull of Brussels."<sup>38</sup> As reform took hold in these postcommunist countries, the EU enlargement program needed confidence that the reforms being made were not superficial. Their guarantee was the legal framework of conditionality—the new name for a system of preconditions to the offer of membership—which has also been used in many other situations.<sup>39</sup> Beginning in the late 1990s, the EA legal accession documents were written with explicit lists of the political and economic changes that were necessary to advance towards accession.<sup>40</sup> Those EAs also included sections devoted to prevention of illegal activities, including corruption and organized crime, which had not been included in prior EAs.<sup>41</sup>

Yet as soon as conditionality was adopted as law, it was used to punish candidates who failed to make reforms. When Slovakia and Turkey could not show sufficient progress with their political Copenhagen Council criteria, their accession negotiations were put on hold.<sup>42</sup> However, in recent times, the EU has made a point of showing candidates the positive outcomes of progress. The EU will soon welcome Croatia to the roll of Member States, the first Member State developed through the Western Balkan enlargement program.<sup>43</sup> The EU

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37. TONY JUDT, *POSTWAR: A HISTORY OF EUROPE SINCE 1945*, at 670 (2005).

38. *Is Serbia's EU Bid Dying?*, *ECONOMIST* (Oct. 1, 2011, 12:40 PM), <http://www.economist.com/blogs/easternapproaches/2011/10/serbias-troubles>; *The Pull of Brussels*, *ECONOMIST* (Oct. 15, 2011), <http://www.economist.com/node/21532306>.

39. See Sarah L. Babb & Bruce G. Carruthers, *Conditionality: Forms, Function, and History*, 4 *ANN. REV. L. & SOC. SCI.* 13, 14 (2008) (discussing the history of conditionality with reference to the International Monetary Fund).

40. See TATHAM, *supra* note 3, at 78-79; Europe Agreement art. 5, 1999 O.J. (L 51) 3, 6 (EC).

41. TATHAM, *supra* note 3, at 82; see Europe Agreement, *supra* note 40, art. 107 (regional cooperation).

42. TATHAM, *supra* note 3, at 202.

43. *Countries Preparing To Join: Croatia*, *supra* note 23.

encourages neighboring states to look to the acceding Croatia as an indication of what it takes to carry out the program of conditionality.<sup>44</sup>

The focus on conditions for accession was born of necessity. The terrible deconstruction and degeneration of the former Yugoslavian states involved in the hostilities of the Yugoslav Wars and the Kosovo War brought greater attention to conditionality's role as one of the only legal frameworks that could induce democratic changes in these countries.<sup>45</sup> Without the magnetic force of future membership, many of the current candidate or precandidate countries would be lost in economic and political conflict.<sup>46</sup> As a result, the EU has committed itself, more than in any previous enlargement, to building up state institutions to a stable and legitimate level in the EU image.<sup>47</sup>

### *B. The Copenhagen Criteria and Beyond to the Western Balkans*

As noted above, the consequence of such a powerful reward required the EU to take responsibility for creating a counterbalance in conditionality. The EU first introduced a conditionality program when it began helping the countries of Central and Eastern Europe.<sup>48</sup> Because at first the reward for cooperating with the EU was only access to the EU's common market and political support from other Member States, not future accession, a unified legal framework was less important.<sup>49</sup> But when the incentive of future accession was finally approved for these countries, the EU had to safeguard it with a legal framework within which the countries could be assessed.<sup>50</sup> The EU wanted commitments from these countries that certain broad political and economic goals would be met before accession would occur.<sup>51</sup> The few preconditions that existed during earlier enlargements were then collected into broader language by the European Council at Copenhagen in 1993, which forms the core of the current system of legal conditions that help to assess a

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44. The European Commission says that Croatia's accession is a message to nearby candidate countries (1) that the EU will follow through with the promise of membership, (2) that the criteria of conditionality is not impossible to meet, and (3) that regional disputes can be settled through negotiation and compromise. See *Enlargement Strategy and Main Challenges 2011-2012*, at 3-4, 13-14, COM (2011) 666 final (Oct. 12, 2011).

45. See TATHAM, *supra* note 3, at 170.

46. See *id.* at 191.

47. See *id.*

48. Othon Anastasakis & Dimitar Bechev, *EU Conditionality in South East Europe: Bringing Commitment to the Process 5* (S.E. European Studies Programme, European Studies Ctr., Discussion Paper, Apr. 2003).

49. *Id.*

50. *Id.* at 6.

51. *Id.* at 5.

candidate state's progress.<sup>52</sup> The Council at Copenhagen shed more light on the requirements for membership by outlining the so-called "Copenhagen criteria":

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.<sup>53</sup>

In general language, the Copenhagen criteria focuses on a state's government and economy as the deciding factors for future offers of membership. The foundation of these conditions can be traced to the primary treaties of the EU. The values of democracy, freedom, human rights, and the rule of law are set in TEU article 2 and give more depth to the Copenhagen political criteria.<sup>54</sup> For instance, the European Commission's conditions for Western Balkan accession include targets for democracy<sup>55</sup> and the rule of law.<sup>56</sup> Democracy broadly requires openness to citizen participation in government and elections and in practice has required a commitment to the common European construction of pluralist democracy.<sup>57</sup> Rule of law includes the concepts of a citizen's protected rights and his or her independence from governmental control.<sup>58</sup>

Such broad, sweeping ideas have been refined for the current group of membership hopefuls. The present system of conditionality, in fact, has been publicly called a precise fit made especially for the Western Balkan states on the horizon.<sup>59</sup> The kind of conditionality seen in the Copenhagen criteria, used for the 2004 and 2007 enlargements, has been expanded with a more challenging set of conditions for the Western

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52. See TATHAM, *supra* note 3, at 237.

53. Presidency Conclusions, Copenhagen European Council, ¶ 7A(iii) (June 21-22, 1993).

54. See TEU art. 2.

55. Including "(1) representative government, an accountable executive, (2) the government and public authorities [are] to act in a manner consistent with the constitution and the law, (3) the separation of powers . . . and (4) free and fair elections at reasonable intervals by secret ballot." TATHAM, *supra* note 3, at 210.

56. Including "(1) effective means of redress against administrative decisions, (2) access to courts and the right to a fair trial, (3) equality before the law and equal protection by the law, and (4) freedom from inhuman or degrading treatment and arbitrary arrest." *Id.*

57. *Id.* at 208; *Opinion on Greek Application for Membership*, ¶ 15, COM (76) 30 final (Jan. 20, 1976).

58. TATHAM, *supra* note 3, at 208.

59. *Id.* at 197.

Balkan countries.<sup>60</sup> Likewise, the EU has begun to use this present system of conditionality, especially the political criteria, as a form of active leverage against the Western Balkans instead of the more passive approach taken with the countries outside of Eastern and Southeastern Europe.<sup>61</sup>

In addition to the conditions laid out in Copenhagen, conditionality for the Western Balkans also comes from the proceedings of the Zagreb Summit (2000), the Thessaloniki Agenda (2003), the Regional Approach, the SAP, the SAAs, other EU financial aid programs, and peace agreements.<sup>62</sup> These sources combined drive home that political conditionality is one of the greatest obstacles between the Western Balkan countries and the prospect of economic riches from EU membership,<sup>63</sup> just like it was for past candidates with totalitarian histories.<sup>64</sup> If the political criteria outlined generally at Copenhagen (and other conferences) are not achieved in a timely manner, states can be hit by reductions in economic support and even suspension of their candidacy agreements.<sup>65</sup> This reflects the core position of political considerations for the next wave of enlargement as compared to prior ones.<sup>66</sup> The Western Balkan states, striving hard for membership, have been given conditions that their neighbors in the last enlargement were not.<sup>67</sup>

Political conditionality was also placed on the Western Balkans at the end of the Bosnian War, through the EU's initial attempt to stifle the region's conflict, known as the Royaumont Process.<sup>68</sup> More conditions came within half a year through the so-called "OBNOVA" Regulation, which included conditionality clauses that went further than any prior EU

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60. Anastasakis & Bechev, *supra* note 48, at 6-7.

61. See TATHAM, *supra* note 3, at 236; Milada Anna Vachudova, *The Leverage of International Institutions on Democratizing States: Eastern Europe and the European Union* 4 (Robert Schuman Ctr. for Advanced Studies, European Univ. Inst., Working Paper No. RSC 2001/33, 2001).

62. See Anastasakis & Bechev, *supra* note 48, at 7-8; Council Decision 2008/213, p.mbl., 2008 O.J. (L 80) 46 (EC); BLOCKMANS, *supra* note 22, at 251-53.

63. TATHAM, *supra* note 3, at 163; *Report from the Commission to the Council and the European Parliament*, COM (1996) 476 final (Oct. 2, 1996).

64. TATHAM, *supra* note 3, at 208 (meaning the countries acceding in the late 1970s and early 1980s, including Greece and Spain).

65. See *id.* at 163.

66. See *id.* at 165.

67. See generally BLOCKMANS, *supra* note 22, at 244 & n.8 (including Slovenia, possibly as a recognition of their general refutation of violence and warfare).

68. Early conditionality focused on general democratic and human rights, but had special requirements for cooperation with the International Criminal Tribunal for the Former Yugoslavia. *Id.* at 243-44.

agreement.<sup>69</sup> At this point, the criteria within that regulation were refined, establishing both positive and negative conditions separately on each country within the region,<sup>70</sup> meaning that positive steps would bring a country more cooperation with the EU, while failures to comply with the conditions would bring a lowering of trade preferences and eventually suspension of the agreement.<sup>71</sup> Building off of the 1993 Copenhagen criteria, the conditions used by the Council at this time were both more comprehensive and more specialized than their foundations.<sup>72</sup>

The EU has resisted establishing concrete definitions for “democracy” and “rule of law” because not doing so gives the EU wider latitude to invent new requirements based on differences among the countries.<sup>73</sup> Yet there remains a foundation in international law where these terms can be rooted. For example, one of the documents that preceded the last enlargement phase is the Charter of Paris for a New Europe, which defined democracy as the nexus of free elections, free expression, tolerance, equality of opportunity, governmental accountability, and compliance with the law.<sup>74</sup> Likewise, within the European Commission, democracy and the rule of law are defined as the nexus of free elections, political pluralism, and independent political branches, including an independent judiciary.<sup>75</sup> For the purposes of enlargement to the Western Balkans, the opposite of democracy and the rule of law would generally be submission to the “law of the ruler.”<sup>76</sup>

Again, while these definitions may include important terms, they do not give much clarity. For states seeking membership in the EU that rely only on these terms, the path connecting the troubled starting point and the worthy destination is unclear. A country that relies on the EU’s willfully vague characterization of democracy and the rule of law can begin to imitate the shape of the institutions and constitutions of other countries with strong democracies and respect for the rule of law.<sup>77</sup>

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69. OBNOVA brought financial conditionality based on return of refugees, restoring infrastructure destroyed by the war, regional cooperation, and other projects. *Id.* at 245; Council Regulation 1628/96, art. 1, 1996 O.J. (L 204) 1, 1 (establishing OBNOVA).

70. *Council Conclusions on the Principle of Conditionality Governing the Development of the European Union’s Relations with Certain Countries of South-east Europe*, 1997 BULL. EUR. UNION, no. 4, § 2 (May 8, 1997) [hereinafter *Council Conclusions*], available at <http://ec.europa.eu/archives/bulletin/en/9704/p202001.htm>; BLOCKMANS, *supra* note 22, at 246.

71. BLOCKMANS, *supra* note 22, at 246.

72. *See Council Conclusions*, *supra* note 70, Annex I; BLOCKMANS, *supra* note 22, at 246.

73. TATHAM, *supra* note 3, at 209-10.

74. *Id.* at 209; Charter of Paris for a New Europe, Nov. 21, 1990, 30 I.L.M. 190.

75. TATHAM, *supra* note 3, at 209.

76. *See* BLOCKMANS, *supra* note 22, at 241.

77. *See* TATHAM, *supra* note 3, at 209.

However, copying the visible form of another successful country does not automatically lead to success, especially when an invisible, unhealthy social order can lie beneath the recorded laws.<sup>78</sup> The way for the EU to change a country's political form and simultaneously change its political society is to create requirements that name specific steps. In short, to be effective, conditionality has to develop a vision of what the lofty ideals of democracy and the rule of law really look like on the ground level.

In practice, these values are vague enough to allow EU leaders to fit many different types of goals within these terms, so they can take a harder or softer line depending on the situation. In the Western Balkans, the line has recently been harder. The EU has adopted a "tough love" approach in its role in shaping reforms in the Western Balkans.<sup>79</sup> Almost all official pronouncements put an emphasis on the results of conditionality in current negotiations with potential Member States, concentrating on what rewards have been given for positive reforms and what punishments will be given for countries that continue their "bad habits."<sup>80</sup>

The importance of political criteria in correcting bad habits can be understood by exploring an instance where membership negotiations for Slovakia and Turkey stalled because the states had made insufficient progress on the Copenhagen political criteria.<sup>81</sup> When Slovakia and Turkey stumbled on their political goals during their path to accession, the European Council pointed toward their lack of fair elections, stable democratic government, or functioning public institutions when it declared that substantive negotiations would not continue until the countries followed the rules given to them.<sup>82</sup> When adequate progress was made to satisfy the conditions, membership discussions could resume.

The other Copenhagen criteria suffer from similar problems to those of democracy and the rule of law. The definitions of human rights, minority rights, market economy, and especially "good neighborliness" are all incredibly flexible. Again, the job of conditionality is to translate these big ideas into a list of benchmarks to be checked off. For example, in the case of the Western Balkans, work on human rights began with the Dayton Agreement that ended hostilities in Bosnia and Herzegovina, the

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78. *See id.*

79. *See* BLOCKMANS, *supra* note 22, at 5-6.

80. *Id.* at 6; *see* Press Release, Council of the European Union, Council Conclusions on Enlargement and the Stabilisation and Associated Process (Feb. 28, 2012), [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/genaff/128255.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/genaff/128255.pdf).

81. TATHAM, *supra* note 3, at 201.

82. *See id.* at 202.

concurrent Royaumont Process that focused on human rights, and the United Nation's prosecution of war criminals at the International Criminal Tribunal for the Former Yugoslavia (ICTY).<sup>83</sup> While the topics of human, minority, and other rights play an important part in the accession process, their conditions usually follow those determined through the conditionality discussed here: political conditionality.

#### IV. POLITICAL CONDITIONALITY IN CONTEXT: A CASE STUDY OF SERBIA

To give a context for how political conditionality works in the real accession process of a country, we turn now towards an examination of Serbia's path towards accession. While the country holds a unique, almost pariah-like place in modern Europe because of its record of war, nationalism, and violence, its story nevertheless illuminates the challenges that face its neighbors in the Western Balkans, as well as the recent successes that even an embattled region can create through conditionality.

##### A. *Historical Background on Serbia's Accession*

In the aftermath of World War I, a new map of Southeastern Europe was drawn. The then-Kingdom of Serbia was part of what would soon become Yugoslavia, a multiethnic state Serbia shared with modern-day Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, and Slovenia.<sup>84</sup> After more than seven decades as Yugoslavia, the constituent states began declaring independence in the early 1990s before devolving into extreme violence soon afterwards.<sup>85</sup>

To the outside observer, Serbia and the other fragments of the old Yugoslavia seem to be caught in a system of corruption and injustice built on ancient group hostilities.<sup>86</sup> They can point to the ethnic nationalism of Slobodan Milošević's reign in Serbia, which led to "ethnic cleansing" and hundreds of thousands killed in the Yugoslav and Kosovo

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83. BLOCKMANS, *supra* note 22, at 243-44, 333.

84. *See id.* at 11 & n.30.

85. The death toll of the Yugoslav Wars that followed the breakup of Yugoslavia has been reported to be as high as 140,000 people. The number of displaced people reached almost 4 million. *Transitional Justice in the Former Yugoslavia*, INT'L CTR. FOR TRANSITIONAL JUSTICE 1 (Jan. 1, 2009), <http://ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Justice-Facts-2009-English.pdf>; *see* BLOCKMANS, *supra* note 22, at 11.

86. JUDT, *supra* note 37, at 665-66; BLOCKMANS, *supra* note 22, at 11.

Wars, a dark, shocking stain on world history.<sup>87</sup> Yet to others, the region's behavior may seem to be the cruel consequence of centuries of imperialist puppetry.<sup>88</sup>

In the aftermath of this warfare, blame for the toxicity of the region has rested squarely on Serbia's shoulders. Serbia has been characterized as the "nation that thwarted the aspirations for independence of other Yugoslav ethnic groups due to their propensity for the indiscriminate use of violence."<sup>89</sup> They were one of the few aggressors against which Europe, NATO, and "the West" fought in modern history.<sup>90</sup> While the shadow of violent war has passed (for the moment), the country will still hold the ignominy of being the belligerent in Europe's only modern wars. Thus, in the minds of many, the reform of Serbia may represent one of the final political and humanist challenges for Europe.<sup>91</sup>

Notwithstanding the proper historical theory, the reality for countries like Serbia and others in the Western Balkans is that they are still directed by actual people who make decisions and who can bring success or failure to their countries in processes like EU accession.<sup>92</sup> The right incentives within the decision-making process is the key to conditionality, and if the right steps are taken, even a country with a history like Serbia's can one day become an EU Member State. Momentously, the EU now concentrates on preparing the states that took part in Europe's only wars since World War II for eventual accession into the Union.<sup>93</sup>

Serbia's current government is working to confront the political challenges left over after military conflict receded in the region. Serbia's political instability in the post-Kosovo War years has been attributed to financial and technological backwardness, state corruption, interethnic tensions, and the future prospect of the secession of Serbian regions in name only (i.e., Kosovo).<sup>94</sup> Serbia joins the other countries of the former

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87. Nenad Dimitrijević & Petra Kovács, *Introduction* to MANAGING HATRED AND DISTRUST: THE PROGNOSIS FOR POST-CONFLICT SETTLEMENT IN MULTIETHNIC COMMUNITIES IN THE FORMER YUGOSLAVIA, at xxi, xxi (Nenad Dimitrijević & Petra Kovács eds. 2009).

88. JUDT, *supra* note 37, at 666.

89. TOMISLAV Z. LONGINOVIĆ, *VAMPIRE NATION: VIOLENCE AS CULTURAL IMAGINARY* 7 (2011).

90. *See id.* at 7-8.

91. *See id.* at 35.

92. *See* JUDT, *supra* note 37, at 666.

93. *See* BLOCKMANS, *supra* note 22, at 11.

94. Dušan Janjić, *From Conflict to Multiethnic Coexistence: The Program of Crisis Solution in Presevo Valley*, in MANAGING HATRED AND DISTRUST: THE PROGNOSIS FOR POST-CONFLICT SETTLEMENT IN MULTIETHNIC COMMUNITIES IN THE FORMER YUGOSLAVIA, *supra* note 87, at 241, 245.

Yugoslavia in being mired in widespread organized crime, high unemployment, economic stagnation, and the aftereffects of disintegrative violence.<sup>95</sup> The counterweight to a future of destructive violence is the reform movement within these Western Balkan countries, especially their quest for accession to the EU.<sup>96</sup> The country of Slovenia represents the frontier of reform and the EU's enlargement into the Balkans; culturally, its citizens view it as the dividing line between the "civilized" northwest Balkan countries and the "culturally inferior" countries to the south and east.<sup>97</sup> The quickness and singularity of Slovenia's accession to the EU may have had as much to do with the promises of membership as with its citizens' desire to separate themselves from the culture of their neighbors.<sup>98</sup> Confronted with the promise of EU accession, the two paths for Serbia have been set forth. Either Serbia achieves membership as part of an EU that is effectively "without borders," or, if Serbia moves too slowly, EU Member States block their approval or else Serbia repudiates the EU's offer.<sup>99</sup> The latter path may lead to the threat of a nationalistic fantasy of a Greater Serbia rearing its head once again.<sup>100</sup>

With stakes like these, the focus is clearly on Serbia's lack of a political infrastructure. In prior enlargements, the EU's job was made easier by the fact that postcommunist states already had a sizable institution of government that only had to be converted to a pluralist democracy. In the Western Balkan countries like Serbia, the apparatus of the state is nonexistent or broken, and instead of changing an existing process, the EU must build an institution that promotes national cohesion, public welfare, and the rule of law.<sup>101</sup> Again, among all of these goals, the EU must also avoid creating institutions that will allow a retreat into the Serbian nationalism that still remains.<sup>102</sup>

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95. However, of the former Yugoslavian countries, Slovenia has fortunately escaped the innermost cores of violence, destruction, and economic trouble. See BLOCKMANS, *supra* note 22, at 2-3.

96. See *id.* at 5.

97. See LONGINOVIĆ, *supra* note 89, at 91.

98. Some say this cultural response stems from the lingering tensions created by the ethnically based imperial borders of the Hapsburg and Ottoman Empires. *Id.* at 98-99.

99. See TIM JUDAH, *THE SERBS: HISTORY, MYTH, AND THE DESTRUCTION OF YUGOSLAVIA* 363 (3d ed. 2009).

100. *Id.*

101. See FAGAN, *supra* note 31, at 28.

102. See *id.*; INT'L CRISIS GRP., *AFTER MILOSEVIC: A PRACTICAL AGENDA FOR LASTING BALKANS PEACE*, at xvi (2001), available at <http://www.crisisgroup.org/~media/Files/europe/balkans/Balkans%201.pdf>.

*B. How Political Conditionality Has Informed Serbia's Application*

The challenge, in short, is whether political conditionality can change Serbia into a proper Member State, lest it fail and sink into nationalism and further violence. The sole “carrot” available to pull countries like Serbia out of postcommunist savagery is the promise of EU membership, and the EU must use it carefully to ensure that true reform is being made.<sup>103</sup> As such, the EU has strengthened its policy of conditionality in order to force lasting changes in the Western Balkans.<sup>104</sup> Until 2001, these early conditionality principles were largely invoked in the negative direction,<sup>105</sup> and when negative conditionality is used, it necessarily requires punitive action. One of the few times that negative conditionality has been exercised was actually in relation to the Federal Republic of Yugoslavia (FRY) (as it was constituted in 1992, comprising of present-day Serbia and Montenegro) and the Conference for Security and Co-operation in Europe (CSCE).<sup>106</sup> The CSCE, the predecessor of the Organization for Security and Co-operation in Europe (OSCE), suspended the FRY's participation during the early months of the Bosnian War because its military support of Bosnian Serbs violated the CSCE's principles.<sup>107</sup>

After it became an independent state, more and more punishment by the international agencies failed to motivate Serbia.<sup>108</sup> Cooperation was at a standstill as its neighboring countries began declaring independence.<sup>109</sup> By 1999, the region was again drowning in violence.<sup>110</sup> As Serbia was being targeted in the NATO bombing campaign for its aggression in Kosovo, the EU had to reexamine its failing policy towards the region and replace it with a more powerful mechanism to prevent future conflict.<sup>111</sup> In the face of violent crisis in the Western Balkans, the EU decided that reforming the region would require putting the ultimate prize on the table: accession to the EU.<sup>112</sup>

With the destination uncovered, the mechanism of conditionality was again brought in to determine what specific reforms would be necessary to achieve the EU's Copenhagen criteria for membership. The

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103. BLOCKMANS, *supra* note 22, at 6; Anastasakis & Bechev, *supra* note 48, at 14.

104. *See* BLOCKMANS, *supra* note 22, at 242.

105. *Id.* at 247.

106. CAPLAN, *supra* note 18, at 171.

107. *Id.*

108. *See* BLOCKMANS, *supra* note 22, at 247.

109. *See id.*

110. *Id.*

111. *Id.*

112. *Id.* at 249-50.

process for the already-acceded Balkan country of Slovenia had been based on a more general process, mirroring the “big bang” nature of such a broad geographic enlargement.<sup>113</sup> On the other hand, in 2004, the European Council outlined a more state-by-state model for accession for Serbia and the other Western Balkan states.<sup>114</sup> This model was intended to give the EU more power to address deeper issues of corruption, judicial independence, and reform in the southeastern European countries than it had been required to do with earlier enlargements.<sup>115</sup>

Serbia in particular has had to accept conditions that were not applied to previous candidate countries or even the other countries of the Western Balkans.<sup>116</sup> These include the legal obligations to honor the peace agreements ending the Yugoslav and Kosovo Wars and to cooperate with the ICTY in bringing war criminals to justice.<sup>117</sup> Additionally, Serbia has been given unique political preconditions for EU membership, including the requirement that the territory of Kosovo be recognized as an independent state, as opposed to Serbia’s current position that Kosovo is a U.N.-protected province of Serbia.<sup>118</sup>

#### V. ANALYZING THE COMPLIANCE OF SERBIA IN MEETING THE POLITICAL CONDITIONALITY REQUIREMENTS

Serbia has accomplished much in the past few years, demonstrating the ways in which a Western Balkan country can change its course and begin to meet conditionality requirements. Serbia’s ambassador to the United States, Vladimir Petrović, sums up the power of the legal framework of conditionality: “For us, the EU is not just about becoming a member. It’s about reforming society to become in line with European laws and European values. We’re going to continue to do that and it’s going to be the top priority of the government in Belgrade.”<sup>119</sup> This Part

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113. See TATHAM, *supra* note 3, at 240-41.

114. *Id.* at 240.

115. *Id.* at 241.

116. See *id.* at 195-96.

117. *Id.* at 196.

118. See generally Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 141, ¶¶ 77, 121 (July 22) (ruling Kosovo’s declaration of independence was legal); Dan Bilefsky, *Kosovo Declares Its Independence from Serbia*, N.Y. TIMES (Feb. 18, 2008), <http://www.nytimes.com/2008/02/18/world/europe/18kosovo.html>; Nicholas Kulish, *Serbian Rage in Kosovo: Last Gasp or First Breath?*, N.Y. TIMES (Feb. 25, 2008), <http://www.nytimes.com/2008/02/25/world/europe/25serbia.html>.

119. Joshua Keating, *Why Serbia Is Still Bullish on the EU*, PASSPORT, FOREIGN POLICY (Mar. 15, 2012, 11:01 AM), [http://blog.foreignpolicy.com/posts/2012/03/15/why\\_serbia\\_is\\_still\\_bullish\\_on\\_the\\_eu](http://blog.foreignpolicy.com/posts/2012/03/15/why_serbia_is_still_bullish_on_the_eu).

will show five areas of improvement out of the hundreds of detailed changes that Serbia has made in response to the conditions presented to it by the EU for accession: (1) war criminal extradition, (2) the establishment of fair elections, (3) judicial independence, (4) anticorruption laws, and (5) recognition of Kosovo.

First, one of the clearest instances of positive conditionality in Serbia's history since the Yugoslav and Kosovo Wars has been the obvious relationship between delivering Serbian war criminals to international courts and the resulting rewards. For example, the effort within Serbian politics to make Slobodan Milošević resign from the presidency was followed by his delivery to the ICTY.<sup>120</sup> It was this delivery that unlocked many economic and political rewards from the EU.<sup>121</sup> Potential accession to the EU has therefore animated not only the reform movement in Serbia, but also the war crimes tribunal. It has also resulted in a clear message to the people and leaders of Serbia about what political conditionality represents and what kind of progress must be made to one day gain the ultimate reward of membership.<sup>122</sup>

Second, the requirements of political conditionality and their specificity are evident in Serbia's progress toward creating a system of fair elections. Corruption in Serbian elections has been reduced by two recent changes: the alteration of how seats are allocated in parliament and the abandonment of an old system of handing blank resignations to party officials at the beginning of their terms.<sup>123</sup> As written in the Serbian Constitution, parliamentary elections in Serbia are made through a proportional system, which ideally means that a political party ranks their candidates on a list, publishes that list for citizens to vote on, and then matches the ranked list of candidates with the number of seats they received from their proportion of the general vote.<sup>124</sup> Originally, the

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120. See Anastasakis & Bechev, *supra* note 48, at 16 n.17.

121. The rewards for his capture included many short-term financial aid, loans, and grants. See *id.* at 16 & n.17.

122. See *id.* at 16.

123. European Comm'n for Democracy Through Law (Venice Comm'n), *Draft Law on Altering and Amending the Law on Election of Members of Parliament of the Republic of Serbia*, Opinion No. 619/2011, CDL-REF (2011) 010 [hereinafter *Draft Law*]. The Venice Commission is the Council of Europe's advisory body for constitutional law. *The Commission: Presentation*, VENICE COMM'N, COUNCIL OF EUR., [http://www.venice.coe.int/site/main/Presentation\\_E.asp](http://www.venice.coe.int/site/main/Presentation_E.asp) (last visited Oct. 16, 2012).

124. *E.g.*, *Draft Law*, *supra* note 123. For example, in the May 11, 2008, parliamentary elections, the far-right nationalist Serbian Radical Party received 29.1% of the general vote, which translated into 77 of the 250 available parliamentary seats. Then, ideally, the candidates ranked before the election in positions 1 through 77 by the Party would become the new members of parliament. See *DS Coalition Wins, Set To Seek Partners*, B92 (May 11, 2008, 11:55 PM), [http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=05&dd=11&nav\\_id=50146](http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=05&dd=11&nav_id=50146).

Serbian Constitution allowed political parties to override the ranking of candidates that had been put before voters and gave them complete freedom to reorder candidates after the vote had been made.<sup>125</sup> In effect, voters would not be able to know who would be seated in parliament when they voted for a particular party.<sup>126</sup> The old system was criticized by the OSCE, the Office for Democratic Institutions in Human Rights, and the Venice Commission and seemed to conflict constitutionally and judicially with Serbian, European, and international laws.<sup>127</sup> The current law has been brought in line with international judgments, and a recent amendment to the election laws means seats are now allocated based on the rankings presented to voters.<sup>128</sup> In general, Serbian elections within the past five years have been aligned to international standards<sup>129</sup> and harmful practices that have remained within the election campaigning system have been recently addressed.<sup>130</sup>

The practice of members of parliament submitting blank resignation letters to their party officials met with substantial criticism but remained legal in Serbia for many years.<sup>131</sup> Under the old Serbian Constitution, party officials could legally force resignations and consequently could maintain extreme party discipline.<sup>132</sup> Bodies such as the Venice Commission feared that this could influence policy, discussion, and appointments.<sup>133</sup> In May 2011, the Serbian Parliament heeded this criticism, and the Law on the Election of Members of Parliament was changed to end the practice.<sup>134</sup> However, the Constitution of Serbia still

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125. *Commission Opinion on Serbia's Application for Membership of the European Union: Analytical Report*, at 9, COM (2011) 668 (Oct. 12, 2011) [hereinafter *Analytical Report*].

126. *Id.*

127. *Id.*

128. *Id.*

129. OFFICE FOR DEMOCRATIC INSTS. & HUMAN RIGHTS, OSCE/ODIHR LIMITED ELECTION OBSERVATION MISSION FINAL REPORT (2008), available at <http://www.osce.org/odihr/elections/Serbia/33212>.

130. See European Comm'n for Democracy Through Law (Venice Comm'n), *Joint Opinion on the Draft Law on "Altering and Amending the Law on Election of Members of Parliament,"* Opinion No. 619/2011, Doc. No. CDL-AD (2011) 005 (Mar. 31, 2011) (commenting on the status of Serbia's election laws); *Analytical Report*, *supra* note 125 (noting that improvements bring Serbian election law up to international standard). Earlier draft versions of the amendment only required that "at least half" of the pre-voting rankings be followed while filling seats, but this was met with criticism and the law was changed again to bring it in line with international law. See *id.*; *Draft Law*, *supra* note 123.

131. *Analytical Report*, *supra* note 125.

132. *Id.*

133. *Id.*; European Comm'n for Democracy Through Law (Venice Comm'n), *Opinion on the Constitution of Serbia*, Opinion No. 405/2006, Doc. No. CDL-AD (2007) 004 (Mar. 2007).

134. *Parliament Abolishes Blank MP Resignations*, B92 (May 25, 2011, 2:52 PM), [http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=05&dd=25&nav\\_id=74543](http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=05&dd=25&nav_id=74543).

reads, paradoxically: “Under the terms stipulated by the Law, a deputy shall be free to irrevocably put his/her term of office at disposal to the political party upon which proposal he or she has been elected a deputy.”<sup>135</sup>

Third, a great deal of progress has been made in the area of judicial independence. In 2008, Serbia formed a Constitutional Court through the country’s adoption of the 2006 Constitution.<sup>136</sup> In April 2011, both a High Judicial Council and a State Prosecutorial Council achieved their final configuration.<sup>137</sup> In general, the judicial process has seen large-scale progressive change within the last ten years.<sup>138</sup> In fact, Serbia’s per capita budget for courts, prosecutions, and legal aid is greater than all but two European countries.<sup>139</sup>

Next, Serbia has been working through the Group of States Against Corruption (GRECO), a Council of Europe anticorruption standards enforcement group.<sup>140</sup> The GRECO investigators examined the anticorruption laws in Serbia and came back with recommendations about laws to alter or change.<sup>141</sup> In the realm of bribery, current laws only prosecute bribes made “within the scope of the official’s competence,” which the investigation team worries will not cover bribes made in areas incidental to someone’s official capacity.<sup>142</sup> These worries remain, but a recent European Commission report stated that Serbia’s approach to dealing with organized crime is acceptable for future membership, considering its situation.<sup>143</sup>

Finally, Serbia’s antagonism toward giving state recognition to the Republic of Kosovo has lessened, primarily because such recognition constitutes a key element of the conditions for enlargement and has been explicitly referenced as the reason why Serbia’s worthiness for accession

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135. USTAV REPUBLIKE SRBIJE [CONSTITUTION] Nov. 8, 2006, art. 102, ¶ 2 (Serb.).

136. *Analytical Report*, *supra* note 125, at 16.

137. *Id.*

138. *Id.* at 16-20.

139. The two countries are Montenegro and Bosnia and Herzegovina. EUROPEAN COMM’N FOR THE EFFICIENCY OF JUSTICE, COUNCIL OF EUR., EUROPEAN JUDICIAL SYSTEMS: EDITION 2010 (DATA 2008): EFFICIENCY AND QUALITY OF JUSTICE 42 (2010).

140. GRECO, Council of Eur., *Third Evaluation Round: Evaluation Report on the Republic of Serbia Incriminations (ETS 173 and 191, GPC 2)*, COUNCIL OF EUR. (Oct. 1, 2010), [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)3\\_Serbia\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)3_Serbia_One_EN.pdf).

141. *Id.*

142. *Id.* ¶ 65 (internal quotation marks omitted).

143. The Commission specifically concluded, “The legal and institutional framework for the rule of law is comprehensive, including in the areas of the fight against corruption and organised crime.” *Enlargement Strategy and Main Challenges 2011-2012*, *supra* note 44, at 29.

candidacy would be uncertain.<sup>144</sup> Sure enough, as recent talks concluded between the two states and Serbia agreed to recognize Kosovo in international conferences, Serbia was granted candidate status.<sup>145</sup>

The history of Serbia suggests that true reform in countries only comes about when membership is made the destination. Motivation for accomplishing the goals outlined in the SAAs clearly seemed to be dependent on the extension of candidacy to countries like Serbia that were waiting for a sign that they would be next in line for membership.<sup>146</sup> Once the offer was made, the pace of the reforms (some of which are sampled above) increased rapidly.

Serbia anxiously awaited the results of the annual report from the European Commission about the next advancement toward becoming a Member State, the move from precandidate to candidate status. Happily for pro-EU Serbian leaders, on October 12, 2011, the European Commission recommended that the “Council should grant Serbia the status of candidate country” with the caveat that Serbia must normalize its relationship with Kosovo before the status should be changed.<sup>147</sup> The Commission noted Serbia’s progress on the political criteria for membership, including the country’s efforts to align its constitutional, legislative, and institutional framework with European and international standards.<sup>148</sup> As EU enlargement has spread from the western shores of Europe towards its eastern neighbors, it has confronted the more and more pronounced role of organized crime in society.<sup>149</sup>

## VI. CONCLUSION

While on one hand the process of becoming an EU Member State is unique and custom-made for each country and time in history, the legal foundation of conditionality can also be applied to other circumstances where only one reward will compel a given state, group, or entity to comply with directions. One such important place for a legal basis of conditionality is within aid and international development.

In the area of assistance to developing nations, the process is aimed not at simply delivering donations of resources, but rather building up the

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144. *A Balkan Cliffhanger*, ECONOMIST, Feb. 25, 2012, at 64.

145. *Belgrade Moves Closer to Brussels*, ECONOMIST (Mar. 2, 2012, 3:28 PM), <http://www.economist.com/node/21549123>.

146. See Presidency Conclusions, Thessaloniki European Council ¶¶ 40-41 (June 19-20, 2003).

147. *Commission Opinion on Serbia’s Application for Membership of the European Union*, at 12, COM (2011) 668 final (Oct. 12, 2011).

148. *Id.* at 11.

149. See generally MEYER & NASH, *supra* note 1, at 62-66.

institutions and infrastructure that will help developing nations find stability and reduce their future need for such aid. The practice of conditionality in the EU context is paralleled by similar work done by the International Monetary Fund and the World Bank.<sup>150</sup> In many respects, conditionality can be traced in the modern era to the post-World War II U.S. Marshall Plan (officially the European Recovery Program), which provided financial aid to Europe in the hopes of changing economic and political systems in the recipient countries.<sup>151</sup> But the key to all of these programs is that for the people caught in desperate need, the promise of aid can be as magnetic as the promise of membership is to countries like Serbia. There must be, then, an appropriate legal framework that establishes conditions so that the fullest effect of the reward can be realized, and so that the targets of the conditions do not receive their gifts “too easily” or, worse, become despondent after a lack of progress. In this case, Serbia has been on a path towards lasting reforms that couldn’t have been possible without conditionality. Yet the future is still uncertain. On one hand, former Serbian President Boris Tadić welcomed his country’s new status as a candidate for EU membership by saying that the prospect of membership puts Serbia on the right path towards “economic advance[ment] and prosperity.”<sup>152</sup> On the other hand, new Serbian President Tomislav Nikolić has returned to old nationalist rhetoric, including denying the Srebrenica massacre and resisting independence for Kosovo, and has cast doubt about whether Serbia will find its way into the EU.<sup>153</sup> Considering the challenge of meeting the

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150. *IMF Conditionality*, INT’L MONETARY FUND (Mar. 30, 2012), <http://www.imf.org/external/np/exr/facts/conditio.htm>; OPERATIONS POLICY & COUNTRY SERVS., WORLD BANK, CONDITIONALITY IN DEVELOPMENT POLICY LENDING 8-24 (2007); see Ron Synovitz, *IMF, World Bank Revise Loan Conditions To Support Eastern Europe Through Crisis*, RADIO FREE EUR./RADIO LIBERTY (Oct. 7, 2009), [http://www.rferl.org/content/IMF\\_World\\_Bank\\_Revise\\_Loan\\_Conditions\\_To\\_Support\\_Eastern\\_Europe\\_Through\\_Crisis/1846018.html](http://www.rferl.org/content/IMF_World_Bank_Revise_Loan_Conditions_To_Support_Eastern_Europe_Through_Crisis/1846018.html).

151. *Cooperation for Recovery: The Marshall Plan*, INT’L MONETARY FUND, [http://www.imf.org/external/np/exr/center/mm/eng/mm\\_dr\\_03.htm](http://www.imf.org/external/np/exr/center/mm/eng/mm_dr_03.htm) (last visited Oct. 26, 2012). Secretary of State George Marshall, in the speech that gave the impetus to the United States’ recovery efforts, stated that the purpose of postwar aid to Europe was “to permit the emergence of political and social conditions in which free institutions can exist.” George C. Marshall, Sec’y of State, Remarks at Harvard University (June 5, 1947); see also J. Bradford de Long & Barry Eichengreen, *The Marshall Plan: History’s Most Successful Structural Adjustment Program* (Nat’l Bureau of Econ. Research, Working Paper No. 3899, 1991), available at <http://www.nber.org/papers/w3899.pdf>.

152. *Serbia Moves Closer to EU Membership*, ALJAZEERA, <http://www.aljazeera.com/news/Europe/2012/03/20123123213019478.html> (last updated Mar. 2, 2012, 9:25 AM).

153. Jovana Gec, *Serbia’s New President Revives Balkan Tensions by Denying Srebrenica Massacre Was Genocide*, STAR TRIB., <http://www.startribune.com/156967505.html?eource=error&refer=y> (last updated June 4, 2012, 12:41 PM).

conditions of the EU, it is still unclear which side will succeed. What is clear is that Serbia's future is in the balance.