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***Pax Europea* for the Balkans?**

The role of values and political conditionality in the EU's policy

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Prologue

Europe has to choose between Balkanisation and Helvetisation.
(Karl Jaspers)¹

Balkanisation as opposed to *Helvetisation*, bellicose jingoism versus integrative plurality, the classical Westphalian concept of nation-state against shared power in a federal system. Where other than in the Balkans can these antagonisms be better observed? The space stretching from the western shores of the Adriatic Sea to the Balkan mountains has not only been the stage for the outbreak of WWI, but it was also an example of failing states at the threshold of the 21st century. Both times the (Western) European powers failed to prevent bloodshed, a double burden weighing heavily on Europe's collective memory.

On 09 May 1950, six European countries decided to go the path of *Helvetisation* and hence committed themselves to the values of reconciliation and cooperation, thus creating a 'domesticated' civilian *Pax Europea*. Nineteen other countries have joined the founding states since then. The attraction of the European integration model has achieved considerable changes in Southern, Central and Eastern Europe and it has proven the potential of civilian power. The EU on the other hand has used this positive perception from the outside to promote its own values of substantive democracy, market economy and rule of law, based on a highly technocrat *acquis communautaire*.

After having failed to prevent the atrocities of the civil wars in the 1990's, the European family of states has committed itself to open the Community also to the countries of the so-called 'Western Balkans' and give them a membership perspective. The positive incentives are ideational and economic: the Balkans could leave behind their bloody past and finally join the Common Market, including additional aid and allocations from cohesion funds. On the other side, the EU has a considerable influence through political conditionality to enforce

¹ Heinrich Schneider, "The dimensions of the historical and cultural core of a European identity", in: Thomas Jansen (ed.), *Reflections on European Identity* (Brussels: 1999), European Commission Working Paper, p. 12.

compliance, either by persuasion, suspension of talks or positive incentives. In some cases Brussels tries to convince the (potential) candidates, in others it openly threatens to suspend negotiations. The aspect of awarding compliance is a third alternative not as often made use of. The question of knowing if societal changes can be imposed from the outside is often answered with ‘no’ by many transformation scholars. Still, the EU has so far had an undeniably great impact on the transition in the region. It remains to see whether the Union strives for expansion and a *Pax Europea* on the whole sub-continent, or if the Union seeks to peacefully promote the crucial values of reconciliation and cooperation in the Balkans in order to integrate them one day into its structures. But will Europe succeed in the stabilisation and pacification? Can the EU apply its own set of norms – values it cherishes since the end of WWII – on others? Has the “hour of Europe”² finally come through the promotion of its democracy paradigm? Seemingly, Brussels can lead the Balkans to *Helvetisation* only if it sticks to a coherent and credible approach and if it maintains the ultimate perspective of EU membership. In the end, the question of *Helvetisation* and Balkanisation is one of great importance for both sides. Today, Karl Jaspers’ words can be interpreted even broader. Only if united can Europe stand the global and regional challenges and only as a *Helvetised* entity can the Balkans enter a period of peace, stability and relative prosperity.

During the course of writing this thesis I received substantial support from various people. Matthias Waechter helped me organise and structure my sometimes chaotic ideas and thoughts and pushed me to find a logical matrix for the thesis. My second supervisor, Ragnar Leunig, listened to my various propositions with great patience and astonished me with his broad general knowledge. The interviews with Fernando Gentilini and Dušan Reljić provided me with further information on the topic itself, the former with genuine insight of a practitioner of the Council’s Policy Unit and the latter with his regional expertise and valuable

² Luxembourg’s Foreign Minister Jacques Poos was overhasty when in July 1991 he stated that the European crisis-management facing the break-up of former Yugoslavia would symbolise that Europe’s hour had come, quoted in: Knud Erik Jorgensen, “Theorising the European Union’s foreign policy”, in: Ben Tonra/ Thomas Christiansen (eds.), *Rethinking European Union foreign policy* (Manchester: 2004), p. 12.

research experience. All these people have added important elements to this thesis and without their contributions the shape and the content of this dissertation would not be the same. Last, but as always surely not least, I have to finally also thank my parents and my family who have supported my studies like a duck takes to water.

Introduction

If there is ever another war in Europe, it will come out of some damned silly thing in the Balkans.

(Otto von Bismarck, end of 19th century)³

The Balkans, more than any other region in the world, are an EU responsibility. [...] we cannot afford to fail.

(Javier Solana, 2005)⁴

Though Bismarck's statement might at first sight seem an appropriate and direct account of the Balkans' contemporary history, it evokes improper connotations. The permanently claimed Europeanisation of the Balkans neglects the fact that a regional process of bridging east and west had already begun in the nineteenth century when the Ottoman Empire retreated gradually. The old widely accepted notion of the Balkan peoples as "tribes that squabble for futile reasons" is a myth and oversimplification of the historical development to which Western Europe greatly contributed its part.⁵ One the main reason for armed conflicts in the region is the "fog of history" which was so many times misused in entire Europe since the creation of the modern nation-state in the 19th century.⁶ Destructive *par excellence*, it led to the catastrophes of the 1990's. It is still a collective memory that dominates politics and societies in the region, dating back to the lost battle on the *Kosovo Polje* in 1389 or only more than ten years to the liberation and actual independence of Croatia. These different periods are still present in today's consciousness.

For the member states of the EU, collective memory has been a leading guideline since 1945, a constructive interpretation of the past and a turn to values such as reconciliation and peaceful cooperation. In retrospective, this internal *Pax Europea* was based on four elements. First, the strong leadership with an

³ Quoted in: Tony Judt, *Postwar* (London: 2005), p. 665.

⁴ Javier Solana, speech on "Europe's International Role" (Bratislava: 09 November 2005).

⁵ Ismail Kadare, "The Balkans: Truths and Untruths", in: Dimitrios Triantaphyllou (ed.), *The southern Balkans – Perspectives from the region*, ISS Chaillot Paper 46 (Paris: April 2001) p. 6.

⁶ *Ibid.*

emancipatory idea, best exemplified by Konrad Adenauer as the crucial figure for building partnerships between former enemies and regaining a regional and international role for Germany. Second, the elites in the founding countries of the European Coal and Steel Community (ECSC) were both driven by interest (security/economic) and norms (reconciliation and dialogue). Third, the positive economic performance enhanced public trust in the integration project and thus guaranteed the citizens' support for the elitist approach to integration. Finally, a common enemy, the USSR, forged a community willing to resist the influence of totalitarianism. Many contemporary politicians have made allusions to the Balkans as being the next pacification project, similar to the experiences of the post-WWII era. Can such historic comparison, often *per se* dangerously simplified, stand more detailed examination?

This thesis will try to analyse in how far norms – meaning “a standard of appropriate behavio[u]r for actors with a given identity”⁷ – are the guiding principles of the EU foreign policy since 1999. To depict in details the Yugoslavian wars in the 1990's and the NATO-bombing in 1999 is beyond the scope of this thesis.⁸ The aim of this dissertation is rather to analyse of the EU's role after the ethno-political armed conflicts in the 1990's and how the EU supports the post-war development and the stabilisation process in the Balkans.⁹ A successful and sustainable pacification of former Yugoslavia is crucial for Europe's credibility as an international actor. That is why High Representative

⁷ Martha Finnemore/ Kathryn Sikkink, “International Norm Dynamics and Political Change”, *International Organization*, 52 (Autumn 1998) 4, p. 891; in the further course I will use ‘values’ and ‘norms’ alternately.

⁸ The literature on Europe's reaction to the disintegration of Yugoslavia until 1995 is immense. For a relatively focused study see Sonia Lucarelli, *Europe and the Breakup of Yugoslavia. A Political Failure in Search of a Scholarly Explanation* (The Hague: 2000).

⁹ In the further course of this thesis, I will use the terms Balkans and Western Balkans interchangeably, meaning the quintet Albania, Bosnia-Herzegovina, Croatia, Macedonia and Serbia-Montenegro with an emphasis on the countries of former Yugoslavia. The expression Western Balkans was coined only in 1998 during the European Council meeting in Vienna in order to separate the countries of former Yugoslavia plus Albania from the potential candidates Bulgaria and Romania. For the whole region the term South East Europe is officially used, though the EU terminology has become somewhat blurry since Moldova also joined the Stability Pact for South East Europe in 2001. See European Council, *Presidency Conclusions*, Bulletin EU 12-1998 (Vienna: 11-12 December 1998).

Javier Solana stresses rhetorically the assumed priority of the Balkans on Brussels' foreign policy agenda.

Concretely, my approach will be two-fold: in the first place, it will depict the role of values in the European foreign policy and secondly it will analyse the success of the promotion of those values in the Balkans.¹⁰ One specific condition concerning the Western Balkans needs to be mentioned, namely the fact that the Western Balkans countries are not only third countries, but have an official membership perspective. Thus, the EU's leverage is very strong because all countries aspire to gain membership. Both enlargement policy and Common Foreign and Security Policy (CFSP) are present in the region. Further, the complex foreign policy *sui generis* of a confederative organisation such as the EU does not go along traditional analytical methods. Former aspects are especially important in my approach, as the tool of political conditionality is by far the EU's strongest means to promote its norms. Concerning the latter dimension, one of the main reasons the EU's credibility is permanently at stake is the inexistence of a unitary actor in Brussels. As mentioned above, the CFSP is complex and depends on unanimity among the member states. Even between the institutions there is often little coherence as the European Commission mainly drives for a quick integration process in the framework of enlargement policy while the Council represented by Secretary-General Javier Solana pursues conflict-management in the first place. The result is in some cases a conflict of interest, leading to antagonistic relations that undermine the EU's coherence and credibility.

Moreover, I argue that identity – unlike in the widely accepted definition given above – is not the basis of these norms and thus the input for foreign policy actions, but a collective memory based on the experiences of WWII and the beginning of the European integration process. Thus, the classical nexus power/identity in the logic of national *Realpolitik* (interest in terms of power) is broken up. The EU interpretation is diametrically opposed to the collective

¹⁰ For a good overview of contemporary normative approaches to values in international relations theory see Chris Brown, *International Relations Theory. New normative approaches* (New York: 1992).

memory in former Yugoslavia. Unlike in post-WWII Western Europe, collective memory in the Balkans of the 1990's was exploited for power struggles and to legitimise ethnic havoc. It is a mirror of what Europe was before it chose to go the way of cooperation and reconciliation.

In synthesis, my argumentation will be based on the assumption that norms are one decisive driving force in the way the EU conducts foreign policy. This value-driven approach does not contribute to the stability of the region, i.e. a value-goal conflict comes into being. The main deficiency of the attempt to foster European norms is the inconsistent application of its principle tool, namely political conditionality. If sustainable societal and political changes were to take root, only a strategic and coordinated conditionality including 'soft power' would be needed. So far, the European value promotion has been a rather dependent variable, though the accession negotiations with the Central and Eastern European countries (CEECs) necessarily caused the EU to switch gradually from reactionary to more strategic policies. Despite such a strategic underpinning, the EU has reached only in its approach to the Western Balkans a relatively coherent strategy and norms promotion is on the verge of becoming an independent variable. In some cases, however, fostering values does not lead to the proclaimed objective of bringing more stability to the region coupled with faster EU integration.

To give one brief example, which is also one of the two case studies in the third part of this thesis, the sanctions for non-compliance with the International Criminal Tribunal for Former Yugoslavia (ICTY) are a double edged-sword. On the one hand, the recent emphasis on the extradition of war crime indictees may be morally justifiable and necessary. But on the other hand, a focus on the search of single persons distracts from other essential problems like refugee return, minority protection and economic progress. The question this thesis is trying to answer concerns the consequences of a value-driven European foreign policy. So, three main points will be discussed. Firstly, the normative dimensions of the EU's policy towards the Balkans will be analysed. Secondly, I will examine how useful

conditionality really is to promote the underlying values in the CFSP and enlargement policy. Finally, the policy output and the situation in the Balkans will be evaluated. The case studies focus on ICTY compliance and on the status questions concerning the state union of Serbia-Montenegro where the EU is the principle external actor. These examples represent the two core values of reconciliation and cooperation, with two EU bodies being the agents to foster these norms.

The focus on values as a driving force of European external relations does not imply that institutions and processes do not play an important role. However, one of the arguments of this thesis is the presumption of normative considerations playing a key role in the conduct of European foreign policy. Further, there are cleavages between proposed values, pursued goals and policy output.

1. Norms of a civilian power

New world order, *Pax Americana* and unilateral moment are terms being used to describe the international system after the end of the Cold War. With the fall of the Berlin Wall not only did the bipolar order find an end, but also Europe's role in the world and the outside expectations also changed dramatically. From being a mere theatre for the two superpowers it became an actor itself. The responsibility for a political reunification of Europe as a whole shifted from Washington and Gorbachev's Moscow to Brussels. In those years, European politicians quickly saw the need for a concerted approach towards Central and Eastern Europe (CEE). In this context, the Federal Republic of Yugoslavia was not in the focus of attention as it was not aligned with the Warsaw Pact nor was there a revolution bringing down the socialist government. So, the disintegration of former Yugoslavia came as a surprise for some but it surely was the first external baptism of fire for a united Western Europe, a baptism that resulted in what James Gow coined a "Triumph of the Lack of Will".¹¹ Unlike in major parts of CEE, a transition to liberal democracy did not take place in former Yugoslavia. War broke out and Brussels was only united in a cacophony of different opinions on how to react.

Following Robert Kagan's rather simplistic line of argumentation Europe failed because it is incapable and too weak to be a significant international actor.¹² Only two years later after the US-led Iraq invasion will he argue in a very different rhetoric that the expanding EU "[...] absorbs problems and conflicts rather than directly confronting them in the American style."¹³ Apparently, there is more to world politics than hard military power and the interpretation of power relations

¹¹ James Gow, *Triumph of the Lack of Will – International Diplomacy and the Yugoslav War* (New York: 1997).

¹² See Kagan's controversial essay on diverging power capabilities and perceptions between the US and Europe: Robert Kagan, "Power and weakness", in: *Policy Review*, 113 (June/July 2002), pp. 3-28. For a critical essay on Kagan's argumentation cf. Stephen S. Szabo, "Power and Hubris", American Institute for Contemporary Studies, Commentary, available at: <<http://www.aicgs.org/analysis/c/power.aspx>> (accessed on 11 May 2006).

¹³ Robert Kagan, "Embraceable E.U.", *The Washington Post* (5 December 2004).

and capabilities depends on the respective historical context. Already here, Kagan pushes forward the idea of the EU as an expansionist project.

Still, it is obvious that Europe was unable to live up to the expectations the world community had put on the old continent. Notably the USA felt deceived because their transatlantic partners showed that they were not able to cope militarily with the new challenges of the post-Cold War era. Nevertheless, the proposed traditional neo-conservative approach of Kagan and others is also increasingly questioned by further chief ideologues from the neocons camp. In his recently published book *America at the Crossroads: Democracy, Power, and the Neoconservative Legacy*, Francis Fukuyama puts emphasis on the complementary importance of 'soft-power' to solve contemporary international conflicts and evaluates the US invasion of Iraq as a strategic and normative error.¹⁴ The term soft power was coined by Harvard scholar Joseph Nye in an article for *Foreign Policy* published in 1990.¹⁵ In the second chapter I will depict briefly his concept as an introduction to the principle of conditionality and show that his idea is not really innovative but rather derives from a European concept.

It became evident that the EU has to reflect on the role it wants play in the new constellations of world politics. This reflection on what Europe actually is – the commonly asked question of a European identity and the *finalité* of the EU – leads directly to the issue of the underlying values shaping any kind of identity.

¹⁴ Cf. Michiko Kakutani, "Supporter's Voice Now Turns on Bush", *The New York Times*, 14 March 2006, available at: <<http://www.nytimes.com/2006/03/14/books/14kaku.html?ex=1299992400&en=baf0b4b159efe8ac&ei=5088&partner=rssnyt&emc=rss>> (accessed on 11 May 2006).

¹⁵ Joseph Nye, "Soft Power", *Foreign Policy*, 80 (Fall 1990), pp. 153-71.

1.1. The power-identity nexus

Although these days the notion ‘soft power’ is particularly attributed to US-American scholars like Nye and Fukuyama, the reflections on alternative ways of power perception came up in Europe in the 1970’s. As they are the basis of apprehending the role of values in Europe’s conduct of foreign policy, I will give a sketch of the academic discussion in the following.

The EU’s “capability-expectations gap” in foreign policy,¹⁶ a term coined by Cambridge professor Christopher Hill, has narrowed since the end of the 1990’s. Tony Blair’s advocating for robust deployment and the EU-NATO cooperation during the Kosovo crisis have shown that Europe is in a process of socialisation, i.e. the understanding that the use of force as an *ultima ratio* cannot be excluded in a partially Hobbesian world. François Duchêne’s idea of Europe as a “civilian power”¹⁷ is put in another light since the recent efforts to establish an operative defence policy especially since 1998, but it still represents an early approach to analyse Europe’s place in the world in other categories than only classical power politics.

Already in the early 1970’s some scholars argued that the new civilian aspect of the European Community should be stressed. Others like sociologist Johan Galtung put more emphasis on the potential “superpower in the making” – in his opinion with a tendency towards Eurocentrism and maintaining a “Pax Bruxellana” – which would lead to counter-forces especially in the less developed world.¹⁸ Galtung believed that a military power Europe would lead automatically one day to the disasters that great powers encounter in general, what he calls “her Vietnam”.¹⁹ However, both agree that Europe has the potential to promote a new development in international politics, or, like Duchêne put it:

¹⁶ Christopher Hill, “The Capability-Expectations Gap, or Conceptualizing Europe’s International Role”, in: *Journal of Common Market Studies*, 31 (1993) 3, pp. 305-328.

¹⁷ François Duchêne, “The Community and Uncertainties of Interdependence“, in: Max Kohnstamm/ Wolfgang Hager (eds.), *A Nation Writ Large?- Foreign-Policy Problems before the European Community* (London: 1973), pp. 1-21.

¹⁸ Johan Galtung, *The European Community: A Superpower in the Making* (Oslo: 1973).

¹⁹ *Ibid*, p. 157.

*The European Community must be a force for the international diffusion of civilian and democratic standards or it will itself be more or less the victim of power politics run by powers more cohesive than itself.*²⁰

In the 1980's, this civilian aspect of European foreign policy was criticised by many, e.g. Hedley Bull stated that – in the wake of the European Community's (EC) failure to prevent the Israeli invasion into Lebanon – the EC proved it was not an actor with real power but constrained to a policy of declarations.²¹ Still, many shared the belief that the EC could stand for a new norm-driven approach to the rest of the world, some kind of interface between the great power blocks and the rest of the world. So far, Galtung's misgiving of an overly ambitious Europe that succumbs to its own ambitions has not proven to be justifiable.

Europe's impotence in the Balkans proved that norms alone cannot be sufficient to solve regional and ethnic conflicts. EU member states allegedly accepted responsibility during the wars but they “[...] never exercised power.”²² The lessons learnt lead first to NATO's Kosovo intervention and consequently to military and civilian efforts in the region in the form of military and police missions in Bosnia-Herzegovina and the Former Yugoslav Republic of Macedonia (FYROM). Power was used, stretching from hard military power in the 1990's – which actually was only in the NATO framework a true military power – and shifting more to soft and political power after the last authoritarian government was overthrown in October 2000. Yet, the turn towards joint military structures and acts does not necessarily contradict the notion of civilian power. The criterion to differentiate between a civilian and a classical power is not military capability and might but its democratic deployment.²³ That is why the

²⁰ Duchêne, pp. 20-21.

²¹ Christopher Hill, “European Foreign Policy: Power Bloc, Civilian Model – or Flop?”, in: Reinhardt Rummel (ed.), *The Evolution of an International Actor – Western Europe's New Assertiveness* (Oxford: 1990), p. 43.

²² David Owen, the EU's mediator from 1992-95 in former Yugoslavia, quoted in: Alexandros Yannis, “EU Foreign Policy in the Balkans: A Credibility Test”, *FORNET CFSP Forum*, 3 (March 2002) 2, p. 2.

²³ See Stelio Stavridis, *Why the 'Militarising' of the European Union is strengthening the Concept of a Civilian Power Europe*, RSC No. 2001/17, European University Institute Working Paper (San Domenico: 2001).

USA cannot be classified as civilian given the numerous non-democratic governments it supports out of realist national interests.

The European Union is not a military alliance like NATO [...]. Instead, it is a community of law and a community of values. Prospective members of the EU have to respect European values and, most importantly, to practise them. This concerns particularly the rule of law in all spheres of life. [...] Accession is about taking European values into the fabric of daily life. Our core values are democracy, the rule of law, respect for human rights, and the protection of minorities. They constitute the nucleus of the European way of life, and they are pre-conditions for closer relations with the EU.

(Olli Rehn, October 2005)²⁴

The EU is explicitly distinguished from the military alliance NATO and thus the civilian aspect *à la* Duchêne moves to the centre of attention. Enlargement Commissioner Rehn names the well-known Copenhagen criteria of democratic standards as the basic condition for any rapprochement between Brussels and the potential member states. It becomes evident that there is a hierarchy in the postulated conditions, a flexible hierarchy being adapted to different regions.

Unlike during the negotiations with the countries in CEE, the Balkans as a post-conflict region apparently needed another approach and a different set of values is taken as a basis.²⁵ At the beginning of the 1990's, the reasoning in Brussels still reflected the old neo-functional thinking which put economics first in the European integration process.²⁶ Moreover, there was no urgent need to apply any rigid democratic conditionality in CEE because the democratic transition was relatively stable with some exceptions in Latvia and Mečiar's Slovakia (see Annex, Graph 4). Such an approach was also based on the vital need to transform

²⁴ Olli Rehn, speech on "The Next Steps Towards Europe" at the University of Novi Sad (Novi Sad: 11 October 2005).

²⁵ However, the cases of Slovakia and Latvia where the EU used rigid democratic conditionality to enforce particularly standards of minority protection are an exception, cf. Frank Schimmelfennig/ Stefan Engert/ Heiko Knobel, "Cost, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey", in: *Journal of Common Market Studies*, 41 (2003) 3, pp. 495-518.

²⁶ Geoffrey Pridham, *Designing Democracy – EU Enlargement and Regime change in Post-Communist Europe* (New York: 2005), p. 39.

the post-communist economic structures.²⁷ In the Balkans, on the other hand, democracy promotion was an essential issue in the approximation process.

This supremacy of democratic conditions and consequently of values (such as cooperation and reconciliation) towards the Western Balkans over economic and legal aspects becomes evident in the case of Macedonia.²⁸ Though economic development and legal harmonisation with the *acquis* did not militate in favour of the government in Skopje, Macedonia was the first country in the Western Balkans to successfully finalise the Stabilisation and Association Process (SAP), the first step towards candidate status. It was rushed through the negotiations as a consequence of the smouldering inter-ethnic conflict between the Slavic majority and the Albanian minority.²⁹ Brussels negotiated the Ohrid Framework Agreement in August 2001 which settled the conflict, only four months after the SAP was concluded. According to the evaluation by US-American advocacy group Freedom House, Macedonia was in 2002 the least democratic state after Bosnia-Herzegovina in the Western Balkans³⁰ and less democratic – in political and economic terms – than Croatia and Serbia-Montenegro (see Annex: Graph 2). Yet, the first association agreement (SAA) was signed with Skopje because an escalation of the conflict would have had severe repercussions on the whole region and in specific on the situation in Southern Serbia and Kosovo where ethnic tensions continue to exist.

So, unlike in CEE where general economic and limited democratic aspects were at the forefront of obligations, in the Balkans EU officials underline norms resulting from the war-torn past. Consequently, assertions like Olli Rehn's statement that

²⁷ Besides the regional approach, Judy Batt identifies three main differences between the Balkans and CEE: political culture, statehood issues and the armed conflicts in the 1990's, cf. Judy Batt, "Introduction: The stabilisation/integration dilemma", in: *The Western Balkans: moving on*, Institute for Security Studies Chaillot Paper, 70 (October 2004), pp. 11-19.

²⁸ To simplify, I will use the internationally-used term 'Macedonia' interchangeably with FYROM, the official EU expression pushed through by Greece. At no point do I refer to the Greek region of Macedonia.

²⁹ See Gernot Erler, "The Stability Pact, the Stabilisation and Association Process and the New EU Strategy: An Attempt to Set out the Political Context", in: *Südosteuropa Mitteilungen*, 4 (2004), p. 14.

³⁰ Cf. Freedom House, *Macedonia Country Report 2002*, available at: <<http://www.freedomhouse.org/template.cfm?page=22&year=2002&country=596>> (accessed on 11 May 2006).

the EU has “the same yardsticks”³¹ for the Western Balkans and Turkey as it had before the Eastern Enlargement is not the whole truth. Elements were added and emphasis was shifted.

After the discord during the civil wars in former Yugoslavia, the EU has understood that its international credibility is at stake in the way it pursues goals in its foreign policy. The Western Balkans have become a ‘laboratory’ for successfully proving the presumed integrity of European commitments. Policy-makers in Brussels perceive the EU still primarily as a civilian power despite recent developments of military peace-keeping employment in the Balkans and soon also on a short-term basis in the Republic of Congo. If armed intervention is assessed as a last resort, other generally applicable instruments are needed to establish an efficient and successful foreign policy.

As development policy is *de jure* a purely civilian type of foreign affairs, the EU has chosen to employ one of the main tools of international aid practice, i.e. the principle of (political) conditionality. Only with an EU-membership perspective that tool came to full force. After the last openly fought military crisis in former Yugoslavia the European heads of government decided in 1999 to open the door of EU-membership to the countries of the Western Balkans, thus using the biggest carrot in order to influence the domestic development and stabilise the region. As carrots alone are generally not enough to attain compliance, the EU also made use of sticks, the other side of the conditionality coin which Brussels applies increasingly in promoting especially political developments. Still, some EU officials claim that neither stick nor carrots are used but what Joseph Nye calls soft power. He added to the two-fold approach a third element, namely Duchêne’s notion persuasion, which will be discussed later on in the second chapter. First, I will highlight the core values and then derive those concerning specifically the Balkans. In order to arrive at the driving norms, the question of what has created those basic values is an essential first step.

³¹ Quoted in: Simon Taylor, “Mr Enlargement takes a test drive”, *European Voice* (27 April – 3 May 2006), p. 17.

1.2. “Collective memory” and basic values

Who we are and what we do are not only two core aspects of behavioural analysis in general, but they are as well the input and the output of the black box of foreign policy analysis. Defining identity and power in a European context is difficult, not only because “[...] Europeans are revisiting and reinventing their own collective view on power”,³² but also because the question of one identity without one European people³³ could only be explained through multilayered identities. Not by chance one of the first declarations of the European Political Cooperation, a voluntary cooperation in the field of foreign policy established in 1970, was entitled “declaration on European Identity”.³⁴ Even the Treaty on the EU (TEU) states that the Union shall “assert its identity on the international scene.”³⁵ However, it remains unclear what the components of such an identity are.

Instead of claiming a unique identity that encompasses all differences, Europe partly stands for liberal values which are generally accepted as guidelines of modern civilisation.³⁶ The significance of basic values such as democracy, human rights and rule of law is the result of historical and painful experiences. Interestingly enough, almost all of these *Leitmotifs* are officially the treaty-based goals of the CFSP: “to preserve peace and strengthen international security [...], to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.”³⁷ In accordance to the practice of the vast majority of international and regional organisations, the EU forms values in the

³² Kalypso Nicolaidis, “The Power of the Superpowerless”, in: Tod Lindberg (ed.), *Beyond Power and Paradise: Americans and Europeans on Europe and America* (2003), p. 98.

³³ However, some scholars see an ongoing formation of a socio-cultural European community, cf. Dieter Fuchs, “Demos und Nation in der Europäischen Union”, in: Hans-Dieter Klingemann/Friedhelm Niedhardt (eds.), *Zur Zukunft der Demokratie – Herausforderungen im Zeitalter der Globalisierung*, WZB-Jahrbuch (Berlin: 2000), pp. 215-236. See also the often-cited Maastricht decision of the German *Bundesverfassungsgericht* in which it denies the existence of one European demos: BVerfG 89, 155 (Karlsruhe: 1992).

³⁴ Jorgensen (2004), p. 12.

³⁵ *Consolidated Version of the Treaty on European Union*, Title I, Art. 2, in: *Official Journal of the European Communities*, C 325/5 (2002); hereafter, the abbreviation *TEU* will be used for the consolidated EU treaty.

³⁶ For the opposite of this idea, i.e. a collective erasure of the bellicose centuries out of our memory as the starting point of a new history, cf. Peter van Ham, “Europe’s Postmodern Identity: A Critical Appraisal”, in: *International Politics*, 38 (June 2001) 2, pp. 229-251.

³⁷ Article 11, *TEU*.

inside and is at the same time driven by them, i.e. it has the dual role of reflecting its inherent values to the outside world and maintaining the respect of norms among its member states. These broad values become more concrete and clearer in the Balkan policy where two core norms are focussed which derive from post-war reconstruction and integration. From the ruins of WWII a two-fold approach was essentially applied to overcome hostility between former enemies and begin constructive cooperation. On the one hand, no Europe-wide reconciliation was possible without a constructive Franco-German tandem. Reconciliation after a violent past included that the “guilty must be punished”.³⁸ Future progress on the other hand was only possible through “[...] coopération effective à des fins pacifiques”.³⁹ Thus, Winston Churchill, whose speech in Zurich gave a crucial impetus to the dialogue between Paris and Berlin, from the very beginning on considered the conviction of war criminals – meaning the rule of law – as the first step before future societal reconciliation and regional cooperation can be established. Jean Monnet stresses that any economic cooperation has to pursue exclusively pacifist ends. Both personalities laid down in their discourse two of the cornerstones of European integration. Unlike some European integration researchers, I do not believe that an analytical distinction between universal and common values has to be made,⁴⁰ as reconciliation and cooperation are both typical for the development in Western Europe in the 1950’s and 1960’s, but also for other war-torn regions.

From these observations it can be concluded that it is not a collective identity that could guide foreign policy in the European context but what French political scientist Jean-Marc Ferry calls “collective memory”.⁴¹ Interpreting European history in a similar way can result in norms that guide foreign policy-making and

³⁸ Winston Churchill, “Speech to the Academic Youth” at the University of Zurich (Zurich: 19 September 1946).

³⁹ Jean Monnet, *Mémoires* (Paris: 1976), pp. 349-350.

⁴⁰ Helene Sjurson/ Karen E. Smith, “Justifying EU foreign policy: the logics underpinning EU enlargement”, in: Ben Tonra/ Thomas Christiansen (eds.), *Rethinking European Union foreign policy* (Manchester: 2004), p. 139.

⁴¹ Cf. Peter Wagner’s answer to the question if a European cultural identity actually exists, in: Hans Joas/ Klaus Wiegandt, *Die kulturellen Werte Europas* (Bonn: 2005), pp. 494-511.

at the same time underline the differences towards others.⁴² From the Westphalian Peace until 1945, European politics were in first place sequence of balance of power politics. The development of European integration is a clear-cut shift towards what nowadays is considered contemporary European politics, namely effective multilateralism or what Werner Weidenfeld calls “Strategie der Kompromissssuche”.⁴³ Not only was that understanding of multilateral consensus-finding the *file conducteur* of the integration process since 1951, but it also is one of the key points of the first European Security Strategy (ESS) for the common foreign policy.⁴⁴ This externality of interior norms is reflected in the Union’s policy towards the Western Balkans. That value can be labelled as peaceful cooperation with one another, exemplified by preserving a state union between Serbia and Montenegro. Another essential value is reconciliation between the former war parties and ethnicities which was a *conditio sine qua non* for coping with past crimes and atrocities and undergoing a self-healing process. The prerequisite for reconciliation is rule of law. German philosopher Theodor W. Adorno spoke for the German case of “Bewältigung der Vergangenheit”.⁴⁵ During the commemoration for the fiftieth anniversary of the capitulation of Nazi-Germany, the President of the European Commission pinpoints to the two values that were in the minds of the founding fathers and ought to inspire the future of the Union:

Aujourd’hui donc, rappelons-nous cette terrible guerre [la Seconde Guerre mondiale] et ce qui en a découlé. Et dans notre travail pour l’avenir, laissons-nous inspirer par l’ambition visionnaire et la détermination des dirigeants et des citoyens qui nous ont précédés. De la réconciliation à la coopération. De la coopération, l’Union.

(José Manuel Barroso, May 2005)⁴⁶

⁴² *Ibid.*

⁴³ Werner Weidenfeld, “Europäische Einigung im historischen Überblick“, in: Werner Weidenfeld/ Wolfgang Wessels (eds.), *Europa von A bis Z* (Berlin: 2006), p. 20.

⁴⁴ European Council, *A Secure Europe in a Better World – European Security Strategy* (Brussels: 12 December 2003).

⁴⁵ Theodor W. Adorno, *Eingriffe. Neun kritische Modelle* (Frankfurt am Main: 1963), p. 14.

⁴⁶ José Manuel Barroso in a speech to the European Parliament on “The transformation of Europe” since WWII (Strasbourg: 11 May 2005).

Reconciliation is part of Western European history and is best symbolised by the Franco-German partnership only few years after standing on different sides of a devastating war, manifested in 1963 through the *Elysée* Treaty. The connection between the conciliated axis Berlin-Paris and contemporary Balkans was for instance examined by a colloquium organised in Skopje in 2003. Academics and experts were invited by the *Fondation Robert Schuman* and the *Konrad-Adenauer-Stiftung* to discuss the pros and cons of transposing the Franco-German model on the Balkans with the conclusion that there are – *mutatis mutandi* – several parallels.⁴⁷

These days, coping with the past is more than just simply present in the enlargement policy. It sometimes even dominates the public discourse. This is not only applicable to the Balkans concerning cooperation with the ICTY but also to Turkey, or, as Krisztina Nagy, spokesperson of Commissioner Rehn, put it: “The accession process should be seen as an opportunity for Turkey to confront its past [i.e. the question of Armenian genocide].”⁴⁸ Brussels’ officials demand from potential member states first to cope with their past. Only after having faced historical criminal acts based on an impartial rule of law can they find their way into the Union. A lasting reconciliation is one of the two pillars on which contemporary Europe was built on. Interestingly enough, one of the driving forces of the material economic integration with the completion of a common market formulates the ideational framework of the integration process. Former French finance minister and president of the European Commission Jacques Delors sees the EU as a construct founded on reconciled peoples and the wish to preserve an important role in the world.

⁴⁷ Fondation Robert Schuman/ Konrad-Adenauer-Stiftung, “L’amitié franco-allemande, un modèle pour la réconciliation des États Balkaniques” (Skopje: 3 April 2003), summary available at: <<http://www.robert-schuman.org/Synth86.htm>> (accessed on 11 May 2006).

⁴⁸ Quoted in: Tara McLaughlin, “Why Armenia continues to haunt Turkey”, *European Voice* (27 April – 3 May 2006), p. 13.

L'idée politique de l'Europe moderne, contrairement à ce que l'on entend souvent dire, n'est pas d'essence matérielle, mais philosophique. Elle recouvre deux intuitions de ceux que l'on a qualifiés de « pères de l'Europe » : celle d'une réconciliation durable entre des peuples qui s'étaient livrés à plusieurs guerres fratricides, et celle d'une crainte de voir l'Europe marginalisée par l'histoire. (Jacques Delors, 2001)⁴⁹

Delors highlights the historic grounding of the attained accomplishments so far while José Manuel Barroso stresses that these fruitful values should be the guidelines for meeting future challenges. In the further course of his speech, Delors goes more into detail and quotes Robert Schuman's Christian beliefs: “Et par un paradoxe qui nous surprendrait, si nous n'étions pas chrétiens - inconsciemment chrétiens peut-être - nous tendions la main à nos ennemis d'hier, non simplement pour pardonner, mais pour construire l'Europe de demain” in order to conclude that those norms are still topical these days and applicable to Bosnia and Kosovo.⁵⁰ He explicitly bridges the time gap of the founding fathers' beliefs and today's reality by arguing that only conciliation can lead to Europeanised Balkans. There are, however, three weak points in his argumentation. First of all, the cultural, political and economic Europeanisation of the Balkans began already in the nineteenth century after the gradual retreat of the Ottoman Empire. Secondly, Delors leaves out the fact that in the Balkans a dual reconciliation has to take place, one for the civil-war during WWII and one for the events in the 1990's. Marshal Tito's 'relatively' soft but authoritarian regime prevented any real *Vergangenheitsbewältigung* in post-war Yugoslavia.⁵¹ In the debate on Kosovo and Serbia historical memory goes even as far back as the 14th century.⁵² Finally, Schuman's religious reference is questionable as there are different varieties of Christianity which are only partially identical with Western European values. Therefore, not Christian beliefs but rather a common set of basic

⁴⁹ Jacques Delors, “Où va l'Union Européenne?”, Speech presented during a series of conferences in the USA (26 March – 4 April 2001), available at: <http://www.notre-europe.asso.fr/article.php?id_article=432&lang=en> (accessed on 11 May 2006).

⁵⁰ *Ibid.*

⁵¹ For an example how the question of victims during WWII still can lead to controversial public debates see Goran Nikolić, “Žrtve rata između nauke i propagande” [The war victims between science and propaganda], *Nova Srpska Politička Misao* (Belgrade: 08 May 2006), available at: <http://www.nspm.org.yu/Debate/2006_POM_nikolic_zrtve111.htm> (accessed on 11 May 2006).

⁵² Tim Judah, *Kosovo – War and Revenge* (New Haven: 2002), p. 5.

convictions and goals contribute to Western cohesion.⁵³ How religious reasoning can lead to controversies could be observed during the discussion on a god reference in the Constitutional Convention. Still these days influential foreign policy-makers like Angela Merkel’s advisor and former assistant to Javier Solana, Christoph Heusgen, speak of European Christian values to be cherished.⁵⁴ Yet, for my argumentation such supposedly religious dimensions do not play a significant role.

Concerning the value of cooperation and dialogue the emphasis lies on international cooperation based on international law and the general rule of law. This is reflected in the main legal sources of EU conditionality in the Balkans. Only two of these sources derive from EU institutions. Firstly, there are the Copenhagen Criteria, stated by the European Council in 1993. The second source is the Council with its conclusions on conditionality from April 1997 which explicitly states the obligation for Croatia and the then Federal Republic of Yugoslavia to fully commit to and comply with the ICTY, thus making cooperation with the tribunal a threshold condition for EU integration.⁵⁵ Finally, the three remaining legal bases are all international conventions: the Universal Declaration of Human Rights (UDHR), the Helsinki Final Act and the Charter of Paris for a New Europe.⁵⁶ Mainly, the international conventions cover democratic standards, human rights and partially rule of law criteria. Accordingly, the EU’s actions are embedded in a net of both United Nations and OSCE documents which is a unique phenomenon.⁵⁷ All three are included in the EU treaty.⁵⁸ It is remarkable that the listed conventions which *de facto* cannot be enforced are part of the framework conditions Brussels applies in the approximation process, the EU becoming thus a key proponent of internationally agreed rights and norms.

⁵³ See Holm Sundhausen, “Pro- und anti-westliche Diskurse und Identitäten in Südosteuropa”, in: *Südosteuropa Mitteilungen*, 2 (2005), pp. 22-23.

⁵⁴ Petra Pinzler, “Merkels Welt-Erklärer”, *Die Zeit*, 47 (17 November 2005).

⁵⁵ European Council, *Council conclusions on the principle of conditionality governing the development of the European Union's relations with certain countries of south-east Europe*, Bulletin EU 4-1997 (Brussels: 29 April 1997).

⁵⁶ Christian Pippan, “The Rocky Road to Europe: The EU’s Stabilisation and Association Process for the Western Balkans and the Principle of Conditionality”, in: *European Foreign Affairs Review*, 9 (2004), pp. 236-237.

⁵⁷ *Ibid.*

⁵⁸ *TEU*, Title V, Art. 11-1.

The rule of law as one of the Copenhagen criteria does thus not only concern the *acquis* but also international law. Further, it is no coincidence that the Helsinki Final Act is included as it is a prime example of issue-linkage, intertwining territorial, economic and human rights aspects. In other words, it is the predecessor of EU conditionality in CEE and the Western Balkans.

One further noteworthy aspect concerns the Paris Charter from 1990. For the first time, democracy promotion is explicitly mentioned and encompasses the universal human rights, i.e. democracy is lifted into the rank of a universal value.⁵⁹ The signatory states “undertake to build, consolidate and strengthen democracy as the *only* system of government of our nations.” and define that democracy “has as its foundation respect for the human person and the rule of law” and prevents that any one is “above the law”.⁶⁰ One year after the collapse of the communist regimes in CEE democracy was officially regarded a universal value and as the only political system. Fukuyama’s buzzword end of history comes to one’s mind but this will actually be the leading value/criterion among the others declared in Copenhagen three years later. In this context, it is important to keep in mind that generally the European definition of democracy differs considerably from the one the US-government seeks to advance. Given the diverse historical traditions, the EC/EU understands democracy in a wider sense as being substantive, i.e. the focus is both on forming pluralistic elites and on furthering free civil societies. The US-American interpretation on the other hand focuses on formal and procedural aspects, thus usually called ‘electoral democracy’. Noteworthy is the fact that other international organisations tend more to the American model and the EU alongside with the Council of Europe is the sole advocate of substantive democracy.⁶¹

Secondly, inter-state cooperation is seen as a key factor for regional integration. The main instrument to approximate the Western Balkans is the SAP which puts, unlike in the approach towards CEE, strong emphasis on regional cooperation.

⁵⁹ Cf. Bernard Edelman, “Universalité et droits de l’homme”, in: *Procès Pénal et droits de l’homme – vers une conscience européenne* (Paris : 1992), pp. 153-168, (My italics. AK).

⁶⁰ CSCE, *Charter of Paris for a New Europe*, Preamble (Paris: 1990), pp. 3-4.

⁶¹ Pridham (2005), pp. 47-50.

There are already some formal successes though the first results can only be evaluated in the medium and long term. Three projects are in the centre of EU efforts: the Central European Free Trade Agreement (CEFTA),⁶² the South East Europe Core Regional Transport Network and the Energy Community Treaty with the European Community. Some countries were reluctant to enter a phase of stronger regional cooperation. Especially Croatia hesitated for a long time because Commissioner Rehn’s initiative first foresaw an exclusively Western Balkans free trade area. Due to fears this could be an “[...] attempt to resurrect former Yugoslavia”,⁶³ Croatia’s Prime Minister Sanader lobbied successfully for an extension of the existing CEFTA towards the Adriatic Sea. After Brussels’ mediation, the acceding states Bulgaria and Romania also agreed to the project and wiped off the ill-founded misgiving. Thirdly, intra-state cooperation is promoted in order to de-escalate ethnic and political tensions in Serbia-Montenegro, Kosovo and Macedonia.

⁶² On 06 April 2006 the countries of SEE have adopted a joint declaration on establishing a common free trade area; South Eastern Europe Summit, *Joint Declaration* (Bucharest: 06 April 2006).

⁶³ *OSCE Mission to Croatia*, “PM Sanader proposes alternative to Western Balkans Free Trade Association”, News in Brief (25 January – 7 February 2006), <http://www.osce.org/documents/mc/2006/02/18040_en.pdf> (accessed on 22 May 2006).

1.3. Norms and interest

This sub-chapter constitutes a brief excursion from the shores of social-constructivism to realist and liberal coasts. Taking the EU as a principled actor as an underlying assumption, I have tried to highlight the normative aspects of European integration history and put it into the framework of today's Balkan policy. Values are one of the main driving forces. However, this does not mean that other factors can be excluded as the EU is not a mere conglomerate of altruistic attitudes. As we do not live an utopian world and "sound political thought [...] will be found only where both [idealism and realism] have their place"⁶⁴ I will follow E.H. Carr's postulate and attempt to explore what kind of interests the EU pursues in the Balkans. To keep the historic perspective, parallels can be drawn to the relationship between France and Germany in the 1950's. It was not merely common values that created cooperation but also interest contemplations on both sides. France's agricultural sector needed protection and security guarantees against possible German aggression. Adenauer on the other hand was looking for more free trade to export Germany's industrial goods. These interest contemplations were repeated after the fall of the Berlin Wall. Thatcher and Mitterrand feared a new central power Germany and only with Helmut Kohl's determined support of further integration (economic and monetary union) could they be calmed.⁶⁵ The interest considerations concerning the Balkans are obviously of a different nature.

In the first place, the EU has a keen security interest in the region. As the Europe Sub-Committee of the US-American lower chamber noted in 2003 the "Europeans have the most direct and obvious interests in preventing further Balkans chaos and instability: an economic interest in developing markets and trade with the region, and a security interest in protecting the borders of the European Union against criminal activity, terrorism and refugee flows."⁶⁶ The Washington administration

⁶⁴ E.H. Carr, *The Twenty Years' Crisis 1919-1939* (London: 1981, first edition 1939), p. 10.

⁶⁵ Cf. Gerhard Brunn, *Die Europäische Einigung* (Stuttgart: 2002), pp. 265-272.

⁶⁶ U.S. House of Representatives, Committee on International Relations, Opening Statement of the Europe Subcommittee, "The Balkans: Assessing the Progress and Looking to the Future" (Washington D.C.: 10 April: 2003).

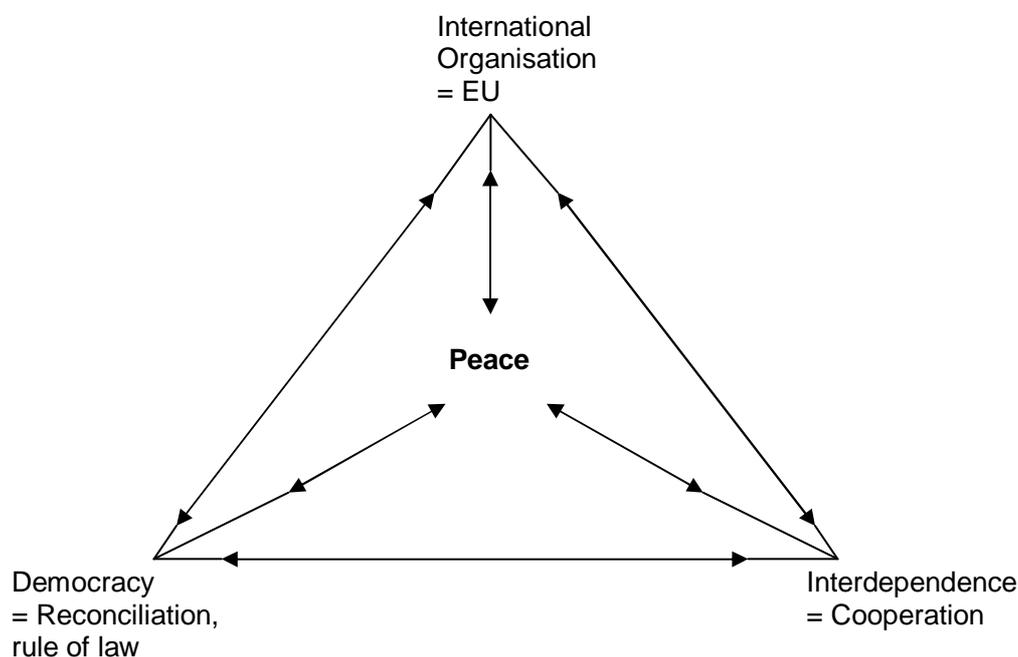
itself is a prime example of how to pursue simultaneously economic, military and moral interests in a Hobbesian world. Nonetheless, Brussels does not have such a complementary approach. It does have an obvious security interest in South East Europe as the 1990's have shown that regional instability has various indirect consequences on Western Europe, like for instance migration and asylum flows, arms trafficking, organised crime et cetera. Thus, it is only a logical consequence that Solana's Policy Unit included these aspects in the European Security Strategy. So, the EU's will to promote its own values goes along with the objective of establishing and maintaining security and stability. Both are two sides of the same coin. Liberal scholar Bruce Russett, the mind behind the democratic peace concept in liberal international relations theory, tried to put the European integration process in Karl Deutsch's idea of security communities. He recognises three factors that created peace:

- consolidation of democracy;
- economic interdependence;
- embedding in a supranational polity.⁶⁷

The following figure combines his concept with the values I have depicted so far. Consolidating democracy encompasses reconciliation and rule of law. The underlying interdependence is not only of an economic nature. It is caused generally by closer cooperation between states and communities in fields such as economy, politics and culture. All these permanent processes take place under the umbrella of the EU which institutionalises them.

⁶⁷ Bruce Russett, "A neo-Kantian perspective: democracy, interdependence, and international organizations in building security communities", in: Emanuel Adler/ Michael Barnett (eds.), *Security Communities* (Cambridge: 1998), pp. 368-372.

Figure 1: Development of a security community EU-Balkans



Source: Bruce Russett, “A neo-Kantian perspective: democracy, interdependence, and international organizations in building security communities”, in: Emanuel Adler/Michael Barnett (eds.), *Security Communities* (Cambridge: 1998), p. 371; own changes.

Consequently, the dilemma of how to maintain security arises and as I have argued before many voices opt for the value-driven approach. Nevertheless, recent statements by leading European politicians – ranging from chancellor Merkel to parts of the generally enlargement-friendly European Parliament (EP) – hint at a policy turn. They seek for alternatives to the enlargement process, something coined as ‘privileged partnership’ by German conservatives in the public debate on Turkey’s membership bid.⁶⁸ What they *de facto* imply is:

- solving the internal EU-crisis has a priority (absorption clause);
- democratisation and economic interdependence create peace;
- conditionality is efficient even without full EU-perspective;

⁶⁸ Werner A. Perger, “Europas Türkeidebatte: Ein linker Verbündeter für Merkel”, *Die Zeit* (28 October 2004), <<http://www.zeit.de/2004/45/sondervertrag?page=all>> (accessed on 28 May 2006); this discussion neglects the fact that in 2005 half of the EU’s citizens supported enlargement, see Annex: Graph 11..

- stabilisation of the Balkans can also be achieved without a regulating and constraining EU polity.

These assumptions are contradictory to Russett's theoretical and empirical argumentation. Though there are several examples of non-institutionalised security communities (US-Canada, US-Mexico, Scandinavia), the growing significance of international organisations makes those specific conditions less probable to reappear.⁶⁹ In addition, the overall consensus in the Brussels administration says that only membership perspective can have the desired effect of stabilisation and peace.⁷⁰ Conditionality as a tool would become blunt if the ultimate carrot was withdrawn. In a different wording, one could argue that some politicians are keen to introduce a fifth Copenhagen criteria, i.e. only if acute security concerns reappear will the EU offer complete membership. Olli Rehn warned already last year that going "wobbly" about the EU-perspective of the Western Balkans can have dangerous side-effects and that the explicit commitment made in Thessaloniki 2003 has to be fulfilled.⁷¹

Hence, the EU should be cautious what message it sends to the governments from Zagreb to Skopje since the compliance costs for adopting European standards are relatively high, especially in sensitive areas such as coping with the past and state-building. In the words of the Commission Delegation's head in FYROM, the Union needs "[...] stable democracies with strong economies that can be security providers, not security consumers."⁷² Up to now the European Neighbourhood Policy has proven that democratic stability without real institutionalisation is hardly achievable.⁷³ On-going crises in the Ukraine, Moldova and the South

⁶⁹ Michel Barnett/ Emanuel Adler, "Studying security communities in theory, comparison, and history", in: Emanuel Adler/ Michael Barnett (eds.), *Security Communities* (Cambridge: 1998), p. 421.

⁷⁰ Interview with Fernando Gentilini, Member of the EU Council-Secretariat's Policy Unit, (Brussels: 03 April 2006)..

⁷¹ Olli Rehn, "Enlargement is a success story", *International Herald Tribune* (18 June 2005).

⁷² Erwan Fouéré, Address to the OSCE Permanent Council (Vienna: 06 April 2006).

⁷³ Following the democracy evaluations of Freedom House, political conditionality led since the start of the neighbourhood policy on average to less free situations in the ENP countries, cf. Frank Schimmelfennig, "European Regional Organizations, Political Conditionality, and Democratic Transformation in Eastern Europe", Paper prepared for Club de Madrid – IV Assembly in Prague (Zurich: November 2005), p. 17.

Caucasus bear witness of these problems. Given the EU's security objectives, it is clear that for the time being only enlargement policy is a forceful tool for promoting stability. Otherwise the self-proclaimed goals of European security policy won't be accomplishable.

It is in the European interest that countries on our borders are well-governed. Neighbours who are engaged in violent conflict, weak states where organised crime flourishes, dysfunctional societies [...] on its borders all pose problems for Europe.⁷⁴

Leaving an isolated enclave surrounded by EU member states is not likely to be in accordance with the EU's security interest.

Secondly, the EU's international credibility is at stake. Parallel to what Delors commented on post-WWII Europe, the contemporary EU does not want to be sidelined in world politics. This includes also the interior efficiency of the polity and reminds us of the Union's absorption capacity, the fourth Copenhagen criterion. As the ESS goes on, only membership can provide incentives for compliance:

Through our concerted efforts with the US, Russia, NATO and other international partners, the stability of the region [Balkans] is no longer threatened by the outbreak of major conflict. The credibility of our foreign policy depends on the consolidation of our achievements there. The European perspective offers both a strategic objective and an incentive for reform.⁷⁵

Like other international organisations, EU officials are conscious of the fact that the EU has to "[...] spread values of the community in order to reinforce trust."⁷⁶ In this case, values and security interests are intermingled and cannot be separated from one another, or in E.H. Carr's words "[p]olitical action must be based on a coordination of morality and power."⁷⁷ Hobbes and Kant do not walk separately, they go hand in hand. The question is basically who decides in which direction to go.

⁷⁴ *European Security Strategy* (2003), p. 7.

⁷⁵ *Ibid*, p. 8.

⁷⁶ Barnett/ Adler (1998), p. 420.

⁷⁷ Quoted in: Finnemore/ Sikking (1998), p. 889.

The realist paradigm of big powers tending to disguise their interest as universal values certainly is often in the background of political action,⁷⁸ especially as leading politicians increasingly use a discourse which excludes any possible tension between both. One of the strongest advocates of a stronger European defence, surprisingly the British Prime Minister Tony Blair, even went so far as to express a merging of values and interests in the context of the NATO intervention in Kosovo: “No longer is our existence as states under threat. Now our actions are guided by a more subtle blend of mutual self-interest and moral purpose in defending the values we cherish. In the end values and interests merge.”⁷⁹ Still, the scope of the connection interest-norms goes beyond such simplifying comments. Leaving these liberal and realist ‘isms’ aside, it becomes evident that the EU is driven by both values and interests. They are not merged but co-exist with one another. Janus-like is the perspective of Brussels in foreign policy as it observes both norms as well as its own interest in the conduct of external relations. As the discussion between enlargement partisans and sceptics shows sometimes the latter predominate, in other cases the former. Despite these debates, values remain the core of the EU’s approach towards the Balkans. The commitments and the promises made will be most probably respected by the political actors and the “community trap” will snap again.⁸⁰

Until now, the EU has managed to overcome crises and to keep its promises in the enlargement process. Nonetheless, the problems resulting from the debate on the Constitutional Treaty have led especially in France to a novelty. For the first time future accession treaties – after the entry of Bulgaria, Romania and Croatia – can only be ratified via plebiscite and thus depend heavily on French public opinion.⁸¹

⁷⁸ Morgenthau took up this idea, dating back as far as to ancient Greek historian Thucydides, in his fifth principle of political realism, see Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: 1978), pp. 4-15.

⁷⁹ Tony Blair in a speech given to the Chicago Economic Club, “Doctrine of the International community” (Chicago: 22 April 1999), quoted in: Norman Fairclough, *New Labour, New Language?* (London: 2000), pp. 149-150.

⁸⁰ In the next chapter I briefly explain Schimmelfennig’s concept of “community trap”. For more his basic article see Frank Schimmelfennig, “The Community Trap: Liberal Norms, Rhetorical Action and the Eastern Enlargement of the European Union”, in: *International Organization*, 55 (Winter 2001) 1, pp. 47-80.

⁸¹ See Congrès du Parlement de la *République Française, Projet de Loi Constitutionnelle – modifiant le titre XV de la Constitution Française*, Title XV, Art. 88-7 (Paris: 28 February 2005).

President Chirac meant to appease critics of a potential Turkey-accession in order to gain a favourable result in the referendum on the Constitutional Treaty. His miscalculations could have disastrous effects and undermine any political will to stay true to the EU's *pacta sunt servanda* traditions. An ex-ante evaluation of possible outcomes in such a referendum is impossible. Recent polls suggest that public opinion in France is overwhelmingly sceptical about further enlargement.⁸² No side can consider now what would happen if. Consequently, I will leave out this aspect in my further analysis, which does in no way mean that it won't play a significant role in the long-term future. Only after candidate countries will have fulfilled their obligations and are standing at the gate of EU-membership will this novelty play a key role and pose a potential source of insecurity and loss of credibility.

Summing up the relationship between interest and values leads me to the conclusion that a social-constructivist approach is a well-suited starting point for going more into the depth of norm promotion. It serves as an umbrella for both phenomena: social actors both seek their profit (interest orientation) and at the same time act according to what is expected from their social role (value orientation).⁸³ I deliberately consider the EU also to be a social actor because of its civilian dimensions.

⁸² According to the latest Eurobarometer survey conducted in autumn 2005, 60 per cent of French oppose further enlargement while only 30 per cent support it. Average approval of enlargement lies at about 50 per cent in the EU-25 (cf. Annex: Graph 11). See Eurobarometer 64, *National Report France* (Brussels: January 2006).

⁸³ Volker Rittberger/ Bernhard Zangl, *Internationale Organisationen. Politik und Geschichte* (Wiesbaden: 2005), pp. 45-48.

1.4. Methodological note

Analysing the EU's enlargement and foreign policy is difficult because of the complex procedures of consensual decision-making between the member states. Consequently, for a long time the academic theories – stretching from classical international relations to European integration theories – struggled to offer one valuable analytical framework for a structured comprehension of the EU's external relations. In recent times constructivism has gained influence in this discussion (see above),⁸⁴ but many scholars themselves argue that only a combination of different approaches can cover the whole scope of the object.⁸⁵

However, neo-functionalism, the so far dominating theory in European integration with Ernst Haas being the main advocate, fails to explain the external factors that led to a stronger CFSP and the enhanced efforts to create a veritable defence policy.⁸⁶ The EU's traumatic Balkan experience with repeated failures to prevent bloodshed in Croatia, Bosnia and Kosovo accelerated the development of more coherent steps towards diplomatic and military missions conducted by Brussels. It was not a simple trickling down from economic competencies to fields of higher politics such as security and foreign policy, the notion of spill-over. Furthermore, the EU was driven to embrace even stronger the original ideals that were the fundamentals on which the house of the European community was built on: international cooperation and reconciliation. The former point is also postulated in the ESS in the wording of “effective multilateralism” and the focus on conflict prevention which was not existent during armed conflicts in post-Cold War Balkans. Yet, recent reflections on Haas' approach identify that he did not mean an automatic spill-over, but rather as the third stage of a process beginning with

⁸⁴ See also Jeffrey Checkel, “The Constructivist Turn in International Relations Theory,” *World Politics*, 50 (January 1998) 2, pp. 324–348.

⁸⁵ Jakob C. Ohrgaard, “International relations or European integration: is the CFSP sui generis?”, in: Ben Tonra/ Thomas Christiansen (eds.), *Rethinking European Union foreign policy* (Manchester: 2004), p. 42.

⁸⁶ For Haas' convincing attempt to depict similitudes between constructivism and neo-functionalism see Ernst B. Haas, “Does Constructivism subsume Neofunctionalism?”, in Christiansen/ Jorgensen and Wiener (eds.), *The Social Construction of Europe* (London: 2001).

socialisation and upgrading common interest,⁸⁷ i.e. only if commitment to interest and values exists, the project will start embracing other areas. This is already one step towards social-constructivist ideas.

Liberal thinkers offered a pre-dominantly material perspective. An academic discussion following Andrew Moravcsik's intergovernmentalist line of argumentation, i.e. European politics being based on rational inter-state bargaining, has failed "to capture the [EU's] accumulation of a more normative, value-driven foreign policy profile."⁸⁸ It is not mere national preference based on rational actors that marks foreign policy in the European framework though the process of preference-shaping is certainly one cornerstone of foreign policy which breaks the realist paradigm of the *Zwei-Reiche-Lehre*, i.e. treating domestic and foreign policy issues as two separate fields, and national interest existing only on the level of inter-state relations.⁸⁹ However, intergovernmentalism offers an understanding of the big treaty stages of European integration and consequently serves more a historic explanation of European foreign policy.⁹⁰

Frank Schimmelfennig takes up Moravcsik's liberal idea and goes one step further in order to analyse why member states like for instance Spain and Portugal supported the Eastern Enlargement although they did not have direct material benefits and even had to make concessions in agriculture and cohesion funding. Only claiming that further enlargement is against their material interest is not sufficient to oppose it as each member state has to vindicate its "political goals on the grounds of institutionalized identity, values, and norms"⁹¹ So, once that promise of accession is given based on certain value perceptions, the "community trap" snaps and no member state can oppose on mere material basis. Though Schimmelfennig applies this to the Eastern Enlargement, it can be argued that already with the accession of Greece in 1981 the tradition of political

⁸⁷ Ohrgaard (2004), pp. 38-40.

⁸⁸ Richard Youngs, "Normative Dynamics and Strategic Interests in the EU's External Identity", in: *Journal of Common Market Studies*, 42 (2004) 2, pp. 416.

⁸⁹ See Andrew Moravcsik, "Taking Preferences seriously: A Liberal Theory of International Politics", in: *International Organization*, 51 (Autumn 1997) 4, pp. 513-553.

⁹⁰ Ohrgaard (2004), p. 41.

⁹¹ Schimmelfennig (2001), pp. 47-80.

enlargements began, meaning an expansion towards countries that in economic terms are not prepared for entry but still are accepted as the result of a historical-political commitment to support young democracies. Taking up this social-constructivist view on the role of rhetorical action on the side EU representatives and combining it with rationalistic questions of “[...] domestic political costs of compliance”⁹² in the Balkan countries serves as a comprehensive *démarche* to show the interaction of common values and the reaction of third parties to norm-promotion. That way, the both international (foreign policy conduct of the EU) and domestic dimension (Western Balkan countries) can be analysed. In the further course, the key tool of political conditionality will be introduced and the efficiency of its application evaluated.

⁹² Schimmelfennig (2003), p. 495.

2. Value promotion: political conditionality

Originally, conditionality is the “[...] way in which states or international institutions impose conditions upon developing countries in advance of distributing economic benefits.”⁹³ The first international institutions to apply conditionality as part of a coherent strategy were the Bretton Woods organisations: the World Bank and the International Monetary Fund (IMF). As part of their engagement in development assistance they determined clear-cut macro-economic preconditions for a continuation of their aid programmes and loans. Hence, the first contemporary steps of conditionality were of an economic nature. In this context, it is important to remember that in reality “[...] the very need for aid compromises the recipient’s sovereignty.”⁹⁴ It is, thus, not the question if national sovereignty will be limited by accepting aid, but in which way this will take place.

Increasingly, it also became a political tool, in the sphere of development aid and in the European context. The end of the Cold War certainly changed the possibilities of Western-style International Finance Institutions (IFIs) as they could act freer and more active around the whole world. Still, political conditionality – meaning conditionality based on political criteria – was already used starting up from the 1960’s when Franco’s Spain wished to agree upon an association with the European Economic Community.⁹⁵ His bid was finally turned down as especially the European Parliament argued against any closer cooperation with a dictatorship. Public awareness of conditional assistance and association, however, has risen only in recent years in the process of the EU’s Eastern enlargement. Now, conditionality is even an officially and publicly proclaimed principle of enlargement policy, one of Commissioner Rehn’s often-cited Cs: consolidation, conditionality, communication. These latest efforts of public diplomacy reflect the internal problems the Union is facing in a debate on its

⁹³ Tim Dunne, “Liberalism”, in: John Baylis/ Steve Smith (eds.), *The Globalization of World Politics* (Oxford: 2001), p. 178.

⁹⁴ James K. Boyce, *Investing in Peace: Aid and Conditionality after Civil Wars*, Adelphi Paper 351 (Oxford: 2002), p. 71.

⁹⁵ Pridham (2005), pp. 30-31.

principles and the future of the integration project as such.⁹⁶ Moreover, many see the accessions of Romania and Bulgaria as mainly political decisions based not on their actual preparedness to enter the Union but on what Schimmelfennig calls “community trap”, i.e. the supporters of further enlargement towards Central and Eastern Europe (CEE) convinced their opponents through a strategic argumentation based on the EU’s liberal norms.⁹⁷ Thus, several European politicians do not wish to fall again in such a trap and are looking for alternatives. Circumstances made in first place the Commission adapt its policy concerning further enlargement. This recent pressure puts the Commission in a dilemma as it is traditionally, next to the European Parliament, the EU institutions that mostly favours accession of new member states.

The European Union is increasingly using conditionality, though World Bank and IMF have distanced themselves from a rigid conditionality principle after criticism of exaggerated conditions imposed on developing countries. In this sense both macro-economic and democracy conditionality have been under scrutiny as criticism and apparent failure (as in the case of the Argentine financial crisis) forced officials to modify policies. Reform proposals name e.g. selectivity and enhanced negotiating processes as an alternative to conditionality.⁹⁸ Despite these critics there is a recent tendency to include concrete democratic demands like freedom of the press into the World Bank criteria for giving loans.⁹⁹ Apparently, the question of the legitimacy of conditionality is controversial as it touches the core sovereignty of states as mentioned above.

⁹⁶ British weekly *The Economist* sees enlargement fatigue connected to general fears towards globalisation and anxiety about social exclusion, cf. “Charlemagne – A case of enlargement fatigue”, *The Economist* (11 May 2006).

⁹⁷ Of course, this is only one aspect of Schimmelfennig’s line of argumentation which centres around the interplay of norms and the rhetoric and material bargaining powers, cf. Schimmelfennig (2001).

⁹⁸ Yet, these new approaches are criticised because they still focus on a hierarchic relationship rather than on partnership, cf. Andrea Schmitz, “Konditionalität in der Entwicklungspolitik”, *Stiftung Wissenschaft und Politik Study Paper* (Berlin: 2006).

⁹⁹ David Hoffman, “World Bank should link loans to press freedom”, *International Herald Tribune* (05 April 2006), available at: <<http://www.iht.com/articles/2006/04/04/opinion/edhoffman.php>> (accessed on 14 May 2006).

In the Western Balkans, in theory, influence on the grounds of financial leverage is divided between the Commission via its delegations and the European Agency for Reconstruction (EAR). The former is responsible for monitoring and implementing assistance in Croatia, Albania and Bosnia-Herzegovina and the latter, as an independent agency, is in charge of the projects in FYROM and Serbia-Montenegro (including Kosovo).¹⁰⁰ However, a part of the EAR's staff is delegated from the Commission, so that a rather coherent action is guaranteed. Recent examples of negative conditionality have shown that in case of non-compliance with specified norms, e.g. extradition of war crimes indictees, negotiations are suspended, not financial assistance. So, the main means of pressure are time and credibility. A country failing to comply loses valuable time in the integration process and both credibility with external actors (trans-national companies hesitate with foreign direct investments) and domestic actors (citizens' approval of EU-integration is high so that each delay is assessed as the government's weakness to progress).

¹⁰⁰ European Agency for Reconstruction, <<http://www.ear.eu.int/agency/agency.htm>> (accessed on 27 May 2006).

2.1. The conditionality tool

[...] Procuste, qui vivait près de la route et avait deux lit dans sa maison, l'un petit, l'autre grand. La nuit, il offrait le gîte aux voyageurs et faisait coucher les hommes petits dans le grand lit et il les étirait en leur arrachant les membres pour les adapter à la longueur du lit; les autres, sur le lit trop petit, il leur sciait tout ce qui dépassait; certains disent cependant qu'il n'avait qu'un lit et qu'il allongeait ou raccourcissait ses clients pour les metre aux dimensions du lit [...]

(Diodorus Siculus, 1st century BC)¹⁰¹

Greek mythology provides a valuable allusion to conditions being laid down and the consequences if someone does not comply with them. The literal meaning of a Procrustean bed implies various truths which can be applied on the principle of political conditionality. First, an actor with the necessary power to enforce certain conditions – though the bandit Procrustes might not have the most reasonable underlying criteria – determines personally in which way to apply these conditions. Choosing a rigid or rather a loose interpretation of the demanded criteria certainly has a deep impact on the outcome. Second, in this hierarchical relationship, the passenger passing by cannot influence the conditions imposed upon him. Thirdly and most important, the actor might have only a limited set of fixed terms and thus a predetermined framework of action, or, he is flexible in the manner he enforces the requirements.

Transferring these thoughts into practice means observing the European Commission's enhanced role in democracy promotion and effecting political conditionality. As mentioned before, the values of reconciliation and cooperation are seen as basic for supporting and cementing democracies in the Western Balkans. Since new challenges came about with the fall of communism in CEE and the new dynamics of economic integration, the EU had to move from reacting on developments to pro-actively engage in democratisation. There are two tendencies as the two acting EU institutions concerns. The Commission has become by far the most important institution in enlargement policy and thus in the

¹⁰¹ Robert Graves (ed.), *Les Mythes Grecs* (London: 1967), p. 507.

Western Balkans.¹⁰² Its inherent bureaucratic *modus operandi* resembles in a certain way Procrustes' bed because of the rigid set of values and conditions it proclaims and monitors, a set which is close to being a vague policy blueprint for the Balkans. Still, there are internal and external factors that have changed the Commission's stance in the last few years. The EU's internal debate about *finalité* and absorption capacity altered essentially the Commission's interest of quick integration but not its general stance. Emphasis is now put on political conditionality to calm popular concerns about new members who are not well prepared as the public discussion on Bulgaria and Romania proves. As the EU is and perceives itself as a "communauté de droit"¹⁰³ – in the material and socially constructed sense – it is *ipso facto* bound to follow international conventions. Thus the external factor is the stress on rule of law for the reconciliation process in the Western Balkans. The ICTY's chief prosecutor Carla Del Ponte has asked the EU to be stricter on the issue of cooperation with the tribunal and arresting war criminals. Combined, these factors are the main reasons for stronger conditionality application as the leverage before starting actual accession negotiations is much higher. After having granted candidate status to a country, fundamental value questions cannot be influenced easily because the points being discussed are primarily technical. An exception to this rule might be Turkey where the first negotiating chapter is to be opened despite general concerns about the human rights situation or the judiciary.

The Council on the other hand, incarnated by Javier Solana, seems to be more reactionary than strategic and thus a flexible 'bed' which can be adjusted according to the respective needs. A good example is the role of Solana in reaching a consensus on forming a loose state union of Serbia and Montenegro in 2002. It was in first place a reaction to Montenegrin independence ambitions and did not solve the question of the final status. It rather proposed a moratorium of

¹⁰² Pridham (2005), p. 42.

¹⁰³ Besides the literal meaning, this also refers to the EU's obligations of good governance vis-à-vis its citizens, cf. *La Charte des Droits Fondamentaux de l'Union Européenne*, Article 41, Journal officiel des Communautés européennes, C 364-1 (18 December 2000); and the decision of the European Court of Justice establishing this principle: Cour européenne de Justice, C-255/90 P, Burban, Rec. 1992 (31 March 1992), p. I-2253.

three years which ended on 21 May 2006 when the majority of Montenegrin citizens voted for on independence via referendum. These different attitudes in some cases result in a quasi antagonism between Council and Commission as will be discussed in the case studies. However both tend in recent years to a rigid interpretation of provisos and thus application of negative conditionality and forceful ‘persuasion’. The governments in the Western Balkans cannot influence or alter the norms they are expected to internalise. Unlike during technical negotiations about transition periods or accessibility to funds, fundamental values cannot be questioned if the ultimate objective is membership of a value community.

Now, concerning the question if the EU has only one adjustable Procrustean bed or several beds of different size there seems to be turning point after the Northern Enlargement in 1995. Until then, there were basically two kinds of enlargement: towards relatively wealthy and towards rather poor countries. Though the Southern Enlargements brought in post-authoritarian young democracies, the negotiations were predominantly of an economic nature and concerned with redistribution of structural and agricultural funds. Obviously the European Community’s (EC) willingness to accept Greece, Spain and Portugal aimed at stabilising the new democratic states. However, economic issues were important as the EC was suffering from *Eurosclerosis* and financial problems.¹⁰⁴ With eight CEECs standing at the gate of the EU, Brussels began to use issue-linkage in enlargement policy, i.e. economic and administrative capacity had to be accompanied by democratic standards. Finally, in post-war Balkans values re-emerged to be at the core of the EU’s approach. So, from having two Procrustean beds, the EU has arrived at having one flexible bed consisting of a set of norms and tools such as political conditionality.

In the media and in political rhetorical action a negative connotation to the term ‘conditionality’ prevails. Given the widely-accepted *totum pro parte* character of the expression, whoever uses ‘conditionality’ usually is referring to the negative

¹⁰⁴ Brunn (2002), pp. 228-250.

sub-meaning, i.e. non-compliance or stick. This widespread custom leaves little space in public debate for the two other aspects of the broader term, namely positive incentive and persuasion. Yet, this also reflects the EU's preference for negative conditionality while it neglects incentives such as visa facilitations. In my further argumentation I will refer to a concept which is mainly based on forceful persuasion ('soft power'), positive incentives and sticks.

In order to apprehend how the EU pursues this strategy, I will first give a short introduction into basic concepts of the underlying understanding of power in the framework of political conditionality. As mentioned before, Duchêne's concept of civilian power implied already the notion of persuasion.¹⁰⁵ Neo-institutionalist Joseph Nye's idea of a threefold power definition modifies his model and explicitly names culture and civil society as significant elements of foreign policy. Both are an adequate starting point to examine the role of values in European foreign policy. In brief terms, Nye's notion of power consists of positive incentives (mainly economic), forced compliance (via military force) and persuasion ('soft power'). So, he adds persuasion to the prominent dichotomy sticks/carrots and thus includes a social-constructivist element which also takes into account cultural pull-factors. He also takes into account contemporary developments of information flows which are not significant for the purpose of this thesis and thus won't be further discussed. Nye himself emphasises the persuasive dimension of soft power while he considers military-economic sticks and carrots as belonging already to hard power. In this context the biased term hard power should be avoided, and the expression 'political power' (encompassing political, economic and military means) preferred.¹⁰⁶

Depending on the actor's preference, either political or soft power dominates their foreign policy, or in other words, in general sticks are applied if substantial high politics matters such as security are affected. However, Nye himself sees soft

¹⁰⁵ Henrik Larsen, "Discourse analysis in the study of European foreign policy", in: Ben Tonra/Thomas Christiansen (eds.), *Rethinking European Union foreign policy* (Manchester: 2004), p. 71.

¹⁰⁶ Henrik Larsen, "Europe's Role in the World: The Discourse", in: Birthe Hansen/ Bertel Heurlin (eds.), *The New World Order: Contrasting Theories* (London: 2000), p. 224.

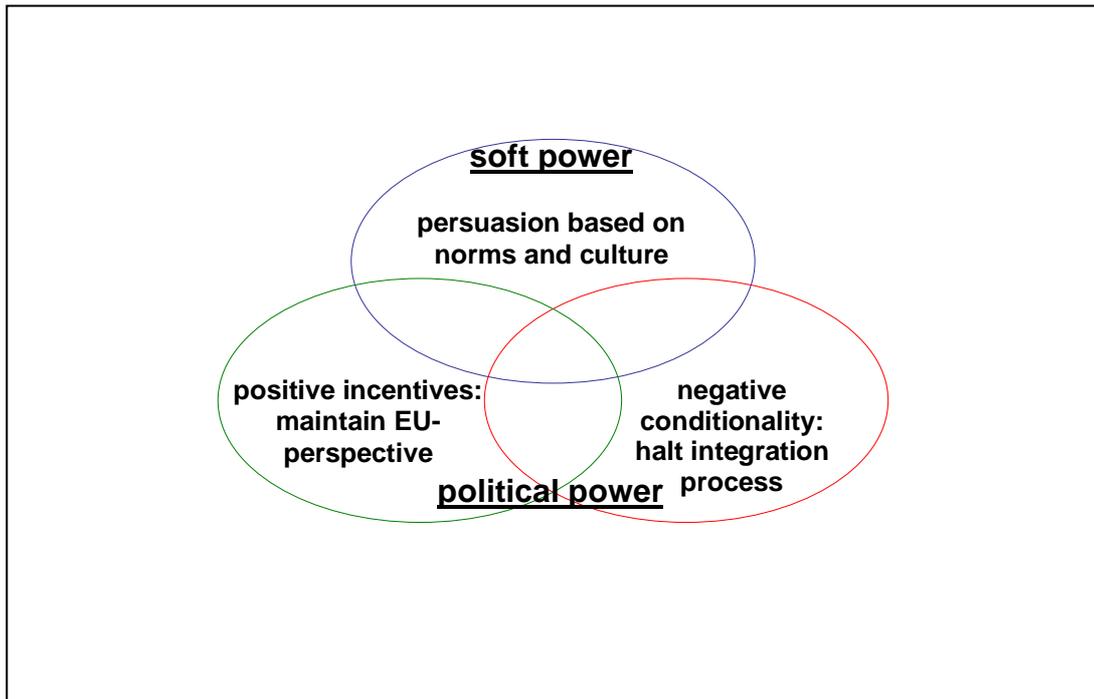
power only as an essential complementary side of political power since he mainly argues that the Washington administration has neglected this aspect so far. For Javier Solana, ‘Mr CFSP’, the aspect of convincing the domestic actors in the Balkans is the only one the EU applies: “I want to underline that the European Union does not impose anything on anybody. We just ask to countries which are interested in participating in our structures to comply with our rules and to share our values.”¹⁰⁷ Following his interpretation the EU is clearly a soft power in Nye’s sense.

Although Nye’s approach might be appropriate to assess the State Department’s foreign policy, in the European context some crucial aspects are different. Given the civilian dimensions of the EU’s self-perception, the military sticks meaning direct intervention do not (yet) play a role. Brussels activities in the form of police, peace-keeping and rule of law missions do not form the basis for military intervention.¹⁰⁸ Hence, a division between persuasion, negative conditionality (suspend enlargement process) and positive incentives (accelerate integration) seems more adequate for describing enlargement policy. In the post-1999 Balkan policy, all three are of a civilian nature meaning non-military interpositions. The military presence is a peace-keeping force and thus the actual use of force is limited. Consequently, I concretise Duchêne’s concept of civilian by distinguishing between soft and political power. Persuasion is a soft power in Nye’s sense. The sticks and the carrots belong both to ‘political power’.

¹⁰⁷ Javier Solana, Interview to MINA Montenegro News Agency (20 November 2003).

¹⁰⁸ Here I do not neglect the commitment made in 2004 to create EU-battlegroups for rapid crisis-interventions. Still, a military intervention is for the time being not a realistic option. Moreover, the often-cited Helsinki Headline Goals 2010 for improving the EU’s military maneuverability go along with an enhancement of the Union’s civilian crisis-management, cf. Gustav Lindstrom, *The Headline Goal*, EU Institute for Security Studies (Paris: April 2006).

Figure 2: Political conditionality in the EU's enlargement policy



Source: Own compilation. For further reading on Nye's concept see Joseph Nye, *Soft Power: the Means to Success in World Politics* (New York: 2004).

Concerning the actual understanding of what power is Nye is not of the same opinion as Max Weber with his often-cited definition of power. Unlike Weber Nye believes that already in international and inter-societal (power) relations legitimacy is important.¹⁰⁹ For him modern political leadership in an increasingly globalised world is "[...] a competition for attractiveness, legitimacy and credibility."¹¹⁰ If an actor's values are not sufficiently appealing, justifiable and convincing, the other side won't comply voluntarily. In the EU's case there is clearly an interest and need to justify foreign policies as European contemporary values strive for legitimacy. Norms and soft power relate to each other in a causal way. In other words, soft power can only be effective if the values of reconciliation and cooperation are perceived as being legitimate. The best argument Brussels is brought forward is integration history. The countries of the

¹⁰⁹ For Weber legitimacy is inseparably bound to government which is based on recognised principles. His classic definition of power can be found in Max Weber, *Wirtschaft und Gesellschaft* (Tübingen: 1980), S. 28.

¹¹⁰ Joseph Nye, "Soft Power & Leadership", in: *COMPASS: A Journal of Leadership* (Cambridge, MA: Spring 2004), pp. 31.

Western Balkans want to access a ‘club’ founded on those values. Consequently, they have to identify with the inherent norms of the club. Interestingly, the most recent Amnesty International report criticises the EU for the “[...] minimalist concept of its domestic human rights role” within the member states.¹¹¹ Thus, the question of double standards is an aspect that could jeopardise the Union’s integrity and weaken the leverage of its soft power in the long-term.

Further, the club has to be credible. If it does not fulfil its commitments, the third countries lose trust in the EU and in the values it stands for. So far, the EU is using the ultimate incentive of membership (including on-going financial assistance), the stick of delaying or cancelling membership and persuasion in the Balkans. Javier Solana’s statement is only in so far right as no military sticks in the original sense are used. To return to ancient Greek bandit Procrustes, persuasion, incentives and threats are the tools used to cut off everything that does not fit onto the ‘bed of values’. Elements that do not have space are for instance deeply-rooted nationalism and lacking will for cooperation. In a way, some scholars rightfully call EU democratisation a “one size fits all” approach.¹¹² Though the EU’s Procrustean bed has become a flexible tool to react on internal and external influences, it is constraint by its collective memory, the underlying values and the paradigm of substantive democracy.

As mentioned, for the Balkans at this stage the military sticks are – even in theory – only partially applicable because the integration of the Balkans into the Western political, economic and security system is advanced (NATO Partnership for Peace, EU-integration) and the outbreak of bellicose conflicts seems improbable. Despite two international protectorates (Bosnia-Herzegovina, Kosovo) and one semi-protectorate (FYROM) in the region the probability of the EU to threaten for the first time itself with military intervention is relatively small. Yet, this was

¹¹¹ Quoted in: Lucia Kubosova, “Amnesty says EU minimalist on human rights role”, *EU Observer* (24 May 2006), <<http://euobserver.com/9/21683>> (accessed on 24 May 2006).

¹¹² See e.g. Tanja A. Börzel/ Thomas Risse, “One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law”, Workshop Paper (Berlin: 2006), draft version available at: <http://web.fu-berlin.de/europa/forschung/docs/boerzel_risse_2004.pdf> (accessed on 13 May 2006).

different in the years directly following the Dayton Peace Accords when rigid conditionality and military threat was used to force Serb representatives of *Republika Srpska* to accept and implement the peace agreement. In general, these efforts were successful, but they were also accompanied by failures to truly contribute to local reconciliation. From today's perspective it was a "trial and error" phase of conditionality.¹¹³ Then the UN High Representative indeed had almost 'colonial' powers which were widely used and culminated during Paddy Ashdown's time in office. Such anachronistic imposition of norms could only be temporary.¹¹⁴

Given the fact that Sarajevo is on the way to a new constitution, thus full sovereignty, and the phasing-out of the double-hatted UN/EU High Representative,¹¹⁵ military sticks are not any longer an option. In the past NATO's SFOR troops were, however, engaged in the chase on alleged war crimes criminals especially in the Serbian *Republika Srpska*.¹¹⁶ In FYROM the EU force is mainly a de-escalation unit in order to prevent possible outbreaks of ethnic conflicts. In general, the Balkans right now can be situated somewhere in between positive peace and relative stability, i.e. structural and actual violence within the countries does not pose any longer a significant problem, but democratic stability is still not achieved especially in the former Yugoslav republics Serbia, Macedonia and Bosnia-Herzegovina. Last year's attacks against minorities in Kosovo however show how fragile the reached stability is. Further, the hesitant Serbian cooperation with the ICTY bares witness of how problematic the government control over parts of the military and the secret service still is.¹¹⁷ Former socialist elites and supporters of Milošević are still present in military and police structures. These structures are not yet in accordance to democratic

¹¹³ Boyce (2002), pp. 16-21.

¹¹⁴ Ivan Krastev, "The European Union and the Balkans – Enlargement or Empire?", Article for Open Democracy (8 June 2005), <<http://www.opendemocracy.net/debates/article.jsp?id=3&debateId=109&articleId=2585#>> (accessed on 20 May 2006).

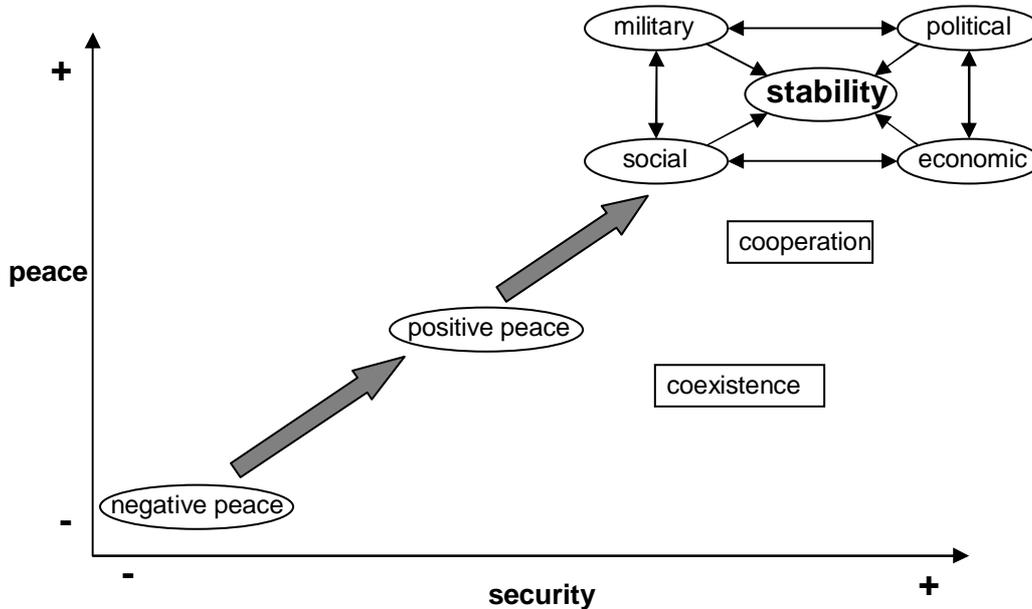
¹¹⁵ Many critics spoke of 'colonial powers' exercised by Ashdown. This led the think-tank European Stability Initiative to written an open letter to the High Representative, demanding already in 2003 a phasing-out of the counter-productive protectorate, cf. European Stability Initiative, *Open Letter to Lord Ashdown* (Sarajevo: 16 July 2003).

¹¹⁶ Boyce (2002), pp. 20-21.

¹¹⁷ *European Voice*, "Western Balkans: Albania leaps ahead" (27 April-3 May 2006), p. 21.

principles. At this point it is important to take a look at the overall situation in the countries of the Western Balkans.

Figure 3: From negative peace to stability



Source: Own compilation. For an introductory reading on peace theory see Reimund Seidelmann, “Frieden, Freiheit, Gerechtigkeit: Normative Postulate der Internationalen Beziehungen”, in: Manfred Knapp/ Gert Krell (eds.), *Einführung in die Internationale Politik* (Munich: 1990), pp. 26-52.

In the last fifteen years the transition from communist/ socialist regimes and inter-ethnic clashes to relatively stable democracies has been a winding road. Some comparative analyses even suggest similarities to Latin American democracies in the field of stateness.¹¹⁸ Though there are remaining problems of governance, refugee return or minority protection, the majority of the Western Balkans countries are evaluated as (partly) free societies. Only the UN protectorate Kosovo is assessed ‘unfree’ with the result that Freedom House ranks the political and civil liberties there as being worse than for instance in Indian Cashmere.¹¹⁹ However, the general tendency clearly shows a positive development. Since 2002

¹¹⁸ Martin Brusis/ Peter Thiery, “Comparing Political Governance: Southeastern Europe in a Global Perspective”, *CAP Policy Research Paper*, 1 (January 2006), pp. 15-18.

¹¹⁹ See Freedom House table on disputed territories in the world: <<http://www.freedomhouse.org/uploads/Chart17File34.pdf>> (accessed on 15 May 2006).

the democratic situation in all the countries in the Western Balkans – apart from the mentioned exception Kosovo and Croatia which remained at the same level of functioning democracy – has improved according to the Freedom House ranking (see Annex: Graph 4).

Still, all countries are undergoing a deep transformation process which is far from being finished. So, if the four elements identified in *Figure 3* are taken as a premise for reaching true stability, almost none of these have been achieved in the majority of the Western Balkans countries. Generally it is difficult to talk about the current state of ‘the’ Western Balkans as the countries in the region are heterogeneous in many fields. Croatia stands out as an exception as economic capacity and democracy status are partially even further advanced than in the acceding countries Bulgaria and Romania (see Annex: Table 3, Graphs 1 and 2). Besides Croatia, Albania has structural problems of its own and did not suffer from ethnic violence but from an institutional breakdown in 1997.¹²⁰ Given this heterogeneity, a separate evaluation of each country would be necessary to compare the status quo. Such an in-depth analysis is, however, not in the centre of this thesis. General trends can be observed like relative macro-economic stabilisation in Macedonia and Serbia, political fragility in Serbia and Bosnia-Herzegovina and societal cleavages in many of the examined countries. Moreover, right-wing forces regain influence like in Croatia or maintain strong support as it is the case in Serbia.¹²¹ Taken together, these tendencies result in a fragile situation in which democratic consolidation is still on-going and the stabilisation only in the beginning. Having this as a background, the question arises how the EU means to tackle these problems. This leads me to the Union’s foreign policy objectives.

¹²⁰ As a consequence, the OSCE established an office in Tirana to assist and advise the domestic public and civil actors, cf. OSCE, *Factsheet Presence in Albania* (2006), <http://www.osce.org/publications/pia/2006/03/13546_12_en.pdf> (accessed on 26 May 2006).

¹²¹ For an surprisingly accurate prognosis from the year 2002 on the expected developments and the EU’s policy challenges see European Stability Initiative, *Western Balkans 2004 – Assistance, cohesion and the new boundaries of Europe* (Berlin-Brussels-Sarajevo: 3 November 2002); and for economic data see Vladimir Gligorov, “The Economic Development in Southeast Europe after 1999/2000”, *Südosteuropa Mitteilungen*, 4 (2004), pp. 54-77.

2.2. Objectives

As argued before, the two main values lying at the very heart of EU policy in the Balkans are reconciliation and (regional/ intra-state) cooperation. Based on these norms, the EU as a confederative organisation pursues three goals: achieve stability, develop good neighbourly relations¹²² and further the integration process with the means of soft and political power. There are uncertainties concerning the third objective of integrating the countries of the region in the long term into the EU polity. But as I have depicted in my excursion on enlargement fatigue, this does not put into question the normative-driven approach. In addition, such debates on enlargement are not a totally new phenomenon as there have already been discussions after the Irish citizens turned down the Treaty of Nice in the first referendum in 2001. The crucial question remains if widening can precede deepening. Obviously, the answer must be no.¹²³ So far, both were pushed forward more or less simultaneously since the queue of membership bids has increased dramatically.

Leaving internal considerations of the EU aside, it is worth observing which role the institutions play in implementing the pursued goals. In that context there is a clear ‘division of labour’ between the Council and the European Commission concerning stabilisation and integration. The Council as being the main actor of CFSP has had a crucial role in conflict-management and it was pushing for enhanced dialogue in the region. First, it was the initiator of the Stabilisation and Association Process – which is an essential first step before candidate status can be granted – in the form of the European Council in 2000.¹²⁴ The mere denomination of the process is telling as it indirectly implies that the EU’s commitment for stabilising the Balkans until then was not sufficient. Against this background, the Council engaged in mediating during the inter-ethnic conflicts in

¹²² Pippan (2004), p. 219.

¹²³ For a more detailed description see Helen Wallace, “Deepening and Widening: Problems of Legitimacy for the EC”, in: Soledad Garcia (ed.), *European Identity and the Search for Legitimacy* (London: 1993), pp. 95-105.

¹²⁴ European Council and Western Balkans Heads of State/Government, *The Declaration of the Zagreb Summit* (Zagreb: 24 November 2000).

Macedonia and Southern Serbia one year later and Javier Solana personally engaged in consensus-finding between Podgorica and Belgrade to find a compromise for a common state union. When the common state was to be dissolved before the referendum on independence, he sent a special envoy to Montenegro in order to make the Union's stance on criteria for potential independence clear. Further, Solana reacted rigorously on the March riots against minorities in 2004 in Kosovo which left eighteen people dead.¹²⁵ And in the Kosovo negotiation talks he nominated Stefan Lehne, a member of the Council's Policy Unit, to represent the EU. The dominant role of Javier Solana is evident and so is the repeated need to intervene in ethnic conflicts. Without stronger cooperation and dialogue also on a regional level, these ethnic cleavages will hardly be overcome.

The Commission on the other hand knew from the beginning of the SAP onwards that "[...] only the real prospect of integration into European structures would achieve [reconstruction, containment and stabilisation]."¹²⁶ Consequently, it followed the traditional path of preparing quick accession talks and insisting on technical implementation of norms (for an overview on the *status quo* of EU-Western Balkans relations see Annex: Table 1). In the case of FYROM these negotiations were under pressure from outside influence due to the armed ethnic conflict. Given a policy that usually aims at technocrat implementation, Olli Rehn's leading principle of enlargement policy comes as a surprise.

[...] my strategy for the future of enlargement is based on three Cs: consolidation of the enlargement agenda, rigorous application of conditionality, and better communication.

(Olli Rehn, January 2006)¹²⁷

¹²⁵ Solana stated: "If some people think that with violence they can precipitate the decisions of the international community, they are wrong [...] burning churches, burning schools, chasing people out of their homes is not the type of standards that the European Union is defending.", quoted in: Human Rights Watch, *Failure to Protect: Anti-Minority Violence in Kosovo, March 2004*, 16 (July 2004) 6, p. 27.

¹²⁶ European Commission, *The Stabilisation and Association Process for South East Europe – First Annual Report*, (Brussels: COM (2002) 163 final, 4 April 2002), p. 4.

¹²⁷ Olli Rehn, in a speech on "Enlargement in the Evolution of the European Union" at the London School of Economics (London: 20 January 2006).

Commissioner Rehn has much more leverage than Enlargement commissioners have had before as the Western Balkans have moved in 2005 from the Directorate-General External Relations (DG RELEX) to his DG.¹²⁸ Thus, the implementation of financial assistance and the management of projects have been centralised. *De facto*, the Commission exerts influence in this field despite the fact that – as mentioned before – the EAR shares responsibility. These newly gained competences, as well as the fact that since the Kosovo crisis the strategic component of enlargement policy has begun to crystallise, had an impact on Rehn’s capabilities to act beyond the bureaucratic scope of the Commission’s work. Besides public relation efforts meant to raise awareness about the advantages of the Eastern Enlargement, the Commission is recently putting a strong emphasis on conditionality and on European values. The hardest sanctions have been the suspension of talks first with Croatia in 2005 and almost exactly one year later Serbia’s shortcomings in arresting Ratko Mladić led to the freezing of association negotiations.

In 2006 enlargement was also on top of the European Parliament’s agenda which “[a]pproves and supports the emphasis placed by the Commission on fair and rigorous conditionality.”¹²⁹ Enhanced use of conditionality was approved by both Commission and larger parts of the EP. Consequently, a change of attitude and capabilities can be witnessed within the two most pro-enlargement institutions.

Already in 1999 the EU has affirmed that its ultimate goal is to “[...] draw the *region* closer to the perspective of full integration of these countries into its structures.”¹³⁰ Then, in 2000 the Western Balkan countries became officially potential candidates for EU membership. Finally, at the Western Balkans Summit in Thessaloniki in 2003, the Council announced that it would fully support the EU

¹²⁸ Olli Rehn, Speech on “New Commission - new impetus to the Stabilisation and Association Process of the Western Balkan countries” (Brussels: 22 November 2004).

¹²⁹ European Parliament, *Resolution on the Commission's 2005 enlargement strategy paper* (Strasbourg: 16 March 2006), (My italics. AK).

¹³⁰ Stability Pact for South Eastern Europe, *Cologne Document* (Cologne: 10 June 1999).

perspective of the Western Balkans.¹³¹ During all these steps of approximation regional cooperation was at the forefront of intents. This objective is also highlighted in the Commission's enlargement strategy paper: "Increasing regional cooperation is important for further *stabilisation* and *reconciliation*. It is an indication of a country's ability to cope with more advanced relations with the EU."¹³²

Pushing for better relations with neighbouring countries as a prerequisite is not new in enlargement policy. It was during negotiations with Greece that an improvement of ties to Turkey was demanded though not via negative conditionality.¹³³ Concrete steps on 'good neighbourliness' in the Balkans were taken as early as in 1995 following an initiative of the European Council leading to the Royaumont Process.¹³⁴ Shortly afterwards a home-grown regional project in the form of the South-East European Cooperation Process (SEECP) came into being without outside interference. Against this time framework of now ten years the potential of such initiatives has not been fully exhausted yet. As Oxford researcher Dimitar Bechev notes, independent regional cooperation ventures were in first place meant for "re-branding" the Balkans' negative image and to comply with imposed norms of good neighbourliness.¹³⁵ The EU on the other hand, did not make use of its full leverage to promote enhanced cooperation in different fields. For those domains in which concrete results were accomplished, this was mainly due to "[...] external pressure (e.g. in trade) or where the links and synergies between the two levels of integration – regional and EU – have been clear and uncontested (e.g. energy)."¹³⁶ It becomes evident that a socialisation

¹³¹ See European Council, *Presidency conclusions*, Bulletin EU 6-2000 (Santa Maria da Feira: 19-20 June 2000) and European Council, *Council conclusions*, Bulletin EU 6-2003 (Thessaloniki: 16 June 2003).

¹³² European Commission, *Communication from the Commission - Enlargement strategy paper 2005* (Brussels: COM(2005) 561, 9 November 2005), p. 9, (My italics. AK).

¹³³ Karen E. Smith, "The Evolution and Application of EU Membership Conditionality", in: Marise Cremona (ed.), *The Enlargement of the European Union* (Oxford: 2003), pp. 109-111.

¹³⁴ For a brief account of the beginnings of regional initiatives in the Balkans see European Stability Initiative, *The Stability Pact and Lessons from a Decade of Regional Initiatives* (Berlin-Brussels-Sarajevo: November 1999).

¹³⁵ Dimitar Bechev, "Carrots, sticks and norms: the EU and regional cooperation in Southeast Europe", *Journal of Southern Europe and the Balkans*, 8 (April 2006) 1, pp. 39-43.

¹³⁶ *Ibid*, p. 42.

process in the sense of internalising proposed values of cooperation and dialogue did not take place, i.e. the much proclaimed objective of promoting good neighbourly cooperation based on the *norm* of cooperation in the Western Balkans has not yet been crowned with success. Consequently, the Commission's causal linkage of regional cooperation with objective (stabilisation) and value (reconciliation) has not been transposed into reality for the time being. To the contrary, the paradox seems to be that policy in first place aims at reconciliation and not at promotion of collaboration within the Western Balkans, making it thus impossible to materialise the causal relation: only if regional cooperation can be accomplished, will we be able to sustain stability and achieve reconciliation. Until now, political conditionality has mainly been used to enforce ICTY compliance.

Summing the observations concerning the objectives and their attainment, it can be concluded that certain progress was made, yet, none of the objectives have been accomplished fully. Stability is still fragile, regional cooperation increasing but supported only half-heartedly and the EU-integration for all countries except Croatia still in the unforeseeable future. Though negative conditionality was applied to promote quicker integration, which in the case of Serbia is tied to cooperation with the ICTY, results are still limited. It is remarkable that seemingly the tool of persuasion was *prima facie* more effective in furthering regional cooperation and providing a minimal stability in the Western Balkans. But can these assumptions also stand empirical evidence? In the following chapter I will attempt to give one example for sticks and one illustration of rather persuasive power to depict how values and objectives interact and if there are contradictions in the EU's approach.

3. Case studies

History [...] is a nightmare from which I am trying to awake.
(James Joyce, 1922)¹³⁷

Finding empirical evidence for the EU policy in the Balkans is difficult because of the close or loose cooperation with other international actors. In some cases this interwoven network of actors even results in “cross-conditionality”, i.e. agent ‘x’ grants a country membership or financial grants under the condition that it complies with the conditions of agent ‘y’. One example would be the correlation EU-Council of Europe (CoE) in Bosnia-Herzegovina where post-membership commitments were directly tied to chapters of the EU Commission feasibility study, the first step to start negotiations for the SAA.¹³⁸ Thus, it is important to select examples where a) the Union is the main actor and b) strong leverage can be exercised.

The two examples which are not only currently in the news, but also are cases where the EU influence is decisive, are: cooperation with the ICTY and the status question of the state union Serbia-Montenegro. In the former case the underlying normative construct is the yearning for reconciliation with the ultimate goal to reach stability and cooperation. Despite the fact that other actors such as the USA and IFIs have also certainly exercised strong pressure in order to enforce true commitment to comply with the warrants of the ICTY, the EU’s leverage is by far the strongest. The Union’s pull is even more forceful in the second case study where Javier Solana’s role in mediating a state union between governing elites in Serbia and Montenegro was crucial. Here, the use of soft power apparently has produced better results than negative conditionality, at least concerning what the Council’s medium term policy goals were. This, however, does not mean that the policy outcomes contribute to the generally outlined goals, namely to increase cooperation and stability. Has the EU sacrificed the ultimate goals of stability,

¹³⁷ James Joyce, *Ulysses* (London: 1992), p. 24.

¹³⁸ Christophe Solioz, “The Western Balkans in ‘Post-Referendum’ Europe”, *Südosteuropa Mitteilungen*, 4-5 (2005), p. 8.

cooperation and integration for short-term successes? This remains to be analysed in detail by examining the development in both cases.

3.1. Cooperation with the Hague Tribunal

In the coming years, we must be able to move more and more from stabilisation towards association. The recent history of your region has left many of you with particular challenges, such as post-war reconciliation, refugee return and organised crime, which you have to overcome. I am confident that you can meet these challenges.

(Olli Rehn, November 2004)¹³⁹

Against the background of the EU as a norm-driven actor and promoter of international law, laid down in the conventions which form parts of the basis for political conditionality, it is a natural consequence that Brussels can only maintain credibility if it acts according to these provisions. In addition to this dedication to the international rule of law, the Union insists on implementing already made commitments. As all the countries are *de jure* obliged to cooperate with the Tribunal and this precondition is explicitly implied in the Council conclusions on conditionality, there is an interior and exterior logic to enforce compliance. After the cross-conditionality with the Council of Europe in Bosnia, this is one further example of two agents interacting and one enforcing indirectly the other's demands.

In the Council of Minister's basic document dating from April 1997, cooperation with the ICTY is listed as the first concrete obligation in order to receive funds from the PHARE programme. An obligatory prerequisite was the "[...] compliance with obligations under the peace agreements, including those relating to cooperation with the International Tribunal in bringing war criminals to justice."¹⁴⁰ Both Croatia and Serbia are bound to these commitments as

¹³⁹ Olli Rehn addresses in this speech *inter alios* the foreign ministers of the Western Balkan countries on his first day in office; "New Commission - new impetus to the Stabilisation and Association Process of the Western Balkan countries" (Brussels: 22 November 2004).

¹⁴⁰ European Council (1997), *supra note* 47, at 21.

3.1. Cooperation with the Hague Tribunal

signatories of the Dayton Peace Accords.¹⁴¹ Yet, the follow-up assistance programme of PHARE, the Community Assistance for Reconstruction, Development and Stability in the Balkans (CARDS), was not suspended when Croatia failed to convince Brussels and the ICTY that it cooperated fully concerning the search for the fugitive general Gotovina.¹⁴² The same is true for Serbia, where only talks for completing the SAP were interrupted in May 2006 and so far financial assistance continues and even the pre-accession instruments for 2007 onwards are discussed with the European Commission.¹⁴³ Apparently, the symbolic character of the EU's actions is far stronger than the sticks being applied.

¹⁴¹ The Council endorsed these criteria in 2000 when the new CARDS programme started, cf. Pippan (2004), p. 232.

¹⁴² Cf. European Commission, *Croatia 2005 – Progress Report* (Brussels: COM (2005) 561 final, 9 November 2005), pp. 6-7.

¹⁴³ B 92, “EU-SCG: Radni sastanci sa EK” [EU-Serbia-Montenegro: Working meeting with European Commission] (Belgrade: 10 May 2006), available at: <http://www.b92.net/info/vesti/u_fokusu.php?id=27&start=0&nav_id=197190> (accessed on 19 May 2006).

3.1.1. Croatia

Political conditionality is neither a new phenomenon for Zagreb nor necessarily tied to EU foreign policy. For pressuring the Tuđman government to improve its commitment to the Dayton Peace Accords, the US-Congress passed corresponding legislation. Consequently, in 1997 President Clinton opposed several hundreds of millions of dollars in IFI loans to countries that did not collaborate with the ICTY. Under such pressure, Zagreb extradited ten indictees.¹⁴⁴ Even before joint efforts by the UN High Representative and international donor organisations, including the EU, had a major impact in Bosnia-Herzegovina, direct leverage was much higher. In Paddy Ashdown's words "[...] the tactical use of targeted conditionality is crucial to delivering results."¹⁴⁵ Yet, Croatia is since the end of the Tuđman era the paragon for the other Balkan countries. How could this model candidate come under the rigorous scrutiny of Brussels and The Hague?

Croatia was the first country to provoke a postponement of EU-accession talks when the EU and Carla Del Ponte in unison declared that the war crimes fugitive Ante Gotovina had to be arrested and extradited to The Hague. Following Zagreb's failure to deliver, the Council decided to cancel the planned beginning of accession negotiations.¹⁴⁶ The decision fell into the same year as the ten year commemorations of Srebrenica. On 11 July 2005, Rehn stressed that for "[...] the sake of justice and *reconciliation* we must continue to support the important work carried out by the International Criminal Tribunal for former Yugoslavia [...]"¹⁴⁷ He was mainly speaking about the people responsible for Srebrenica and their being brought to justice but it reflects the crucial role of the ICTY in initiating a process of truth finding and reconciliation. In this historic framework and

¹⁴⁴ Boyce (2002), p. 10.

¹⁴⁵ Paddy Ashdown, "Identifying Common Themes and Key Factors in Post-conflict Reconstruction Processes", in: *Beyond Cold Peace: Strategies for Economic Reconstruction and Post-conflict Management*, Conference Report Federal Foreign Office (Berlin: 27-28 October 2004), p. 40.

¹⁴⁶ Council of the EU, *Council conclusions on Croatia* (Brussels: 16 March 2005).

¹⁴⁷ Olli Rehn, "Statement on 10th anniversary of Srebrenica massacre" (Brussels: 11 July 2005), (My italics. AK), <http://europa-eu-un.org/articles/en/article_4883_en.htm> (accessed on 19 May 2006).

considering the fact that the ICTY is concerned with issues of international criminal and humanitarian law which in a comparable scope “[...] have lain dormant since the Nuremberg and Tokyo trials”,¹⁴⁸ the significance of political conditionality becomes clear. As mentioned, only Bosnia-Herzegovina and Kosovo are protectorates, thus the EU apparently does not have the same competences as the victors and then occupational forces after WWII. Still, the domestic governing elite represented by Croatian Prime Minister Sanader stressed in October 2005 that their country was committed to European values.¹⁴⁹ Both sides, EU and Croatia, officially endorsed the norm of reconciliation. This is remarkable as Sanader was facing strong opposition back home with a fragile majority in parliament and over three quarters of the population opposing the government’s policies.¹⁵⁰ Though he did not comply by actually handing over Gotovina, he increased efforts in removing non-democratic elements and persons from the state apparatus. Furthermore, he crucially contributed to the reconciliation process for instance by visiting the Jasenovac WWII concentration camp where over 100,000 Serbs, Jews, Sinti and Roma and Croat dissidents were killed by Croat fascists.¹⁵¹ Sanader used the occasion to stress that the victory “[...] over fascism is a victory for *values* which are threaded into modern Europe and modern Croatia.”¹⁵² Leading politicians have accepted the norms of European collective memory. Yet, does reality conform to such rhetoric? Is the collective memory of the Balkans turning towards a constructive interpretation? Olli Rehn finds the answer by stressing the efficiency of conditionality to achieve this.

¹⁴⁸ International Criminal Tribunal for the former Yugoslavia (ICTY), *General Information*, <<http://www.un.org/icty/cases-e/factsheets/generalinfo-e.htm>> (accessed on 20 May 2006).

¹⁴⁹ *Neue Zürcher Zeitung*, “Kroatiens «europäische Werte»” (5 October 2005), <<http://www.nzz.ch/2005/10/05/al/articleD795C.html>> (accessed on 19 May 2006).

¹⁵⁰ Solveig Richter, “Kroatien: Zitterpartie nach Europa”, *Südosteuropa Mitteilungen*, 6 (2005), p. 9.

¹⁵¹ For an historical account see Milan Bulajić, *Jasenovac, Ustaški logor smrti, "Srpski mit?", Hrvatski ustaški logori genocida nad Srbima, Jevrejima i Ciganima* [Jasenovac, Ustashi death camp, “Serbian myth?” – Croatian Ustasha camps of the genocide against Serbs, Jews and Gipsies] (Belgrade: 1999).

¹⁵² Quoted in: *BBC.co.uk*, “Balkan ‘Auschwitz’ haunts Croatia” (25 April 2005) (My italics. AK), <<http://news.bbc.co.uk/2/hi/europe/4479837.stm>> (accessed on 21 May 2006).

3.1.1. Croatia

We have made cooperation with ICTY a necessary condition for closer relations with the EU. We have done so for the reasons of justice and reconciliation. Our policy of conditionality is producing results [...].
(Olli Rehn, July 2005)¹⁵³

Despite this apparent EU success in norm promotion, the incoherence in applying conditionality is salient. Zagreb was granted candidate status despite the failure to capture Gotovina. Following a last minute consensus in the Council after bargains between pro-Croatian Austria and opponents to Turkey accession talks, negotiations were opened with both Ankara and Zagreb. The decision was officially based on the judgement of a single person, ICTY chief prosecutor Carla Del Ponte, who changed her opinion without giving credible reasons for doing so. In September she stated that Zagreb had not substantially changed its operations for arresting Gotovina and that she believed he was in the region.¹⁵⁴ Only one month later she declared that the ICTY had developed “the best co-operation” with Croatia and that the government is “working intensely” on finding Gotovina.¹⁵⁵ Neither was the EU coherent and transparent in applying negative conditionality, nor did the decision to first use sticks (suspension) and then award with the carrot (accession talks) stand on credible grounds. Critics argue that Del Ponte was pressured by some EU member states.¹⁵⁶

I also admire the wisdom and courage of those who over the past month have contributed to reconciliation between the peoples of the Balkans. There is no better way to banish the ghosts from the past and to prepare a peaceful future. Reconciliation too is a European standard. We should not forget that reconciliation between France and Germany after World War II laid the foundation for European integration.
(Solana, 2003)¹⁵⁷

Integration meant for post-WWII Europe also that those who were guilty of crimes against humanity would be punished. Like Solana, Del Ponte creates a

¹⁵³ Olli Rehn, speech on “The Balkans, Europe and Reconciliation” (Sarajevo: 11 July 2005). Rehn was supposed to give this speech at the University of Sarajevo but he cancelled it at short notice.

¹⁵⁴ *Southeast European Times*, “Del Ponte urges EU to Press Croatia, Serbia-Montenegro for Full Cooperation With ICTY” (2 September 2005), <http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2005/09/02/feature-01> (accessed on 20 May 2006).

¹⁵⁵ Carla Del Ponte, Address at Goldman Sachs (London: 6 October 2005), <<http://www.un.org/icty/pressreal/2005/speech/cdp-goldmansachs-050610-e.htm>> (accessed on 19 May 2006).

¹⁵⁶ Human Rights Watch, *Country Summary Croatia* (New York: January 2006), available at <<http://hrw.org/wr2k6/pdf/croatia.pdf>> (accessed on 21 May 2006).

¹⁵⁷ Intervention by Javier Solana during the EU-Western Balkans Foreign Ministers' Meeting (Brussels: 9 December 2003).

connection between Western European integration history and the Balkans in the 21st century. She compares the founding act of the EU, being “[...] an act of repentance for the crimes committed by Nazi Germany”, to post-conflict Balkans. She insists that there “[...] will be no reconciliation in South-East Europe without the sincere recognition of the crimes committed by one’s own nation.”¹⁵⁸ Given the common deficiencies of historic comparisons, she does not mention the long-term legal procedures of reconciliation in the Balkans. There is no clear break with the past but an on-going painful development to cope with the past in a fragile political, social and economic environment.¹⁵⁹

What can be observed is an *apparent* transformation process of the governing elite in favour of the values the EU is promoting. However, there are two major setbacks for Brussels’ approach for reaching a true reconciliation. First, public opinion shifted dramatically to being anti-EU (51 per cent opposed EU-membership in September 2005). The number of supporters fell to half of what it was in 2003. This change of public opinion was accompanied by a turn to right wing parties in the municipal elections in May 2005.¹⁶⁰ Public support for EU integration increased when Zagreb received the green light for starting negotiations. Volatility in this case was the direct result of the suspension and the imperative questioning of the role of the Croatian army in the liberation of the *Krajina* in 1995. If it was only about rather emotional changes in the attitude of public opinion, the consequences would not be severe. But the radical forces that gain influence through protest votes are an obstacle to the reconciliation process which remains superficial without entering civil society.

Secondly, in 2005, the human rights situation worsened and the number of ethnically motivated violence against Serbs was more frequent than in previous years. This led to a condemnation by the Croatian Parliamentary Committee on Human and National Minority Rights which expressed concerns about these

¹⁵⁸ Carla Del Ponte, Speech on “Civilian Peace Building and Human Rights in South-East Europe” (Bern: 1 September 2005).

¹⁵⁹ Helena Cobban, “Think Again: International Courts”, *Foreign Policy* (8 May 2006), available at: <<http://yaleglobal.yale.edu/display.article?id=7363>> (accessed on: 20 May 2006).

¹⁶⁰ Richter (2005), pp. 10-11.

ethnically motivated incidents and called the responsible state bodies to objectively inform the public about the proceeding and the progress made in preventing ethnic violence.¹⁶¹ A possible pretence for the violent assaults could be the tenth commemoration day of Croatia's liberation through the military 'Operation Storm'.¹⁶² Gotovina is accused of war crimes committed in this very period shortly before the end of the war in Croatia. In this context it becomes obvious how important the 'fresh' war experience is for the collective memory of Croatia as it is a "nation forged in war" against Croatian Serbs.¹⁶³ Thus, an acceptance of Western European collective memory becomes more difficult.

Thirdly, problems persist concerning the return of refugees and their tenancy rights. According to OSCE estimates, only 20 per cent (approx. 70,000) of Croatian Serbs who had fled during the wars have actually settled again in Croatia.¹⁶⁴ Generally, the judicial system is struggling to cope with all of the filed cases, particularly those concerned with repossession of property owned by Serbs.¹⁶⁵ Several Croatian Serbs wishing to complain against these delays and rejected claims filed applications to the European Court of Human Rights. However, in a land-mark decision the Court judged this year in April that all tenancy claims which had been terminated by a national court ruling before 5 November 1997 – the date when Croatia ratified the European Convention on Human Rights – do not fall under the Court's jurisdiction.¹⁶⁶ This leaves the open question of property rights to the judgement of partially biased national courts with a sometimes insufficient number of staff and experienced judges.

¹⁶¹ Parliamentary Committee on Human and National Minority Rights (Croatia), *Conclusions on the incidents with an ethnic background in Croatia 2005* (Zagreb: 26 January 2006), <<http://www.sabor.hr/default.asp?gl=200602020000005>> (accessed on 23 May 2006).

¹⁶² Richter (2005), p. 12.

¹⁶³ Marcus Tanner, *Croatia: a nation forged in war* (New Haven: 1997).

¹⁶⁴ Human Rights Watch, *Croatia* (2006).

¹⁶⁵ Freedom House, *Country Report Croatia 2005*, available at: <<http://www.freedomhouse.org/template.cfm?page=22&year=2005&country=6720>> (accessed on 21 May 2006).

¹⁶⁶ European Court of Human Rights, *Press Release Grand Chamber Judgement Blečić v. Croatia*, Application no: 59532/00 (Strasbourg: 8 March 2006), available at: <<http://www.echr.coe.int/Eng/Press/2006/March/GrandChamberjudgmentBlecicvCroatia80306.htm>> (accessed on 21 May 2006).

Fourthly, domestic jurisdiction on war crimes is a crucial aspect of reconciling former opponents and thus promoting ethnic and social stability. Over 60 per cent of Croatians support the idea to have the crimes related to the war in former Yugoslavia judged by national courts.¹⁶⁷ Domestically trialled war crimes not only mirror the democratic maturity of a transformation country but also limit the sentiment that norms are imposed from outside actors. Still, both theoretical advantages can be contested in reality. Besides the fact that trials “[...] only recognize criminal guilt, not political or moral responsibility”,¹⁶⁸ it is doubtful that the national judiciary system is prepared to give unbiased judgements. In its recent assessment Human Rights Watch criticised the partiality and lack of efficiency to process war crime trials. The Council of Europe also sees the need for substantial progress in these areas.¹⁶⁹ Moreover, the EU has identified these problems but has not insisted on improvements.¹⁷⁰

Taking into consideration the high-level political acceptance of norms such as peaceful coexistence and reconciliation, these developments have still not been transferred completely to the administrative, societal and judiciary level. Here it is important to note that the government and local authorities give financial support for the defence of the charged Croats standing trial in The Hague.¹⁷¹ Such endeavours to calm public opinion aggravate unbiased war crime trials at home and might send the wrong message to the citizens. It resembles a domestic sticks-and-carrots approach aiming at convincing the accused to surrender voluntarily and in return be financially secured and publicly rehabilitated. The relatively stable socio-political system of Croatia has so far prevented any escalation. Yet, if true reconciliation is the aspired goal, the mere focus on one fugitive general

¹⁶⁷ Richard Rose, *Croatian Opinion and the EU's Copenhagen Criteria*, Chatham House Briefing Paper, EP BP 05/04 (London: December: 2005), p. 6.

¹⁶⁸ Institute for Democracy and Electoral Assistance (IDEA), *Reconciliation after Violent Conflict – A Handbook* (Stockholm: 2003), p. 107.

¹⁶⁹ Human Rights Watch, *Croatia* (2006).

¹⁷⁰ See European Commission, *Croatia 2005 – Progress Report* (2005), pp. 10-34.

¹⁷¹ *OSCE Mission to Croatia*, “Local authorities donate to legal defense fund for ICTY indictees”, News in Brief (19 April – 2 May 2006), <http://www.osce.org/documents/mc/2006/05/18891_en.pdf> (accessed on 22 May 2006).

neglects imprudently other important fields which also form part of European norms.¹⁷²

Not only was the decision to continue the approximation process based on shaky grounds, but also the lacking coherence in conditionality application have decreased the Union's credibility. As mentioned, the stable *status quo* in Croatia ensures that negative developments can be absorbed. PM Sanader has increased cooperation with the ICTY despite the high costs of compliance which resulted in losses during the municipal elections in May 2005. His strong leadership enabled him to not only transform the former nationalist party HDZ (*Hrvatska Demokratska Zajednica*) into a centre-right democratic one,¹⁷³ but also to initiate a process of reconciliation. Serbia by contrast is still in an early phase of democratic transition coupled with weak leadership; hence rigid negative conditionality can lead to severe blows to the frail stability.

¹⁷² Richter (2005), p. 13.

¹⁷³ Anna McTaggart, "'Reformed' HDZ Set to Retake Power", *Institute for War and Peace Reporting* (Zagreb: 20 November 2003), <http://www.iwpr.net/?p=bcr&s=f&o=155397&apc_state=henibcr2003> (accessed on 27 May 2006).

3.1.2. Serbia

The criteria laid down to achieve reconciliation here are the same as in Croatia, but Belgrade's political and social future is overshadowed by vital status questions. Ranging from the referendum on Montenegro's independence to the status talks on the UN protectorate Kosovo, the factors of uncertainty are varied and important. Against this background arises the question of why the international community, spearheaded by the EU, increases efforts and uses negative conditionality to foster norms at these very times. Javier Solana reiterated on several occasions that "[...] there can be no [European] integration without reconciliation. And there can be no reconciliation without justice. It is therefore a moral and political imperative to have all those responsible for the crimes of the Bosnia war tried by the International Criminal Tribunal for the former Yugoslavia in The Hague."¹⁷⁴ The suspension of the SAP on 3 May 2006, due to the failure in arresting Ratko Mladić, is not the first case in which Brussels uses sticks to enforce ICTY compliance. Last year the SAP could only begin after Belgrade handed over the accused generals Lukić and Pavković who surrendered voluntarily. By complying, the government sent a positive signal to the European Commission whose feasibility study paved the way for negotiations to begin.¹⁷⁵

Given the emblematic character of the ten year commemorations of Srebrenica last year in July, it seems that collective memory moves to the foreground of policy-making.¹⁷⁶ European politicians had demanded that the remaining war crime fugitives be arrested before that symbolic date. Governing elites in Serbia have for a long time neglected the need to foster reconciliation which consequently would have led to arresting the people responsible for Srebrenica. The Croatian example should have been stern warning that the EU is willing enough to prioritise democratic standards. Though Prime Minister Koštunica has

¹⁷⁴ Javier Solana, "Srebrenica 10 years on. A past that haunts and a future that beckons", Article published in several newspapers in the region (11 July 2005), available at: <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/articles/85655.pdf> (accessed on 22 May 2006).

¹⁷⁵ Ian Traynor, "Serb general surrenders to war crimes tribunal", *The Guardian* (25 April 2005), <<http://www.guardian.co.uk/Kosovo/Story/0,,1469388,00.html>> (accessed on 18 May 2006).

¹⁷⁶ Javier Solana (2003), *supra note* 131, at 53.

been slow to realise the importance of cooperating with the ICTY, public opinion has shifted towards recognising the need to reconcile and face the crimes of the past. Democracy movements and NGOs in Serbia are criticising the government for its failure to arrest indictee Mladić. Not only does a majority support a detention of Mladić (57 per cent in February 2006),¹⁷⁷ but the taboo of an independent Kosovo also perishes slowly, with 40 per cent stating that independence cannot be prevented.¹⁷⁸ Compared to the public support for Ante Gotovina in Croatia, which was at 70 per cent before EU talks were suspended in 2005,¹⁷⁹ the polls in Serbia reflect on the surface a stronger acceptance of norms in the Serbian public.

The conditions to capture Mladić were much more auspicious than in the case of Slobodan Milošević's detention in April 2001. Opposition against the arrest of the former president was high among his former followers in the state apparatus and among those who had benefited from his rule. Yet, the public was in favour of arresting him.¹⁸⁰ As described above, the costs of compliance to extradite Mladić have never been as low as they are today with a relatively stable public approval. With important status decisions on Montenegro and Kosovo, there are more difficult and vital tasks ahead. It is rather unlikely that PM Koštunica does not want to comply with the ICTY conditionality. It is more a question of knowing if he is capable and able of doing so. Thus, the leadership of the Koštunica government has to be examined more in detail. In order to consolidate young democracies, trust towards the newly elected representatives is crucial. Since the assassination of former Prime Minister Đinđić, public trust in the democratic institutions and politicians is fading away. Civil society activist Milenko Bereta pinpointed it simply: “[w]e thought our leaders were true democrats, but they

¹⁷⁷ Michael Martens, “Lauter letzte Fristen”, *Frankfurter Allgemeine Zeitung* (23 February 2006), <<http://www.faz.net/s/RubFC06D389EE76479E9E76425072B196C3/Doc~EA782671FE26D49519F2900B5844B9797~ATpl~Ecommon~Scontent.html>> (accessed on 22 May 2006).

¹⁷⁸ *Neue Zürcher Zeitung*, “Serbiens gemässigte Kräfte formieren sich” (11 May 2006), <<http://www.nzz.ch/2006/05/11/al/articleE43AW.html>> (accessed on 22 May 2006).

¹⁷⁹ *European Commission Delegation to Bulgaria*, “EU shelves Croatia Talks”, News (17 March 2005), <<http://www.evropa.bg/en/del/info-pad/news.html?newsid=1002>> (accessed on 22 May 2006).

¹⁸⁰ Steven Erlanger, “U.S. Makes Arrest of Milosevic A Condition of Aid to Belgrade”, *The New York Times* (10 March 2001).

were not.”¹⁸¹ The connections and ties between organised crime and politics concussed confidence.¹⁸² Without trust in the institutions that are supposed to ‘deliver’ indictees to the ICTY, the citizens won’t accept any jurisdiction which they consider being justice imposed by an external agent. Only a credible and reliable government can foster reconciliation.

German state theorist Claus Offe offers three ways out of such a legitimacy crisis. Ideally, trust should be fostered from below, i.e. civil rights and social movements regenerate trust by defining new social and political norms. The second option would be top-down “trust-building measures”, generally dominated by populist figures. A final solution could be “lateral” trust-building founded on morally reliable institutions.¹⁸³ Based on what is realistic and possible, at the moment only two of these options are worth being elaborated on. Given the still unorganised and relatively limited impact of social movements and NGOs, it is unlikely that trust will be created by societal currents.

So, populist movements from above and trustworthy institutions remain as an option. The former is unfortunately a realistic scenario as the ultra-nationalist Serbian Radical Party (SRS) has most seats in the Serbian parliament (81) and remains the leading party in public surveys with about 37 per cent of support.¹⁸⁴ To prevent the rise to power of un-democratic forces, only the third option could foster trust and consequently also reconciliation. However, the domestic institutions can hardly be the source of good governance, especially now that the state union between Serbia and Montenegro is dissolved and the concrete future of the common polity is not yet clear. Moreover, the governance capabilities of the Serbian institutions are relatively weak. According to the Bertelsmann

¹⁸¹ Quoted in: Nicholas Wood, “For Serbia, a death that transforms – but how?”, *The New York Times* (19 March 2006), <<http://www.iht.com/articles/2006/03/17/news/serbs.php>> (accessed on 22 May 2006).

¹⁸² Freedom House, *Serbia-Montenegro Country Report 2005*, <<http://www.freedomhouse.org/template.cfm?page=22&year=2005&country=6898>> (accessed on 22 May 2006).

¹⁸³ Cf. Claus Offe, “Wenn das Vertrauen fehlt”, *Die Zeit*, Part V of the Series on the Future of Democracy (1999), <http://www.zeit.de/archiv/1999/50/199950.offe.gueltige_fa.xml?page=all> (accessed on 18 May 2006); and *idem*, “Democracy and Trust”, *Theoria*, 96 (December 2000).

¹⁸⁴ *Angus Reed Global Scan*, “Radical Party Remains Ahead in Serbia” (6 May 2006), <<http://www.angus-reid.com/polls/index.cfm/fuseaction/viewItem/itemID/11780>> (accessed on 22 May 2006).

Transformation Index, Serbia-Montenegro is the only country in the Western Balkans that today has a worse public management than three years ago (see Annex: Graph 3).¹⁸⁵ This negative development is mainly explained by the difficult conditions of an inefficient state-union, a weak minority coalition government and a conservative *status quo* government. This stands in contrast to Croatia's stable democratic institutions, which can absorb any mistrust e.g. towards PM Sanader when he decided to pro-actively search for indictee Gotovina. Consequently, establishing trust in democratic institutions and politicians should be on top of the EU agenda. In the long run, the objective has to be to promote strong democratic leadership on government and social level. Therefore, the responsibility of the EU is immense. But how do the EU policies reflect that vital commitment?

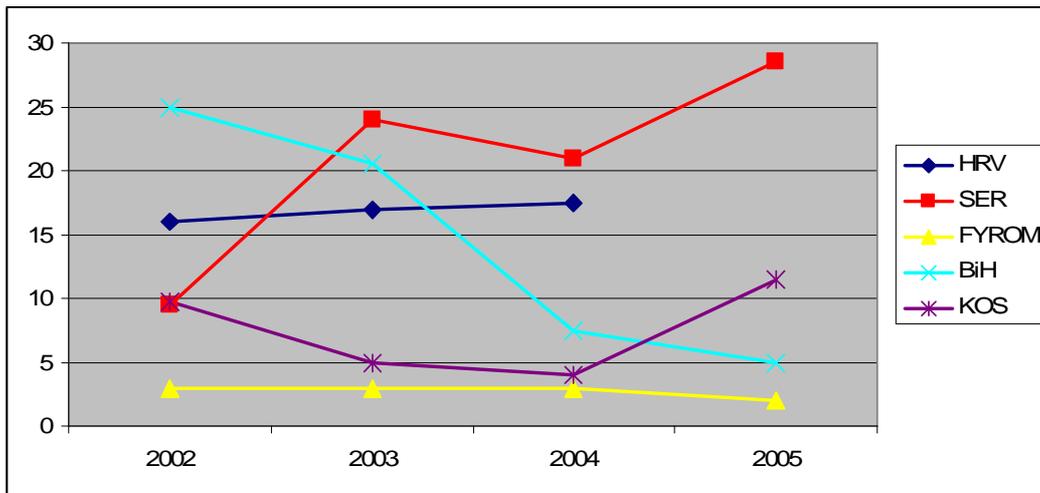
Rhetorically, the Commission insists on the values represented by full cooperation with the ICTY. That a norm hierarchy does exist is also stressed by other actors like the OSCE: "Europe is above all a community of values and principles. Among these, principles of justice and the rule of law stand above all."¹⁸⁶ Indeed, such a prioritisation bears witness in tangible numbers. Concretely, the financial support of policy fields accords with a primacy of justice issues. The domain of justice and home affairs in the whole region received increasingly more allocations, a rise from 54m EUR in 2002 to 211m EUR in 2004 (see Annex: Graphs 5-7). Yet, the execution of criminal justice neither leads automatically to moral and political reconciliation,¹⁸⁷ nor to a veritable identification with the norms the EU is trying to promote. Though EU funding for democratisation and civil society almost tripled in Serbia, it fell dramatically in Bosnia-Herzegovina. Same is true for Kosovo until 2004. In Croatia, support rose minimally (see graph below).

¹⁸⁵ Further, the journal *Foreign Policy* lists Serbia-Montenegro on its 'failed state' ranking after conflict-torn Moldova and Georgia, cf. "The Failed States Index", <http://www.foreignpolicy.com/story/cms.php?story_id=3420&page=1> (accessed on: 22 May 2006).

¹⁸⁶ *OSCE Mission to Serbia-Montenegro*, Maurizio Massari (Head of the OSCE Mission), "War Crimes: The legacy of the past and the country's present and future tasks" (5 October 2004), <http://www.osce.org/documents/fry/2004/10/3704_en.pdf> (accessed on 19 May 2006).

¹⁸⁷ IDEA (2003), *supra note* 141, at 55.

Graph 1: CARDS allocations for democratic stabilisation (EUR mill.)*



Source: Own compilation. Data from the homepage of *DG ELARG* <http://ec.europa.eu/comm/enlargement/financial_assistance/index_en.htm>; *: Croatia did not receive any direct CARDS assistance in 2005 as it benefits now from pre-accession instruments.

There is no steady increase or stable support for the region with Bosnia-Herzegovina, the country that suffered most from ethnic violence, receiving almost the smallest amount for democratisation. Reconciliation can only be achieved with a regional approach. To come back to Serbia, EU funding reflects both the need for justice reform and the necessity of fostering values in civil society. The results seem to be more positive than negative. Though leading political figures and a majority of the population accept the obligation to extradite alleged war criminals, this is not based on norm identification but on rational choice. As Human Rights Watch notes, government representatives in a “[t]roubling trend” praised those indictees who surrendered voluntarily as patriots and responsible citizens.¹⁸⁸ The wish to move forward towards EU-integration and improvement of living standards, i.e. to leave the lost years of war and poverty behind, seems to be the key rationale for cooperating with the ICTY. Superficially, norms were accepted, but commitment to a deep reconciliation process is basically not existent.

¹⁸⁸ Human Rights Watch, *Country Summary Serbia-Montenegro* (New York: January 2006), available at <<http://hrw.org/english/docs/2006/01/18/serbia12242.htm>> (accessed on 21 May 2006).

For the time being, the enhanced financial support of justice and democratisation in Serbia did not have the intended results. Neither was the norm-driven approach successful, nor did a stabilisation of the political system take place. As it seems from today's perspective, Prime Minister Koštunica won't enter the history books as the much needed Serbian "Adenauer", an allusion made by Serb journalist Duška Anastasijević and Carla Del Ponte.¹⁸⁹ His party comes in recent polls only in third place after the radicals and the democrats of President Boris Tadić.

Given the failure to contribute to democratic and normative consolidation of the Belgrade republic, the EU applied the stick of suspension in order to impose values. The suspension was like in the Croatian case not accompanied by a stop of financial support. Unlike the US-Congress who has announced to revise aid grants at the end of May and thus continues its rigid negative conditionality,¹⁹⁰ the EU shies back from withholding allocations. The timing of the final decision to freeze the talks after a "continuous deadline" proclaimed by Olli Rehn was not chosen cautiously.¹⁹¹ Only two weeks before the crucial Montenegrin referendum on independence, Brussels materialised its threat and suspended negotiations. In how far was this decisive for the outcome of the referendum? This is difficult to say. It surely was a good argument for Montenegro's PM Milo Đukanović and his pro-independence camp to blame Belgrade for halting the EU-integration process.¹⁹² As a direct result Serbian vice-PM Miroljub Labus resigned and his party announced that it would leave the coalition government if association talks were not resumed before September this year.¹⁹³ There are two possible reasons why conditionality was nevertheless applied. One was mentioned before, namely the

¹⁸⁹ Duška Anastasijević, quoted in: Tim Judah, *Kosovo...* (2002), p. 307; Carla Del Ponte (2005), *supra note* 133, at 54.

¹⁹⁰ The Bush administration already stopped aid allocations after a congressional deadline expired in March 2005, cf. Georgi Kamov, "International Involvement in the Western Balkans", *Institute for Regional and International Studies* (Sofia: 2005), p. 11, available at: <http://www.iris-bg.org/5_International%20Involvement%20in%20the%20Western%20Balkans.pdf> (accessed on 22 May 2006).

¹⁹¹ Alexander Kleibrink, "Was wird aus Serbien?", *Europa-Digital* (20 April 2006), <http://www.europa-digital.de/laender/semo/nat_pol/serbienstatus.shtml> (accessed on 22 May 2006).

¹⁹² Simon Tisdall, "Serbia cannot escape curse of Mladić", *The Guardian* (17 May 2006), <<http://www.guardian.co.uk/yugo/article/0,,1776459,00.html>> (accessed on 28 May 2006).

¹⁹³ B 92, "Labus se povukao sa čela G 17 plus" [Labus resigned as head of G 17 plus] (13 May 2006), <http://www.b92.net/info/vesti/index.php?style=headlines&yyyy=2006&mm=05&dd=13&order=priority&nav_id=197560> (accessed on 28 May 2006).

collective memory of Srebrenica coming back to public consciousness. The massacre in Bosnia is not only a heavy burden for the people in the Western Balkans, but also a stigma of Western European impotence.

I shall go to the commemoration ceremony in Srebrenica next week to honour the victims and their families. I shall go there to express Europe's support for peace, reconciliation and democratic development, and for a European future of the Western Balkans. I expect all parties to ensure that the ceremony will be a dignified event and contribute to the reconciliation process. Reconciliation is a very painful process after a devastating war like this, after violations of the most fundamental rights – but it is a necessary process. The EU, as the greatest peace and reconciliation project ever, can testify to that and serve as an example of what can be achieved. Justice is an essential element of reconciliation. There can be no reconciliation until war crime suspects are held accountable in a court of law. In this respect, the International Criminal Tribunal for the former Yugoslavia, ICTY, plays a crucial role.
(Olli Rehn, 2005)¹⁹⁴

Apparently, for the “Rechtssystem”¹⁹⁵ EU two values are at stake in the Balkans: reconciliation and the rule of law. Both were the pillars in which the project of European integration was built and consequently, Brussels would lose credibility if it did not insist on these norms.

In second place, the death of Slobodan Milošević in February 2006 was a major setback for the ICTY and chief prosecutor Del Ponte. The highest ranking politician could therefore not be judged for his deeds and the EU, who had chosen “justice, as a policy”,¹⁹⁶ was deprived of an important element for reconciliation in the whole region. Both events possibly influenced the time corridor for deciding on sticks, when Del Ponte, whose mandate ends in September 2007,¹⁹⁷ urged Commissioner Rehn to be consequent and act.

¹⁹⁴ Olli Rehn speaking in front of the European Parliament's plenum in commemoration to the victims of Srebrenica; "Commission Declaration on the Balkans 10 years after Srebrenica" (Strasbourg: 06 July 2005).

¹⁹⁵ Javier Solana's Special Envoy for the Kosovo status talks Stefan Lehne stresses that the EU system can only be transposed if rule of law and administrative capabilities are on a high level, cf. Stefan Lehne, “Montenegro im Kontext der Europäischen Integration”, *Südosteuropa Mitteilungen*, 3 (2003), p. 12.

¹⁹⁶ Late Harvard scholar and political theorist Judith N. Shklar, quoted in: Gary J. Bass, “Milošević in The Hague”, *Foreign Affairs* (May/ June 2003), p. 82.

¹⁹⁷ Del Ponte herself points out her personal ambition by stating that Mladić and Karadžić must be in The Hague until then, cf. B 92, “Karla Del Ponte o Karadžiću” [Carla Del Ponte on Karadžić] (4

During a recent seminar organised by the *Heinrich-Böll Stiftung* and the Belgrade-based Humanitarian Law Centre, the question of collective memory in the Balkans was discussed. Participants argued that Serbia was still looking for a renewal of its collective identity and the head of the Law Centre, Nataša Kandić, concluded that the “[...] formiranje Haškog tribunala, pred kojim se vode sudjenja optuženima za najteža zlodela, vrlo je bitno za formiranje istorijskog pamćenja u Srbiji” (creation of the Hague Tribunal, before which those accused of worst atrocities are trialled, is very important for forming historic memory in Serbia).¹⁹⁸ Exactly such a renewal following the European example is a driving force of EU policy, to copy the project which reconciled Western Europe in order to stabilise the region.

By focusing on that objective, the EU neglected, like it did in Croatia, other aspects which are important for coming to terms with the past. Concentrating political conditionality exclusively on criminal justice is one-sided and does not underpin a process of truth and reconciliation. In post-conflict areas for instance transitional justice is highly significant. It encompasses all “[...] processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”¹⁹⁹ Domestic processes of this kind would have increased the ICTY’s legitimacy and furthered reconciliation. Truth telling and unbiased efficient domestic war crimes tribunals are one cornerstone of coping with the region’s past of armed conflict and atrocities.²⁰⁰ Despite the fact that PM Koštunica himself has initiated the creation of a truth and reconciliation

May 2006), <http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=05&dd=04&nav_id=196623> (accessed on 23 May 2006).

¹⁹⁸ B 92, “Opterećenost tradicijom ratova” [Obsession with the tradition of wars] (20 May 2006), <http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=05&dd=20&nav_id=198261> (accessed on 23 May 2006).

¹⁹⁹ UN Security Council, *Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict Societies*, UN Doc. S/2004/616 (New York: 23 August 2004), p. 4.

²⁰⁰ For an overview over the limits of the ICTY in the reconciliation process see Iavor Rangelov, *EU Accession Conditionality and Transitional Justice in the former Yugoslavia*, Paper for the European Foreign Policy Conference (London: 1-2 July 2005), <<http://www.lse.ac.uk/Depts/intrel/EFPC/Papers/RANGELOV.pdf>> (accessed on 23 May 2006).

commission in 2001, his self-proclaimed objective of a “social catharsis” has not been met.²⁰¹

As a consequence of this lacking EU effort, it comes as no surprise that human rights activists who foster truth and conciliation projects are offended by politicians as well as verbally harassed by the public.²⁰² Although it is true that punitive justice and reconciliation are complementary, the EU’s inactivity can delay social and ethnic reconstruction. One further aspect of reconciliation is the return and the integration of refugees and internally displaced persons. In Serbia alone, over 373,000 persons or five per cent of the total population are still waiting for a solution concerning their status.²⁰³ Though the European Commission states that there was no progress made concerning new refugee legislation, it does not insist any further on the implementation of these outstanding issues.²⁰⁴

Therefore, the social and ethnic reconstruction has not been able to move forward yet. Coupled with the weak democratic leadership resulting from the trust crisis, stability and democratic consolidation in Serbia is far from being achieved. Both cases show that politicians in Croatia and Serbia rhetorically accept European norms, but at the same time have to make concessions to the nationalist opinions of the public. The EU has failed to increase trust in the democratic polity and politics in Serbia and it has even contributed partly to an aggravation of the trust put in the government. After the suspension of talks in May, Belgrade reacted desultorily in its attempt to batter the network that had been helping Mladić to hide.²⁰⁵ So far, no major success has been accomplished. It is true that without the

²⁰¹ Steven Erlanger, “Admissions by Milošević should speed up his trial, Bosnia says”, *The New York Times* (4 April 2001), available at: <http://www.globalpolicy.org/wldcourt/tribunal/2001/0404_admt.htm> (accessed on 22 May 2006).

²⁰² Human Rights Watch, *Serbia-Montenegro* (2006).

²⁰³ UNHCR Representation in Bosnia-Herzegovina, *Estimate of Refugees and Displaced Persons still seeking solutions in South-Eastern Europe* (Sarajevo: December 2005), <http://www.unhcr.ba/maps/03/SEE_EstimateOfRefIDPs_MapA3LC_31dec05.pdf> (accessed on 23 May 2006).

²⁰⁴ European Commission, *Serbia-Montenegro 2005 – Progress Report* (Brussels: COM (2005) 561 final, 9 November 2005), p. 24.

²⁰⁵ *BBC.co.uk*, “Serb police maintain Mladić hunt” (7 May 2006), <<http://news.bbc.co.uk/2/hi/Europe/4983052.stm>> (accessed on 14 May 2006).

Commission's deadlines, the cooperation with the ICTY would not have been accelerated. Yet, there has not been much progress in meeting the general rule of law criteria in Serbia. The rule of law "[...] remains fragile".²⁰⁶ Thus, the argument often brought forward that ICTY compliance results in improved rule of law standards is misleading. The recent acts of public diplomacy and rigid political conditionality can also be seen as concessions to public opinion in the EU member states where doubts about the preparedness of Bulgaria and Romania stir the general debate on further enlargement. Instead of applying silent diplomacy with stronger financial pressure to reach compliance, public discourse was an important driving factor of the policy.

In order to transpose the European model of post-war reconciliation and pacification, the adequate leading politicians with an emancipatory idea are crucial. On the one hand, Ivo Sanader has proven he was able to act also under public and political pressure. Serbian PM Koštunica on the other hand, is losing credibility and thus his ability to actively implement reconciliation and truth finding. Far from being the Serbian 'Adenauer', the EU nevertheless applies the same strict conditionality towards the head of a fragile government. The European Commission's success should be measured by what its own strategy demands, namely to lead the Western Balkan countries "[...] to transform themselves and to adopt EU standards and *values*."²⁰⁷ Until now, the norm of reconciliation has not taken root in the societies of the region. This failure should be translated into a policy change by moving ICTY conditionality away from a mere short-term focus on extraditing individuals to rather long-term objectives such as enhancing the role of domestic tribunals and efforts to improve education based on European values. Only if the "social institutions" (government, churches, NGOs etc.) adopt the norms, will it be sustainable and lead to stability.²⁰⁸ Negative conditionality

²⁰⁶ European Commission, *Serbia-Montenegro...* (2005), p. 10.

²⁰⁷ European Commission, *Enlargement strategy paper* (2005), p. 3 (My italics. AK).

²⁰⁸ This was also suggested by the influential International Balkan Commission, cf. International Balkan Commission, *The Balkans in Europe's Future* (Sofia: 2005), pp. 35-36; already in 2001 the Brussels-based International Crisis Group advised to support civil society as it is better able to foster "[...] the values of truth and reconciliation" without which reforms cannot take root, see International Crisis Group, *Serbia's Transition: Reforms Under Siege*, ICG Balkans Report No. 117 (Brussels-Belgrade: 21 September 2001), p. 21.

has not produced valuable results in this context and has two basic deficiencies: it lacks coherence and neglects other important fields. Driven by the core founding norms of European integration, the EU is (un)willingly exposing itself nevertheless to path dependency by sticking to a narrow interpretation of conditionality.

In the following, I will analyse how the EU promoted the norms of dialogue and cooperation with a rather soft power approach and if persuasive action can be more efficient than the classic carrots/stick dichotomy.

3.2. Life and death of Serbia-Montenegro

It [the Belgrade Agreement] brings Serbia and Montenegro an important step closer to the EU. It provides a new basis for practical cooperation between Belgrade and Podgorica. It contributes to regional stability. And it serves as an example for the right way of resolving difficult status issues in the region: namely, through dialogue rather than through confrontation and unilateral action.

(Javier Solana, 2002)²⁰⁹

Sometimes history goes faster than one might expect with the consequence in the present case that this part is concerned with the development of a country no longer in existence. As I am writing these lines the first Serbian government representatives are accepting the outcome of the Montenegrin referendum, namely the independence of Podgorica. These recent events cast a new light on the role of the EU, mainly represented by Council Secretary-General Solana, and on the evaluation of its policy. The self-proclaimed soft power approach in terms of persuasion can be observed in the way the Union had actively fostered a state union between Serbia and Montenegro in 2002 and how it attempted to maintain the (con)federation after the end of an agreed moratorium three years later. The policy can be seen as a two-fold approach combining ideational and material interests.

- i) ideational: cooperation and dialogue are basic elements of (European) integration, thus a value community founded on these norms expects aspiring members to be fully committed to them & a socialisation process of regional integration could stand as an example for South East Europe;
- ii) material: provide short-term stability by freezing status issues in order to give domestic reform politicians time for democracy consolidation and reforms²¹⁰ & prevent a sequence of secessionist movements (Kosovo,

²⁰⁹ Javier Solana, "The implementation of the March agreement and progress towards the EU go hand in hand", published in Blic (Belgrade) on 16 May 2002.

²¹⁰ Wim van Meurs, *Serbia and Montenegro – One Small Step for Mankind, One Giant Leap for the Balkans*, CAP Working Paper (Munich: March 2002), p. 7.

Republika Srpska, Vojvodina, Sandžak, Transnistria)²¹¹ in South East Europe & potential offer of membership leads the EU also to the question of its own future manageability with many smaller member states aggravating decision-making.²¹²

Given these motivations, the EU ‘intervened’ and acted according to some critics rather like a “bull-dozer” with the aim to keep a state union between the two republics alive.²¹³ The EU was more robust than Javier Solana’s rhetoric would suggest.²¹⁴ The alleged soft power was only insofar soft as no direct sanctions were announced in the case of non-compliance. The incentive was the promise that as a state union both republics could advance faster towards an association with the EU and consequently to official candidate status. As depicted briefly above, Mr Solana was only in a limited sense the “honest broker” think tanks like the European Stability Initiative (ESI) demanded for.²¹⁵ Given the clear priorities and interests of the Union, coupled with the normative approach of fostering intra- and inter-state cooperation in the region, objectivity was not a dominant factor. The EU did use its regional role of hegemonic economic power to force the two republics into an “[...] Ehe auf Probe”.²¹⁶ The dominant role of Solana – leading some journalists to dub the newly found union ‘Solania’ – was the third case of ethnic-conflict management of the EU in the Balkans.²¹⁷ In a row Brussels intervened in Southern Serbia, mediated in the ethnic conflicts in FYROM and brokered a union between Podgorica and Belgrade.²¹⁸ In the first two cases, the

²¹¹ Interestingly enough, government delegations from Basque Country and Catalonia were present during the referendum in Montenegro in order to draw conclusions for their own secessionist struggles, cf. B 92, “Crna Gora, inspiracija separatista” [Montenegro, inspiration for separatists] (25 May 2006), <http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=05&dd=25&nav_id=198694> (accessed on 25 May 2006).

²¹² Gergana Noutcheva/ Michel Huyseune, “Chapter 3: Serbia and Montenegro”, in: Bruno Coppieters/ Gergana Noutcheva/ Marius Vahl *et al.*, *From Europeanization and Conflict Resolution: Case Studies from the European Periphery*, Journal on Ethnopolitics and Minority Issues in Europe, 1 (2004), p. 27.

²¹³ Van Meurs (2002), p. 4.

²¹⁴ Solana (2003), *supra note* 89, at 38.

²¹⁵ ESI, *Politics, interests and the future of Yugoslavia: An Agenda for Dialogue* (Berlin-Brussels-Sarajevo: 26 November 2001), p. 2.

²¹⁶ Lehne (2003), p. 13.

²¹⁷ Tim Judah, “One day soon, Yugoslavia will be old news”, *The Observer* (5 January 2003), <<http://observer.guardian.co.uk/Milošević/story/0,,868857,00.html>> (accessed on 24 May 2006).

²¹⁸ Van Meurs (2002), p. 7.

negotiated solutions have led to relatively stable results in the medium term. The latter intervention, however, was masterminded as a temporary transition model to provide the conditions for democratic consolidation. All three examples were successful in terms of what the desired direct policy outcome was expected to be. Yet, the sustainability of 'Solania' was questionable from the beginning on.

3.2.1. Forging a union

I hope we do not see the creation of any more nation-states.
(Douglas Hurd, 1993)²¹⁹

It is clear that nobody in the EU member states favoured any further Balkanisation in the region. It is not only the antonym of integration, but also a continuation of ethnically motivated nation-state building. In this conceptual context of stabilising the existing state forms and thus the region itself, the EU's stance on the secessionist moves on the part of Montenegro was clear and straight-forward: a referendum on independence at a time when democracy in the country was only one year old was out of question. Thus, the leading principle for implementing UN Resolution 1244 in Kosovo – first standards than status – was also applied on the Federal Republic of Yugoslavia. Final status decisions were postponed in order to establish democratic standards first and then find a compromise solution between stable democratic institutions. In the case of Kosovo, this approach of first concentrating on standards and reconciliation “[...] has frankly failed” according to former US Ambassador in Serbia-Montenegro William Montgomery.²²⁰ Nevertheless, Solana remained on the standpoint that independence claims were counterproductive at that point and he engaged in active diplomacy to maintain one state encompassing Serbia and Montenegro. The EU's role accorded to its general foreign policy, i.e. to exert its “know-how in regional integration” and “the values of inclusiveness and social tolerance” in the Balkans.²²¹ So, the Belgrade Agreement was signed on 14 March 2002 and both sides could say that they got what they wanted. Koštunica and Đinđić on the Serbian side saw many of their proposals included and Montenegrin independence was averted. However, the coalition government formed nine months after the signing of the agreement was divided between secessionists, unionists and even

²¹⁹ Douglas Hurd, British Foreign Secretary, quoted in: Fred Halliday, “Nationalism”, in: Baylis/Smith (2001), p. 448.

²²⁰ Quoted in: NATO Parliamentary Assembly, *Seminar Report of the 60th Rose-Roth Seminar: Serbia And Montenegro: Reconciling Integration And Fragmentation* (Brussels: 16-18 June 2005).

²²¹ Javier Solana, Speech at the Italian Ambassadors Conference (Rome: 24 July 2002).

monarchists.²²² Then Montenegrin President Đukanović on the other hand, though criticised by many pro-secessionists back home, could present a guaranteed referendum on independence after a moratorium of three years. In the end, both Serb unionists and the Montenegrin pro-independence camp could ‘sell’ the Belgrade agreement as a victory and thus had low costs of compliance with regard to the EU’s demands.

In the end, the agreed terms did stabilise the governments in the two republics. Yet, two main drawbacks have to be mentioned. Firstly, the economic aspects were left aside as the focus was on the political consensus.²²³ Contrary to the logic Western European integration, high politics were put first and economics discussed later. This can be seen as a comprehensible approach given the incongruence of the economies: two different currencies and central banks since 1999,²²⁴ varying customs and tariffs arrangements and fiscal systems. A common market did not exist even until the positive referendum on independence. There was no notable harmonisation of markets as foreseen.

Secondly, Javier Solana miscalculated the consequences and the willingness on both sides to truly commit to the new state union. Though the state union was not as tight as foreseen by the EU plans,²²⁵ the rather loose hybrid between federation and confederation was seen as both the lowest common denominator and a workable solution. However, there were various asymmetries and deliberate attempts to keep the union from becoming efficient.

If one was to pinpoint what is the basic prerequisite for a federal system, integral federalist Denis de Rougemont gave “l’amour de la complexité” as one starting point.²²⁶ From the very beginning on, especially Montenegro tried to leave the

²²² Nathalie Tocci, “EU Intervention in Ethno-political Conflicts: The case of Cyprus and Serbia-Montenegro”, *European Foreign Affairs Review*, 9 (2004), p. 565.

²²³ Van Meurs (2002), p. 11.

²²⁴ Already in 1999 under the Milošević regime Montenegro introduced the German Mark which was substituted by the Euro in

²²⁵ Van Meurs (2002), p. 11.

²²⁶ Denis de Rougemont, “L’attitude fédéraliste”, in: *Rapport du premier congrès annuel de l’Union européenne des Fédéralistes à Montreux* (Geneva: August 1947).

state union – whose budget was almost entirely consumed for defence – as minimal and insignificant as possible.²²⁷ In theory, the competences of the union envisaged defence, foreign relations, human rights (including minority protection) and international and internal economic relations. In practice, however, both republics had far reaching autonomy and only final decisions had to be made on union level. The anyway limited union competences were undermined by the EU and the republics themselves. The EU's SAP instrument was modified for the specific needs of the state union and a twin-track approach was introduced in 2004, i.e. both republics would sign one common agreement on the political issues plus two separate protocols on the economic criteria. *De facto*, this meant that economic questions were left to the republics,²²⁸ with the union being left dismantled to foreign, defence and human rights affairs. Montenegro, on the other hand, established its own ministry of foreign affairs and European integration, thus undermining the union powers even more. Further, Montenegro's government openly displayed its unbowed independence ambitions by simply ignoring a constitutional deadline for direct elections to the union's parliament which were to be held in February 2005. The constitutional charter foresaw until then a provisory solution with the republican parliaments sending proportionally deputies to the state union parliament.²²⁹ On Belgrade's side, the enthusiasm was also lukewarm at best. Only PM Koštunica adhered to the union until the very end, probably because it was him who proclaimed in 2002 that the new arrangement was "a new historic unity between Serbia and Montenegro."²³⁰ Apparently, the will to live for a longer time in this arranged marriage never really existed, or, it was not out of commitment to the partner but rather a nostalgic reminiscence to the federal times of Yugoslavia. However, Podgorica's strive for independence was a well-grounded reason for preventing an efficient and publicly legitimised union. Montenegro was criticised by the International Balkan

²²⁷ In 2003, about 90 per cent of the expenditure was military spending, of which Serbia contributed 93.3 per cent, cf. SIGMA, *Assessment Report on Serbia and Montenegro – Public Expenditure Management* (Paris: 2004), p. 1. <<http://www.sigmaxweb.org/dataoecd/37/31/36512619.pdf>> (accessed on 24 May 2006).

²²⁸ Vladimir Medjak, *Twin-track approach towards Serbia-Montenegro – A Recipe for faster EU-integration?*, SEESOX Opinion Piece (Oxford: December 2004), p. 3.

²²⁹ International Crisis Group, *Montenegro's Independence Drive*, Europe Report No. 169 (Brussels: 7 December 2005), p. 8.

²³⁰ Quoted in: Van Meurs (2002), p. 10.

Commission for its “policy of blocking the normal functioning of the Federation as a way to cause its disintegration“ which “should not be tolerated.”²³¹ Given the fact that the two republics differ largely in size and economic structure, the problems concerning the unanimity principle on union-level could have been foreseen.²³² This was a paralysing factor for the development of the republics.

Following the old saying of socialist times ‘we pretend to work and they pretend to pay us’, the two republics pretended to make the union work while the EU pretended to accelerate the association process. As discussed in the previous case study, the integration process was slow and was even frozen in May 2006 due to Serbia’s inability and unwillingness to comply with the ICTY. One further obstacle in maintaining the momentum of quick European integration based on reform policy was the standstill between creating the union and introducing the above mentioned twin-track mechanism. These were 28 lost months in a crucial time after the assassination of PM Đinđić and it did neither improve the EU’s credibility nor help to advance the standing of the union as such.²³³ Due to these imperfections of the construct as such, the EU’s self-perception as having achieved the first true success of the European common foreign policy can be questioned. Yet, the EU was and remains the principle external actor and the framework for reforms.²³⁴ Javier Solana has proven that the Union’s capabilities in crisis-management have improved by calming ethnic tensions in three cases in the region, with the Ohrid Agreement being the most sustainable – but still frail – success so far.²³⁵ These enhancements, however, remain rather reactionary than illustrating a blueprint for conflict-prevention.²³⁶ So, what was the reason that this in any sense transitional solution was terminated?

²³¹ IBC, *The Balkans in...* (2005), p. 26.

²³² The population ratio is 1:18, see Tocci (2004), p. 564.

²³³ Ivan Vejvoda, “Serbia after four years of transition”, in: *The Western Balkans: moving on*, Institute for Security Studies Chaillot Paper, 70 (October 2004), p. 41.

²³⁴ Tocci (2004), pp. 561-62.

²³⁵ Batt (2004), pp. 14-15.

²³⁶ For details on the role of the EU and the proceedings of its institutional mechanisms in FYROM see Claire Piana, “The EU’s Decision-Making Processes in the Common Foreign Security Policy: The Case of the Former Yugoslav Republic of Macedonia“, *European Foreign Affairs Review*, 7 (2002), pp. 209-226.

3.2.2. 'Solania' revisited

*Rano moja opasna,
mom si srcu prirasla.
Pa, neka si, neka boli,
izdržaću jer te volim.*

*Moja ljubavi
razvedrilo iznad gora,
i na nebu mom
sija samo ljubav tvoja.*

*My dangerous wound,
you got closer to my heart,
So stay there, let it hurt,
I can handle it because I love you.*

*My love,
the sky cleared up beyond the mountain,
and in my sky
only your love is shining.*

(No Name, 2006)

In which way love – not the one for reality's complexity à *la Rougemont* – can lead to an illustrative scandal in Serbia-Montenegro, can be exemplified by the preceding lines of a song. It is an excerpt from the Montenegrin contribution to the national Eurovision preliminaries in 2006. According to the jury's decision it was also the winning song, but the Serb audience reacted with an uproar against the alleged bias of the representatives from Montenegro's public broadcaster. They had not given any points to the Serb performers which resulted in public tumult and the boy band 'No Name' leaving the stage under boos and flying bottles.²³⁷ In the end, both sides could not agree on a restaging and Serbia-Montenegro withdrew from the song context. As childish as this example might seem, it highlights the deep-rooted cleavages between the republics and the lack of cooperative attitudes. A Turkish diplomat stated in the eve of the final contest in Athens that this was an opportunity for the Southern countries to show that there their values were also European norms.²³⁸ If this was true, then the incident showed that the commitment to values such as dialogue and cooperation is at the most in an embryonic stage.

That this strong scepticism towards a common state union was mutual is also mirrored in the reactions to the Eurovision raw. Some Serb commentators interpreted the lyrics of the song as being a metaphor for the patriotic love

²³⁷ *BBC.co.uk*, "Row prompts Eurovision withdrawal" (20 March 2006), <<http://news.bbc.co.uk/2/hi/entertainment/4824692.stm>> (accessed on 25 May 2006).

²³⁸ Andrew Rettman, "No politics please, it's the Eurovision", *EU Observer* (18 May 2006), <<http://euobserver.com/9/21646>> (accessed on 19 May 2006).

towards *Crna Gora*, Serbian for Montenegro, meaning 'black mountain'.²³⁹ This was perceived by many as an affront against the Serbian brother republic. The wound as the union with Serbia, which was borne only with the hope that one day it would be independent again.²⁴⁰ Against the background of various animosities of this kind, it comes as no surprise that the Montenegrin government as expected announced the referendum on independence for 21 May 2006. The scenery was prepared for Javier Solana's last appearance on the stage of Serbia-Montenegro. Here again, the EU's conditionality, this time again as a soft power but with a light stick threatening, was applied.

Javier Solana intervened to save the struggling state union by sending a special envoy, Slovak diplomat Miroslav Lajčák, to represent the EU's interests. Concretely, that meant defining the necessary criteria for an official EU recognition of the referendum's results. The Venice Commission, the Council of Europe's advisory body on constitutional matters, including questions of referenda and elections, was asked to give an opinion on Podgorica's referendum law. After assessing the situation, a qualified majority for a valid independence vote was recommended, with a minimum participation of half of the eligible electorate.²⁴¹ Originally, the Montenegrin law foresaw a simple majority of the cast votes and a minimum quorum of fifty per cent. So, one part of the Venice Commission's recommendations was already fulfilled. While the expressed opinion explicitly judges the legal provisions to be already according to international standards, it called for a negotiated compromise – with the EU acting as intermediary – due to the high significance of the issue. This led Lajčák to

²³⁹ *Euronews.net*, "Decision time looms in Montenegro" (13 May 2006), <http://www.euronews.net/create_html.php?page=europeans&article=358781&lng=1&option=1> (accessed on 24 May 2006).

²⁴⁰ Montenegro's nation-statehood dates back to 1878 when the Congress of Berlin conceded a formally independent state to Prince Nikola. In 1918 it was incorporated into the newly founded Kingdom of Serbs, Croats and Slovenes, which Prince Nikola supported though large parts of the population opposed this move. Cf. Hans-Michael Miedling, "Einheit in Gespaltenheit? Eine kritische Betrachtung zum Selbstverständnis der Montenegriner in der Krise", *Südosteuropa Mitteilungen*, 6 (2005), pp. 56-59.

²⁴¹ European Commission For Democracy Through Law (Venice Commission), *Opinion on the compatibility of the existing legislation in Montenegro concerning the organisation of referendums with applicable international standards* (Venice: CDL-AD(2005)041, 16-17 December 2005), pp. 9-11.

propose a 55 per cent threshold of cast votes for an acceptable and legitimate outcome. His proposal was endorsed by the Council of the EU.²⁴² For the case of non-compliance, Javier Solana threatened to call upon the OSCE not to send any observers to the referendum, thus de-legitimising the result.²⁴³ Both the Đukanović government as well as the opposition in Montenegro accepted the proposal “[...] after some reluctance [...]”²⁴⁴ and with a clear approval on the part of the parliament in Podgorica. Đukanović himself criticised the Council’s formula as contradicting basic democratic principles and being a danger to stability.²⁴⁵

The rest is history and ends with a positive vote on independence. At the time this thesis is written, the official preliminary result is 55.5 per cent for independence with an unprecedented high turnout of 86.3 per cent, i.e. about 20,000 votes more than the qualified majority demanded by the EU. This result has yet to be proclaimed the final one by the republican referendum commission, but even in theory there won’t be any decisive changes though some unionist politicians demanded a recount in a number of municipalities.²⁴⁶ Against this sequence of events, the EU has used two ‘sticks’ in order to promote its interests and values: withdrawal of other international agents (OSCE) and rejection to recognise outcome in case of non-compliance. This was not only directed towards the governing elite but also to the unionist opposition who partially threatened to boycott the referendum. Despite these aspects of negative conditionality, it remains a soft power approach as neither economic sanctions nor a suspension of EU association talks were under discussion.

²⁴² Tim Judah, “Divorcing Serbia: The Western Balkans 2006”, *The Fletcher Forum of World Affairs*, 30 (Summer 2006) 2, p. 218.

²⁴³ Tim Judah, *The EU must keep its promise to the Western Balkans, Centre for European Reform Essay* (May 2006), p. 4.

²⁴⁴ OSCE, *Republic of Montenegro, Serbia-Montenegro – Referendum 21 May 2006, Needs Assessment Mission Report* (Warsaw: 14 March 2006), p. 2.

²⁴⁵ Aida Ramusovic, “Aritmetika odvajanja” [Arithmetic of separation], *Transitions Online* (6 March 2006), available at: < <http://www.vlada.cg.yu/vijesti.php?akcija=vijesti&id=11479>> (accessed on 28 May 2006).

²⁴⁶ *The Economist*, “Enter Montenegro – A minnow emerges” (25 May 2006).

To put it in a nutshell, both in negotiating and potentially dissolving the state union, the EU, represented by the Council, was an omnipresent external actor. The union came into being and all the parties involved in general respected the formal terms of the agreement, except those misgivings mentioned earlier. Equally, the referendum took place in accordance with the EU's forceful proposal and, which probably comes as a surprise for some analysts, without major conflicts in the aftermath of the ballot. Critics like German MEP Doris Pack who attacked Javier Solana for having prevented Podgorica's independence three years ago neglect the relatively strong leadership he has demonstrated.²⁴⁷ He had two clear short-term policy goals and both were attained. Yet, the question of credibility arises again. Brussels' magnetic pull should derive from "[...] credibility and legitimacy" if it was to use its soft power efficiently.²⁴⁸

In an isolated examination, Solana's handling of the situation, though reactionary, is credible and with some restrictions also legitimate: credible because it accords to the values proposed in the first place and relatively legitimate because the EU neither menaced with direct sanctions concerning EU membership nor with exaggerated demands regarding democratic criteria. In the end, Solana insisted on agreements both sides committed to, with harsher conditions on the necessary qualified majority. Despite various critics, the different 'yardsticks' can also be based on the cited unwillingness to make the union work. In any regard, the threshold might be above the international standard but appropriate for the question at stake.

Still, the institutional incoherence of CFSP and enlargement policy has reduced the EU's authority. The action of the European Commission in decisive moments thwarted the credibility of High Representative Solana in specific and the Union in general. This culminated in certain cases in a counterproductive antagonism. Political analyst Nathalie Tocci notes this for EU foreign policy in Serbia-

²⁴⁷ B 92, "Pak: Solana odgovoran" [Pack: Solana accountable] (13 May 2006), <http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=05&dd=13&nav_id=197561> (accessed on 27 May 2006).

²⁴⁸ Joseph Nye (2004), p. 31.

Montenegro and also for the attempts to solve the Cypriot conflict.²⁴⁹ Also other scholars observe an institutional incoherence of that kind and name FYROM as a further example.²⁵⁰ Both institutions pursue a different set of objectives with different preferences concerning the negotiation framework:

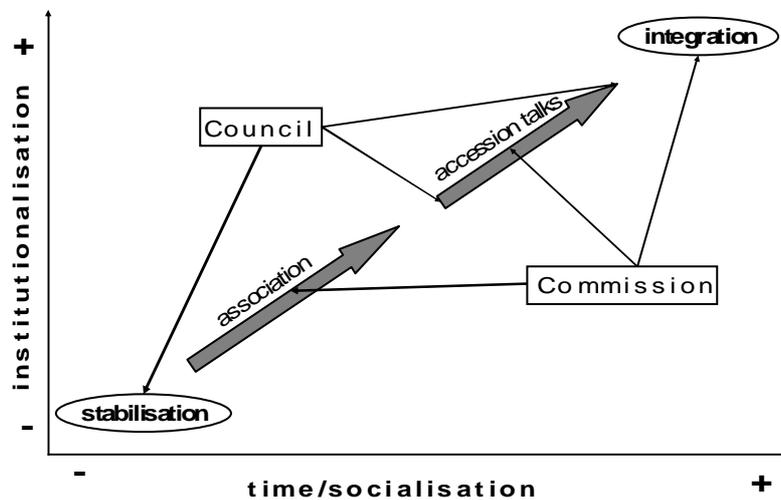
- European Commission: quick association and integration process, technocratic implementation of the SAA and consequently of the 29 *acquis* chapters → preference for a strong unitary state → longer term perspective;
- Council of the EU/ European Council: prioritise (inter-ethnic) conflict management and stabilisation → short to medium term goals.

With reference to the brief enumeration at the beginning of chapter 3.2., it can be observed that ideational norms and material interests are interwoven between both bodies. Such complex and partly contradictory interplay is difficult to apprehend for third parties, not only because it is actually lacking coherence, but also due to the general characteristics of multi-level governance. The Council so far is the main actor in crisis-management and its decision is particularly decisive before starting accession talks and before concluding the membership.

²⁴⁹ Tocci (2004), pp. 571-572.

²⁵⁰ Piana (2002), pp. 216-217.

Figure 4: Institutional influence on an 'ideal' integration process



Source: Own compilation.

The Commission, on the other hand, is principally engaged in the negotiations before, during and after the association/ integration process. Contrary to what the rhetoric of some politicians indicates, the regional stabilisation is not yet concluded. That is the dilemma of the Balkan policy. The SAP, with the Commission as principle agent, had begun already five years ago with Macedonia and in the following months and years with the other countries of the region (see Annex: Table 1). Nevertheless, the Council continued with its conflict-management efforts in order to consolidate stabilisation and calm ethnic tensions. So, both policies were executed simultaneously and led in some cases to a conflict of interests and short-term goal.

One recent example is the pre-referendum period. As depicted in the case of ICTY compliance, the Commission suspended negotiations with Serbia-Montenegro on 3 May 2006. Apparently, this was not a cautious and anticipatory move with the vital referendum taking place on only two weeks later. For over one year Olli Rehn had demanded better ICTY compliance, but the date he chose to finally

sanction Belgrade was improvident. Thus, the suspension was contrary to the Council's interest of preserving the state union and fostering integrational cooperation. The signal from Brussels provided the secessionists politicians with the welcome arguments to convince the voters of the advantages independence would bring. Montenegro's Foreign Minister Vlahović accordingly stressed that Podgorica was "in the dependent position – because we bear the consequences of the non-cooperation of the Serbian authorities".²⁵¹ President Vujanović went so far to highlight that his country was being held hostage by the interdependence with Belgrade's outstanding ICTY issues.²⁵² Carla Del Ponte has stressed that her criticism of non-cooperation is directed towards Belgrade, not the Montenegrin capital. Consequently, the antagonism of Olli Rehn's actions indirectly supported the belief that the state union was detriment to EU integration and to the republic's progress. Though at first sight a solution of this polity dilemma seems to be within reach, the provisions in the Constitutional Treaty for establishing an EU foreign minister won't help to increase coherence.²⁵³ If the future foreign minister was to be double-hatted, i.e. taking over the DG RELEX and the post of Secretary-General as laid down in the Constitutional Treaty, the conflictual relationship with the DG ELARG – so far the main actor in relations towards potential candidates/ members – and the Council still would not be solved.

In summing up the findings on the constitutional side of the EU, the policies of Council and Commission seem to run diametrically. While Solana's soft power approach is both coherent and transparent,²⁵⁴ the Commission is lacking mainly these characteristics in its application of negative conditionality. Further, the Commission seems to be in a schizophrenic situation, with two roles it has to

²⁵¹ Miodrag Vlahovic, Interview for daily *Pobjeda* (Podgorica: 24 January 2006).

²⁵² Filip Vujanovic, "Vujanović: Nemogući harmonični odnosi u jednoj državi" [Vujanovic: Harmonic relations impossible in one state], Interview for Serbian public broadcaster RTS (3 May 2006), <<http://www.predsjednik.cg.yu/?akcija=vijest&id=1046>> (accessed on 27 May 2006).

²⁵³ For an treatise on the would-be EU foreign minister see Giovanni Grevi/ Daniela Manca/ Gerrard Quille, *A Foreign Minister for the EU – Past, Present and Future*, FORNET Working Paper 7 (November 2004).

²⁵⁴ Still, colleagues like the coordinator for the Stability Pact in South East Europe criticise Solana's powerlessness compared to US-influence. Ironically, Busek asked a journalist: "What can Javier Solana use as a threat? That he is going to visit again?", quoted in: *B 92*, "EU lacks political concept" (May 12, 2006) <www.b92.net/english/news/index.php?nav_category&order=priority&nav_category=60>, accessed on 14 May 2006).

fulfil: its traditional drive for bureaucratic and fast integration and the rather new (rhetoric) role of fostering values of cooperation and reconciliation by enforcing ICTY compliance. This can be seen as one example of how “[...] language constraints the choices of agents [...]”.²⁵⁵ Concerning policy outcomes, the Council as well as the Commission has achieved *prima facie* its proclaimed goals, namely extradition of ICTY indictees and following integration/ association speed up on Olli Rehn’s side and stabilisation with peaceful status arrangements on the part of Javier Solana. Yet, under the surface, the proposed values and norms have only been accepted half-heartedly if at all and the long-term objectives, namely stabilisation and integration, were not furthered. Societal changes are stagnating and the reconciliation process was initiated but for the time being could not take root in the region. In addition, the differing and sometimes contradicting policies by Council and Commission weakened credibility and thus the strength of soft power and negative conditionality. Compromising on a loose and dysfunctional state union paralysed some of the reform dynamics which began during Đinđić’s mandate. In addition, the Council did not maintain permanent pressure on the two republics to make the confederation work. A further loss of (international) credibility is the lacking will on the part of the EU to engage as actively in Kosovo. In Kosovo much more is at stake for the entire region with large Albanian minorities in Montenegro, Southern Serbia and Macedonia. Until now, the EU has not committed more space on its policy agenda to the reconciliation and cooperation between the ethnic groups in Kosovo.²⁵⁶

Leadership is also crucial in the region itself. On the one hand, Milo Đukanović is the longest serving head of government/state in South East Europe. At the age of 29 he became Prime Minister back in 1991. Despite the high costs of compliance concerning the relatively elevated 55 per cent threshold, he accepted the EU’s interference in order to consolidate his country’s international standing. Without recognition of the independence vote through the EU, the membership perspective would have suffered a severe blow. His public standing is solid as he tied his

²⁵⁵ Larsen (2004), p. 42.

²⁵⁶ Cf. Jean-Arnault Dérens, “Vier Jahre nach dem Kosovo-Krieg – Der Solana-Staat zerfällt”, *Le Monde Diplomatique* (14 February 2003), pp. 10-11.

political destiny to his independence promise, stating that he would not run again for prime minister if the referendum was negative. Despite prognoses from Solana that “whoever thinks that leaving the state union will speed up that process is deceiving himself”,²⁵⁷ Đukanović has repeatedly emphasised that independence would bring more dynamics for EU integration.²⁵⁸ He received unintended support from the Commission and thus could convince the majority of the electorate of the advantages secession would bring. Nevertheless, the problem of organised crime persists in Montenegro. It is said that highest government circles have ties to organised trans-border crime and smuggling.²⁵⁹ Though measures have been taken, organised crime and corruption remain key deficiencies as in most of the Balkan countries. Except that misgiving, Đukanović’s status is secure and he will most probably be confirmed for a further mandate after this autumn’s elections. As the opposition, which was mainly in the unionist camp, will now struggle to find a credible *raison d’être*, there seem to be few alternatives to the governing DPS (*Demokratska Partija Socijalista*).

On the other side, the problems in Serbia were already listed with reference to the cooperation with the ICTY. The government might be reshuffled following the resignation of Vice-PM Labus. Unlike Đukanović, Koštunica is losing more and more public support and trust. In April his party was with 14 per cent on the third place behind the radicals and the democratic party of President Tadić. Given the suspension of EU talks, the negative referendum outcome and the decisive on-going status negotiations on Kosovo, it is questionable if he can sustain.

Again, Serbia appears to be the most fragile of the examined states. Unlike the freezing of negotiations in the first case study, the Council’s interference during the referendum process did not imply an unintended destabilisation. Yet, it slowed down the association process and hampered reforms. Only one major setback can be identified, namely the disconcerted interplay of Council and Commission. As I

²⁵⁷ Javier Solana, Interview to *BETA* News Agency (Belgrade: 7 June 2005).

²⁵⁸ *B* 92, “Montenegro adopts EU declaration” (28 April 2006), <http://www.b92.net/english/news/index.php?nav_category=13&style=texts&news_per_page_limit=0&order=priority> (accessed on 7 May 2006).

²⁵⁹ ICG (2005), *Montenegro’s ...*, p. 16.

have argued before, the attempt of value promotion did not cause a veritable socialisation process. Socialisation did take place only in the form of lip service, like e.g. Vojislav Koštunica stating that his government “believe[s] integration is better than disintegration.”²⁶⁰ Clear interests are underlying the proclaimed preference of integration: calming nationalist attitudes in Serbia and preventing any negative influence on the Kosovo talks. For Serbia, many facts indicate that 2006 could become an *annus horribilis* with four major challenges: ‘divorce’ in a calm and constructive way from Podgorica, arrest fugitive general Mladić, explain the probable gradual independence of Kosovo to its citizens and await the judgement in the pending genocide lawsuit filed by Bosnia-Herzegovina at the International Court of Justice.²⁶¹

By examining the developments in the Balkans, one is tempted to agree with scholars who see certain trends of “Latinization” and not Europeanisation in the region due to “unfulfilled social expectations, weak structures of political representation, populism, bad governance and the general weakening of reform dynamics.”²⁶² All these traits can be observed in the Balkans. While witnessing in this very moment a peaceful ‘velvet divorce’ as in Czechoslovakia in the case of Serbia-Montenegro, we are also observing what can be described as “soft power revolution”.²⁶³ The given examples have shown the possibilities and limits of political conditionality. On an ideational level, important first steps were initiated but the processes of truth finding, reconciliation and peaceful cooperation can only be the results of lasting long-term efforts. On a material level, the region has been stabilised with Kosovo remaining the only potential hot spot. Yet, the norm-driven approach of both Council and Commission can only yield fruit if consistence and coherence are guaranteed. Deficiencies in domestic war crime

²⁶⁰ Quoted in: “Serbian Premier Denies Genocide Took Place in Bosnia”, *SCG Ministry of Foreign Affairs Press Release* (Belgrade: 3 March 2006), <http://www.mfa.gov.yu/Bilteni/Engleski/b060306_e.html#N4> (accessed on 21 May 2006).

²⁶¹ The Sarajevo government accuses Serbia-Montenegro (now Serbia) – the successor state to the Federal Republic of Yugoslavia – of having planned and supported genocide in Bosnia, cf. *BBC.co.uk*, “Court hears Balkans genocide case” (27 February 2006), <<http://news.bbc.co.uk/2/hi/europe/4753874.stm>> (accessed on 27 May 2006).

²⁶² Brusis/ Thiery (2006), p. 18.

²⁶³ ESI, *The Helsinki Moment – European Member-State Building in the Balkans* (Berlin-Brussels-Istanbul: 1 February 2005).

tribunals, ethnic relations, minority protection, refugee return etc. are all against commonly accepted European values. Still, some singular cases are 'cherry-picked' while others move to the background. The ultimate objective of EU policy is exemplified by Macedonia, something like a role model of Solana's mediation virtue as "today [it] is a stable democracy and a functioning multi-ethnic state."²⁶⁴ For Serbia-Montenegro this was not accomplished. If the region with Kosovo in the centre of attention will one day finally conform to that assessment, depends largely on a concerted and credible application of democratic conditionality while providing enough space for regional ownership. Finally, if the EU does not succeed in making clear that history is not a nightmare but a potential source for a constructive future, the European idea of a constructive collective memory based on reconciliation and cooperation won't take root in the Western Balkans.

²⁶⁴ European Commission, "The Commission recommends candidate status for the former Yugoslav Republic of Macedonia", Press Release (Brussels: IP/05/1391, 9 November 2005).

Conclusion - Community trap reloaded

I trust that European leaders will conduct a responsible debate that does not question these commitments [of membership perspective] and erode our credibility in demanding that they meet our standards. Otherwise we would weaken our ability to work for stability and democracy in the Western Balkans and thus harm Europe's own interests.

(Olli Rehn, January 2006)²⁶⁵

Even if interests were the main driving force in EU foreign policy, they could not be pursued without contemplating normative aspects. Stability and democracy can only be consolidated through fostering and cementing values, or, in the words of Italian political theorist Giovanni Sartori: “[a] democracy exists only insofar as its ideals and values bring into being.”²⁶⁶ European common values have been the ideational pillars on which the economic integration process was initiated in the 1950’s. The various allusions made by politicians to this period of post-war reconciliation and enhanced cooperation pinpoint the significance of these values for Europe’s collective memory. In order to fathom the guiding norms of foreign policy, identity in the classical sense so far does not provide substantial material to analyse foreign affairs in a European context. Given the multi-layered nature of European identities, it is difficult to filtrate the essence of what could be an underlying identity for explaining external relations. The notion of collective memory is a valuable premise as it concentrates the dense experiences commonly lived in most of the Western European states since the end of WWII. Both identity and collective memory are socially constructed, “imagined”.²⁶⁷ Yet, the latter is more concrete and resembles *mutatis mutandi* the Western Balkans as a post-conflict region.

As noted in the introduction, four main reasons for the successful post-war integration and socialisation in Europe can be identified. Firstly, leadership is

²⁶⁵ Olli Rehn, speech on “Enlargement in the Evolution of the European Union” (London: 20 January 2006).

²⁶⁶ Quoted in: Laurence Whitehead, *Democratisation. Theory and Experience* (Oxford: 2002), p. 6.

²⁶⁷ Benedict Anderson’s treatise on the imagined character of identities remains a seminal work, see Benedict Anderson, *Imagined communities: reflections on the origin and spread of nationalism* (London: 2003).

essential if sustainable social and ethnic reconstruction is to take place. In the Western Balkans, the reconciliation between Croatia and Serbia as the most important factor for regional stability is vital. In Croatia, PM Sanader can potentially meet the requirements for combining strong leadership with European norms, backed by a stable democratic polity. Yet, Serbia is still searching for its ‘Adenauer’. The setback of Montenegrin independence, plus the uncoordinated policies of Council and European Commission, have weakened Vojislav Koštunica’s position and destabilised the political structures. Radicalisation in both countries constitutes a real danger for the political system and the tensed inter-ethnic relations. Under these circumstances, with open status questions in Kosovo and constitutional deficiencies in Serbia and Bosnia-Herzegovina,²⁶⁸ a tandem Zagreb-Belgrade is unlikely to lead the region towards EU integration. Under the burden of unfinished reconciliation processes from several wars, including WWII, the promoted norms have not taken root yet. As Brussels is an advocate of substantial democracy, it has only partially succeeded to form pluralistic elites and to further the role of civil societies based on European norms in the region. The very fact that the Commission is applying stronger coercion for ICTY cooperation illustrates that the EU was unable to promote alternative power centres to the influential elites and interest groups associated with the wars of the 1990’s.²⁶⁹ Consequently, even though some democratic politicians such as Sanader are equipped with the appropriate characteristics to lead the countries to the right direction, they are hindered by the remains of the predecessor governments. State weakness is widespread in the Balkans as a whole. Public trust in the political systems is reduced and the socialisation process does not fully embrace civil society.²⁷⁰ If the state and social sectors are not strengthened, political leaders – even if sufficiently capable, able and committed to democratic norms – won’t succeed in fostering stability and regional cooperation.

²⁶⁸ According to Ivan Krastev, the mastermind behind the International Balkan Commission, the “constitutional frameworks themselves are both effect and cause of the governments’ weakness”: cf. Ivan Krastev, “Weak States as a Security Threat”, *Südosteuropa Mitteilungen*, 4 (2004), p. 106.

²⁶⁹ *Ibid*, p. 107.

²⁷⁰ *Ibid*, p. 105-109.

Secondly, norms were coupled with material interest in the Franco-German pioneer tandem. France wanted security guarantees, indirect control over Bonn's heavy industry and later on protection of its agricultural production. Adenauer on the other hand wanted to re-enter with Germany on the international stage and establish new markets for industrial exports.²⁷¹ In that specific situation, interests and the values of reconciliation and cooperation were compatible. To come back to the relationship between Croatia and Serbia, the present governments have the integration into EU structures on the top of their agendas. Although the norms do correspond with these objectives – in the end regional cooperation and ICTY compliance are both explicit conditions for further approximation – clear policies in this direction remain in principle on a symbolic basis and the potential of enhanced cooperation has not yet been fully embraced. Again, despite the fact that norms were accepted by politicians and smaller parts of the population, especially in Serbia the criteria put forward by the EU are not met. The components of the nexus interests/norms are in theory complementary, but the governments have so far failed to keep their promises.

Thirdly, a *Wirtschaftswunder* increased living standards and ensured social peace in the six founding countries of the EEC. In the Western Balkans, only the economic performance of Croatia is an example of stable growth. In general, the economic development is not substantial²⁷² despite the large international financial assistance from which the countries have been benefiting particularly until 2001. The recent “donor fatigue”²⁷³ has not but worsened the economic prospects. Social unrest and cleavages won't contribute to improve the trust crisis towards the democratic political systems.

Finally, a common enemy to facilitate the normative distinction ‘we’ and the ‘other’ does not exist. The problems of facing the past and coping with the events

²⁷¹ Brunn (2002), pp. 70-88.

²⁷² Marie-Janine Calic, “The Western Balkans on the Road Towards European Integration”, Friedrich-Ebert Stiftung, *Internationale Politikanalyse Frieden und Sicherheit* (December 2005), pp. 3-4.

²⁷³ Bodo Hombach, “The Stability Pact – Lessons for the Future”, *Südosteuropa Mitteilungen*, 4 (2004), pp. 29-30.

of the wars are still too present. The cohesion of the region is weak, not only due to the ethnic, economic and political heterogeneity, but also because of the unwillingness to cooperate. Despite the shared long term objective of joining the EU, regional cooperation initiatives are limited and generally do not derive from local initiatives but rather come into existence via the intermediation of an external agent.

Against this background, it becomes apparent that historical periods have to be analysed in their respective context. The rhetorical comparisons between post-WWII reconciliation and cooperation and today's Balkan policy are oversimplifying and incautious. To take historical events out of their specific and unique context and apply them on different situations and constellations is an improper basis for conducting foreign policy. Still, two of the underlying values of that era have found their way into a norm-driven enlargement policy. Did these values nevertheless contribute to stability and cooperation in the Western Balkans? The answer can only be an ambiguous 'yes and no'.

By examining two examples in greater detail, this thesis has tried to depict the pros and cons of a value-driven approach. In order to circumvent "empirical ad-hocism",²⁷⁴ one should keep in mind that only two case studies cannot be representative for the picture as a whole. They, however, do give an insight into the possibilities and limits of furthering norms. The main tool for fostering values is political conditionality, which has one obvious restriction in the Balkans: time.²⁷⁵ Entering one day the EU is the prime incentive for political and economic reforms in the region, yet, for all the countries except Croatia, the ultimate 'carrot' is still at least ten years away. Apparently, such a long time corridor makes it difficult for reform politicians to keep pace with EU demands and to take difficult but necessary decisions even against public resistance. Nye suggests attractiveness, legitimacy and credibility as means to maintain strong leadership. The magnetic pull of the EU makes the union more than attractive, especially concerning the economic dimension. With regard to legitimacy and credibility it is

²⁷⁴ Ohrgaard (2004), p. 36.

²⁷⁵ Tocci (2004), p. 568.

more difficult to maintain a permanent high level of both. Each error or inconsistency can severely damage the EU's authority and integrity.

Political conditionality depends heavily on the agent's credibility, the less credible the agent, the weaker the tool becomes. As analysed in the case studies, there are two kinds of discrepancies which are problematic for Brussels' leverage: structural conflicts on the one hand and conflicts between proposed values and goal-attainment on the other hand. Concerning the former, the lack of coordination and coherence between the Council and the Commission "often yield[s] unintended effects."²⁷⁶ The diametrically executed tasks of conflict-management and association negotiations leave domestic actors without clear orientation what has to be done. Some members of the Serbian coalition government understood the Commission's message to be as follows: association talks with one strong unitary actor are quicker and preferable to long drawn negotiations with an inefficient state union.²⁷⁷ This was grist for the mill of unionist PM Koštunica's critics, deteriorating his standing in his own cabinet and the public. Yet, the Council insisted on forging a loose and hardly workable state union. Here the weak sides of soft power become evident. Although Javier Solana at first succeeded in implementing the Council's wish to circumvent the creation of further micro-states, he could not coerce the parties to cooperate and make the union work.

This leads to the second conflict, namely between proclaimed values and objectives. In brief terms, the Commission has coerced ICTY compliance though this can, as observed on several occasions, halt the integration process. This contradicts the Commission's traditional task of advancing quickly in negotiations and Europeanisation. The Council, on the other hand, has achieved short-term stability through a negotiated compromise between Belgrade and Podgorica, while failing to foster norms such as cooperation and dialogue. Given the inefficiency of the state union, Serbia-Montenegro has lost almost two years in advancing towards EU candidate status. In general, short-term goals like extradition of

²⁷⁶ Tocci (2004), p. 572.

²⁷⁷ *Ibid*, 566.

indictes and conflict-management have been attained, with an improvement of capabilities in the latter. However, the socialisation process encompassing reconciliation and inter-ethnic dialogue remains in an early stage. The two norms of dialogue and reconciliation condition each other and cannot be separated. Consequently, only a consistent and coherent approach can yield fruit.

If the EU member states agree with Jean-Claude Juncker's statement that foreign policy is "le plus noble des projets européens",²⁷⁸ a coherent strategy is needed to edge Brussels' foreign policy tools and to tap the full potential of political conditionality. Dividing foreign policy between inter-governmental and supranational institutions is counterproductive and does neither lead to better compliance in third countries nor does it take advantage of synergy effects. Without legitimacy and credibility policies can have unintended side-effects which are particularly dangerous in fragile regions such as the Balkans. Those people in the Western Balkans who are today criticising the EU's negligence, could tomorrow reject the whole project as such since an increasing number of people considers the project to be the cause for the negative situation in their respective country.²⁷⁹ Only with durable commitment can the fragile construct of furthering stability and values persist. The compliance-pull of norms directly depends on the agent's credible and coherent commitment.

Some critics argue that the European Union is missing a "grand narrative" which should include a constructive debate on future enlargements.²⁸⁰ Especially the Commission has tried in the last few months to actively engage in a public discussion on the advantages of the Eastern Enlargement. Yet, the EU should simultaneously inform the EU citizens and restructure its policy in order to be convincing both to its own citizens and to the people in the Balkans and Turkey.

²⁷⁸ Jean-Claude Juncker, Speech on the occasion of his nomination as President of the *Centre international de formation européenne* (CIFE) and inaugural discourse of the conference "Maintien de la paix : la coopération de l'ONU et des organisations régionales européennes" (Nice: 22 November 2005), almost 80 per cent of EU citizens approve of a strong common foreign and security policy, see Annex: Graph 10.

²⁷⁹ Sundhausen (2005), p. 24.

²⁸⁰ Solioz (2005), p. 13.

A reconfiguration could also calm misgivings of an expansionist/ imperialist EU, pinpointed in the question: does Brussels opt for an empire stretching towards the Balkan Mountains or does it choose enlargement?²⁸¹ The latter should be the policy goal as every ‘pax’ in the history so far was based on Roman legions, US-American troops or other military forces. Given the nature of the EU as a civilian power, only the choice for enlargement remains, for “member-state-building” instead of creating more nations/states.²⁸² If the Union aspires to be an influential and forceful civilian power, it has to modify its approach, not only to be more efficient, but also to truly support the transformation and integration processes in the region. Five aspects should be considered for accelerating the transition with a fully-fledged conditionality tool.

- i. offer more incentives for reforms and compliance (e.g. visa facilitation,²⁸³ pre-accession assistance already at an earlier stage etc.);
- ii. increase the emphasis on regional cooperation and if necessary, apply negative conditionality;
- iii. prefer silent diplomacy to public diplomacy so that local governments are not weakened even more;
- iv. include other persisting problems in the policy agenda (minority protection,²⁸⁴ refugee return, transitional justice etc.);
- v. improve coherence (in the long run, the antagonism between Commission and Council has to be abolished).

²⁸¹ British historian Timothy Garton Ash cites the title of one of Ivan Krastev’s articles, *supra note* 112, at 46; see also Timothy Garton Ash, “For a Pax Europeana”, *The Guardian* (14 April 2005).

²⁸² ESI, *The Helsinki Moment...* (2005); the International Balkan Commission also demands to apply a new strategy for the region, based on three points: institution-building with more funds, a common market and “constituency-building” (improve political representation, visa facilitations), cf. IBC (2005), p. 29.

²⁸³ Vejvoda (2004), p. 42; Michael Emerson suggests an interesting alternative, namely to first introduce visa-free travel within the region (including the new EU member states), cf. Michael Emerson, *An Interim Plan for South East Europe – Customs Union with the EU and a Regional Schengen for the Free Movement of People*, CEPS Policy Brief, 85 (Brussels: November 2005).

²⁸⁴ For a comparative study on minority rights conditionality towards Hungary, Slovakia and Romania see Gwendolyn Sasse, *EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy*, EUI Working Papers, RSCAS 16 (2005).

If the whole scope of political conditionality was used, the danger of the Balkans becoming “a ghetto of underdevelopment in the midst of Europe”²⁸⁵ would be kept minimal and regional ownership would be guaranteed. Only with a coherent approach can the values of reconciliation and cooperation take root and pave the way to stability and integration. The region is “tired of the sticks-and-carrots politics”, so that soft power and concrete short-term incentives are essential to maintain local support.²⁸⁶

The EU’s official stance is that in this crucial time for the region, the financial assistance won’t increase, it will even lessen (for Serbia-Montenegro, see Annex: Graphs 9, 12). That is one further reason for improving the tools that are already available. After the commitment to grant membership perspective to the Western Balkans, there is no way out to escape the ‘community trap’. In the Balkans a second “Helsinki moment” is taking place,²⁸⁷ and thirty years after the CEECs took decisive steps towards substantive democracy, the Balkan countries are today facing the same task. The EU’s issue-linkage (political, normative, economic, legal) can lead to faster socialisation.

Instead of giving way to path dependency, the EU should actively pursue complementary and coherent policies to keep up the momentum of changes in the Balkans. In the end, it might be that the echoing Cassandra calls these days are wrong, that the future of the European project was not decided in Paris and The Hague in 2005, but that “[t]he real referendum on the EU’s future will take place in the Balkans.”²⁸⁸

²⁸⁵ ESI, *Breaking out of the Balkan Ghetto: Why IPA should be changed* (Berlin-Brussels-Istanbul: June 2005), p. 1.

²⁸⁶ Vuk Drašković, Foreign Minister of Serbia-Montenegro (My translation. AK), quoted in: *B 92*, “Solana ublažava Stroa o Kosovu” [Solana extenuates Straw on Kosovo] (11 March 2006), <http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=03&dd=11&nav_id=191241> (accessed on 23 May 2006).

²⁸⁷ Gerald Knaus, “The ‘Helsinki Moment’ in Southeastern Europe”, *Journal of Democracy*, 16 (January 2005) 1, pp. 39-53

²⁸⁸ International Balkan Commission, *Rome Declaration* (Rome: 9 May 2006), available at: <<http://www.cls-sofia.org/cgi-bin/public/index.cgi?topic=news&id=3&lang=1>> (accessed on 29 May 2006).

Epilogue

Nous n'avons que le choix entre les changements dans lesquels nous serons entraînés et ceux que nous aurons su vouloir et accomplir.

(Jean Monnet)²⁸⁹

Europeanisation is not an automatic process, nor does it exist in isolation. It has to be pursued permanently and cannot be limited by geographical frontiers on a map. The exclusion/inclusion dilemma cannot be dissolved easily. Yet, the EU is challenged by its neighbouring countries and their development. In other words, if *Helvetisation* does not come to the Western Balkans, Balkanisation will come to the EU in the form of instability and backwardness. In 1953 American journalist Theodore White wrote: "Europe wants rest, quiet and forgetfulness. But even this it cannot have in the world of today, for it is helpless to calm the world."²⁹⁰ It is still true that Europe wants rest, but it increasingly enhances its own kind of power and seeks for a constructive collective memory to calm the Balkans.

If the European Union does not want to end like the Roman Empire, it should distance itself from any expansionist attitudes to create a second *Pax Romana*. However, Europe has to find the right balance between values and interest, norms and objectives. Once it will reach such a strategy, Abraham Lincoln's words could also become true for the EU.

I do the very best I know how, the very best I can, and I mean to keep doing so until the end. If the end brings me out all right, what is said against me won't amount to anything. If the end brings me out wrong, ten angels swearing I was right would make no difference.

(Abraham Lincoln)²⁹¹

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²⁸⁹ Quoted in: "Les publications", *Foundation Jean Monnet pour l'Europe*, <<http://www.jean-monnet.ch/pPublications/publications.htm>> (accessed on 26 May 2006).

²⁹⁰ Quoted in: John Vincour, "Trans-Atlantic quarrel: An indifferent Washington shrugs", *International Herald Tribune* (19 January 2004), <http://www.iht.com/articles/2004/01/19/estranger_ed3_.php> (accessed on 27 May 2006).

²⁹¹ Quoted in Morgenthau's forth principle of political realism: Morgenthau (1978), available at: <<http://www.mtholyoke.edu/acad/intrel/morg6.htm>> (accessed on 30 May 2006).

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Annex

Tables and Graphs

*Table 1 – Key dates of relations between EU and Western Balkan countries
(May 2006)*

	Status	Date
Croatia	SAP begins SAA signed EU-membership application Candidate status SAA enters into force Suspension of negotiations Start of accession talks & begin of screening stage	Nov. 2000 Oct. 2001 Feb. 2003 June 2004 Feb. 2005 March – Oct. 2005 Oct. 2005
FYROM	SAP begins SAA signed Ohrid Agreement EUFOR mission EUPOL mission EU-membership application SAA enters into force EUPAT mission Candidate status	March 2000 April 2001 Aug. 2001 March – Dec. 2003 Dec. 2003 – Dec. 2005 March 2004 April 2004 Dec. 2005 Dec. 2005
Serbia-Montenegro	Belgrade Agreement signed Constitutional Charter of SCG enters into force Twin-track approach SAP begins Suspension of negotiations	March 2002 Feb. 2003 Oct. 2004 Oct. 2005 May 2006 - ?
Bosnia-Herzegovina	EU Special Representative & EU Police Mission EUFOR replaces SFOR SAP begins	March 2002 Dec. 2004 Nov. 2005
Albania	SAP begins	Jan. 2003

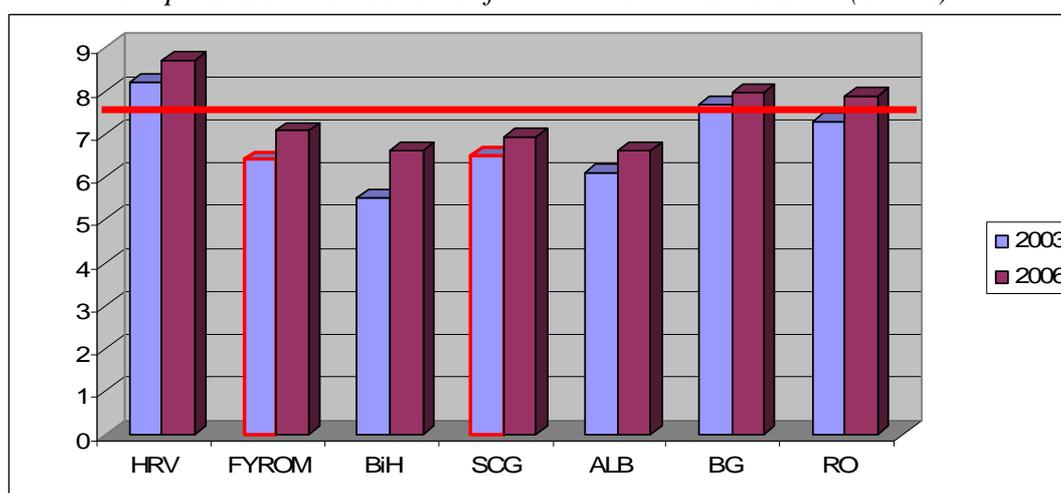
Source: Own compilation based on information taken from the homepage of the *European Commission DG ELARG* (<http://ec.europa.eu/comm/enlargement>).

Table 2: Key economic data (2004)

	BG	RO	HRV	SCG*	FYROM	BiH	ALB
GDP/capita (in PPS, EUR)	6,324	7,000	10,300	5,625	5,600	4,895	3,983
Economic growth (in %)	5.6	8.3	3.7	8.8	4.1	6.2	6.2
Inflation (in %)	6.1	11.9	2.1	S: 17 CG: 1.8	-0.4	0.9	2.9
Unemployment (in %)	11.9	6.8	13.8	18	37.2	43.9	14.4
Pop. below national poverty line (in %)	12.8 (2002)	18.8	11 (2002)	10	30.2 (2003)	18	25.4 (2003)

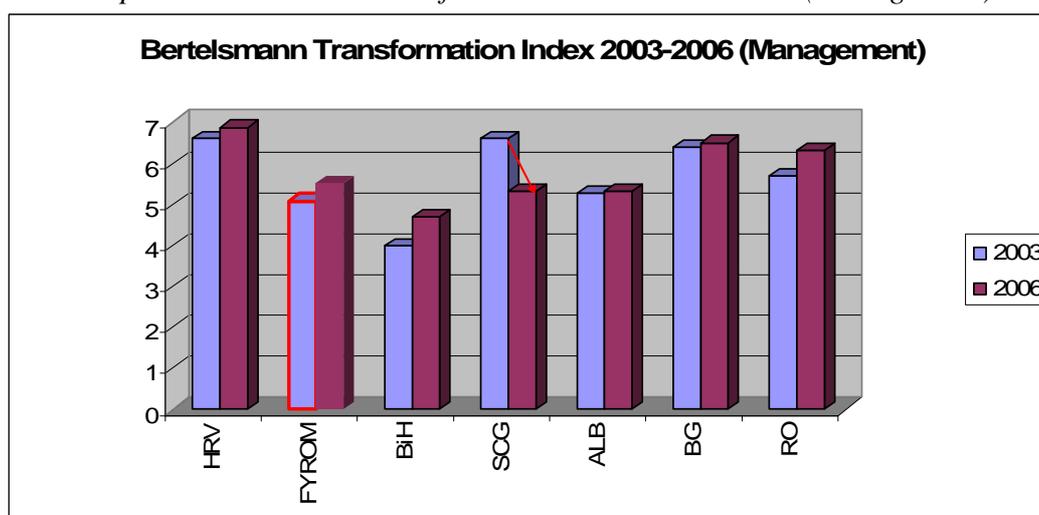
Sources: Own compilation. Data from the homepages of the *European Commission DG ELARG*, the *World Bank* <www.worldbank.org> and the *Vienna Institute for International Economic Studies* <www.wiiw.ac.at>; *: without Kosovo.

Graph 2: Bertelsmann Transformation Index 2003-2006 (Status)



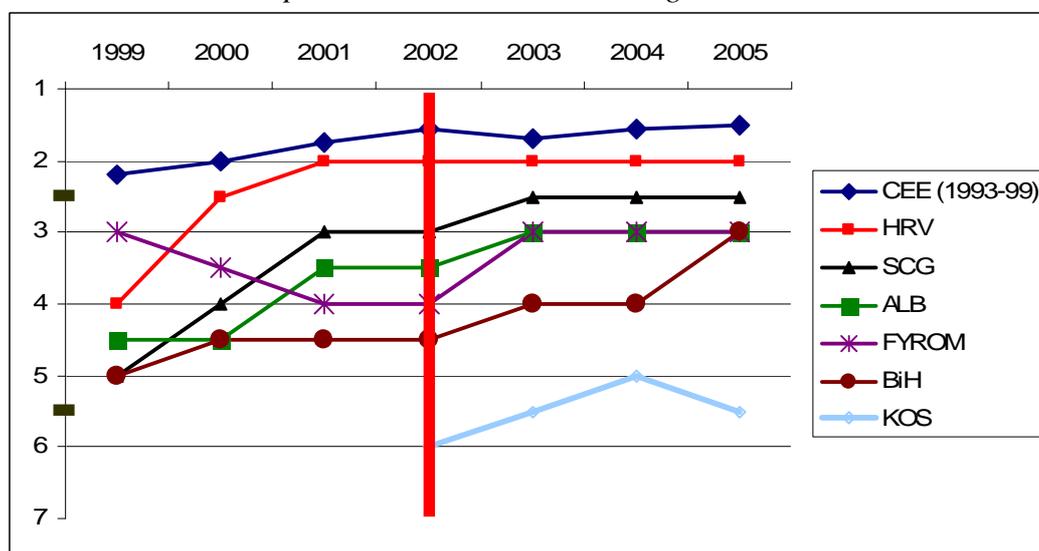
Source: Own compilation. Data from the *Bertelsmann Transformation Index* <www.bertelsmann-transformation-index.de>; this index rates the political and economic developments of transformation countries with best score = 10 and worst score = 0 (for comparison: Slovenia leads the ranking in 2006 with 9.45); red line marks the average status of the acceding countries (BG, RO) and the candidate countries (HRV, FYROM) in 2006.

Graph 3: Bertelsmann Transformation Index 2003-2006 (Management)



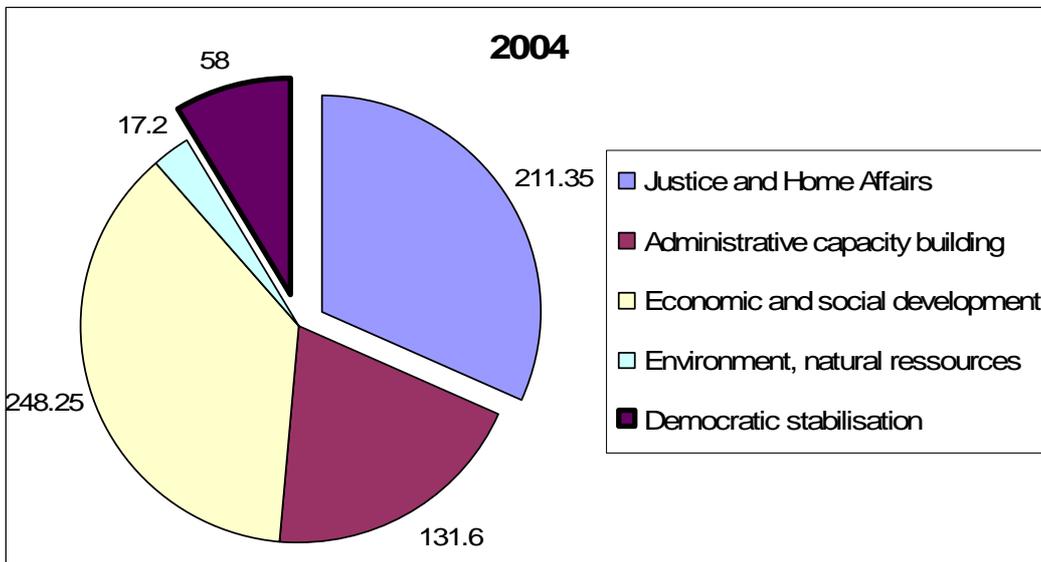
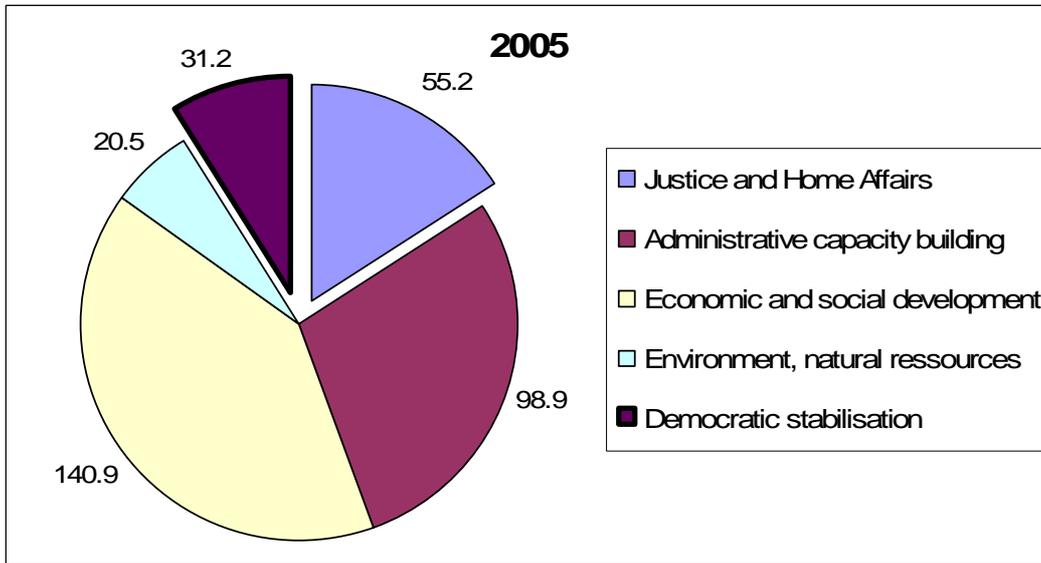
Source: Own compilation. Data from the *Bertelsmann Transformation Index* <www.bertelsmann-transformation-index.de>; this index rates the management capabilities of domestic political decision-makers in relation to the degree of difficulty with best score = 10 and worst score = 0 (for comparison: Slovenia ranks 6th in 2006 with 7.32); Serbia-Montenegro is the only country in which capabilities have decreased; FYROM was the first country to sign the SAA in 2001 although it was two years later still last but one after BiH concerning its public administration capabilities.

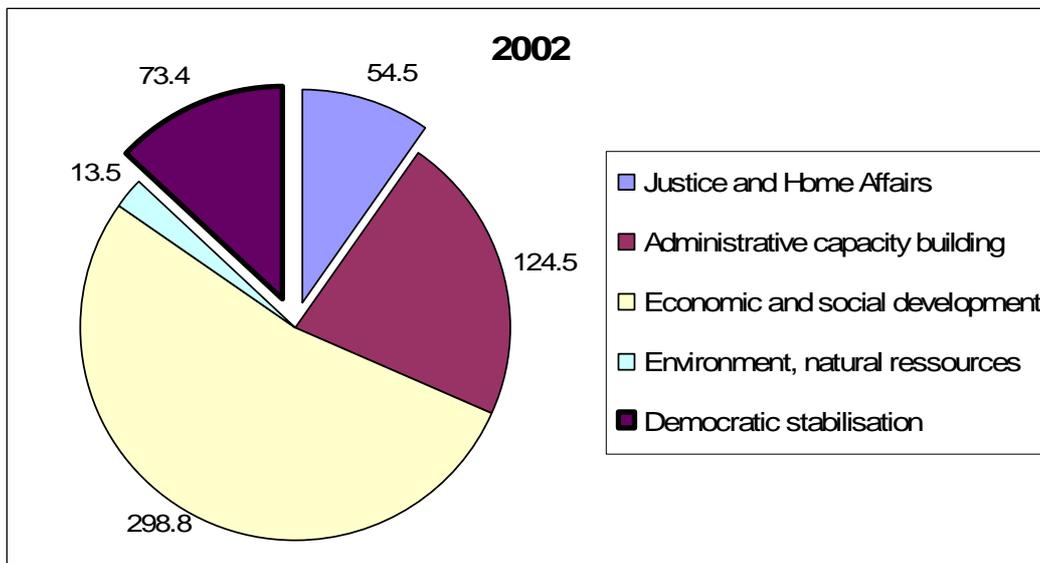
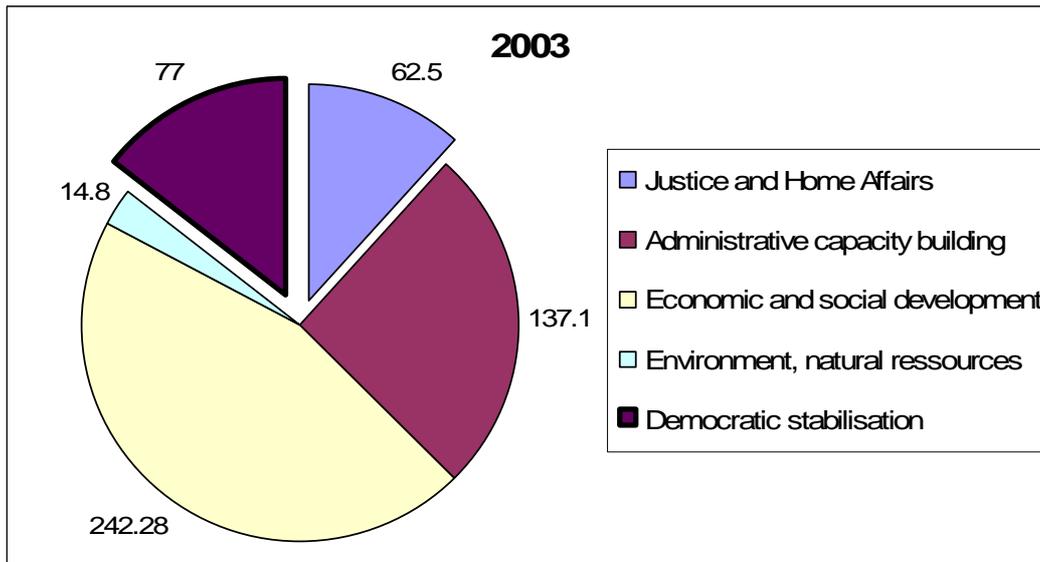
Graph 4: Freedom House Ranking 1999-2004



Source: Own compilation. Data from Freedom House, *Freedom in the World Comparative Rankings: 1973-2005* <www.freedomhouse.org/template.cfm?page=15&year=2005>; Key to ratings: 1.0-2.5 = Free, 3.0-5.0 = Partly Free, and 5.5-7.0 = Not Free; these limits are marked on the y-axis. The vertical red line illustrates that all Western Balkan states, i.e. not including Kosovo, have improved or stabilised their status after 2002. The average development of CEE in the years 1993-99 (approx. from signing the Europe Agreements until start of accession talks) is included to highlight the difference of these relatively stable transitions in comparison to the Western Balkans.

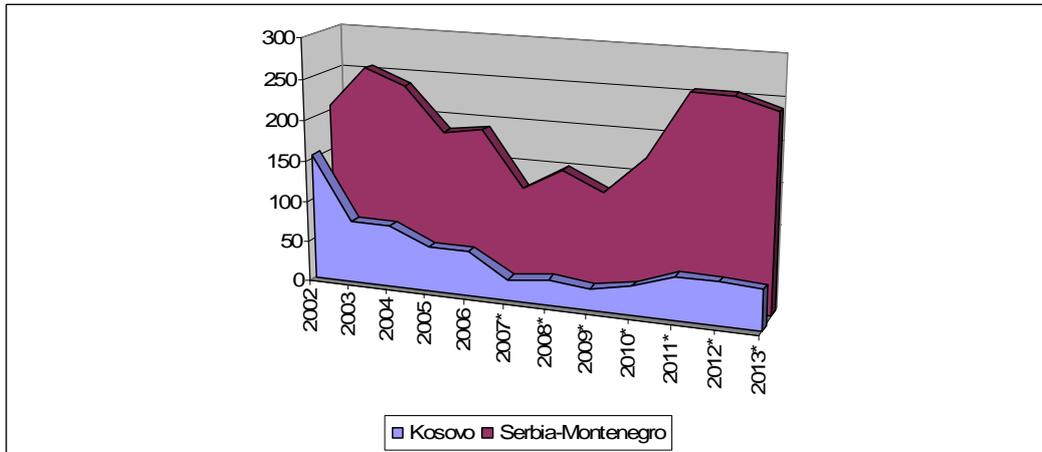
Graphs 5-8: CARDS assistance by policy from 2002-2005 (EUR mill.)*





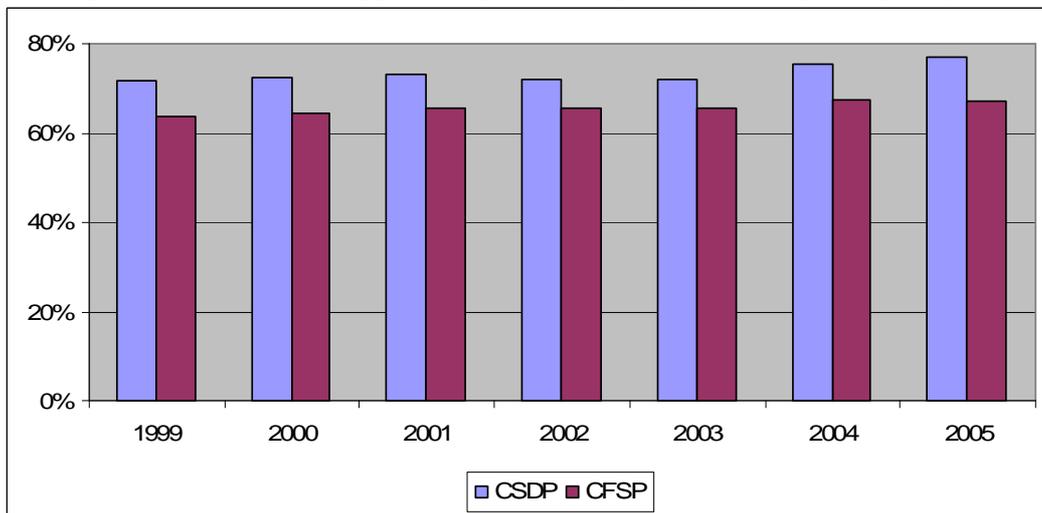
Source: Own compilation. Data from *DG ELARG* <http://ec.europa.eu/comm/enlargement/financial_assistance/index_en.htm>; *: these numbers only include direct allocations to the Western Balkan countries without general regional programmes; in 2005, Croatia did not receive any direct CARDS assistance as it benefits now from pre-accession instruments.

Graph 9: Planned CARDS allocations for Serbia-Montenegro and Kosovo (EUR mill.)



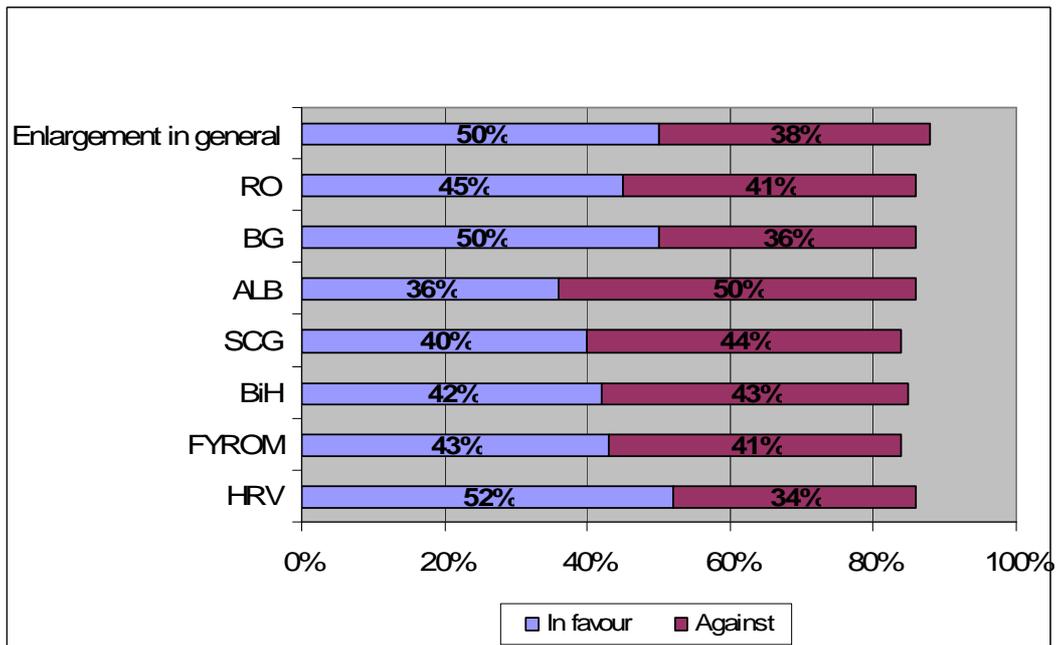
Source: Own compilation. Data from European Stability Initiative, *Breaking out of the Balkan Ghetto: Why IPA should be changed* (Berlin-Brussels-Istanbul: June 2005), p. 5; *: estimates.

Graph 10: EU citizens' approval of common foreign and defence policy (%)



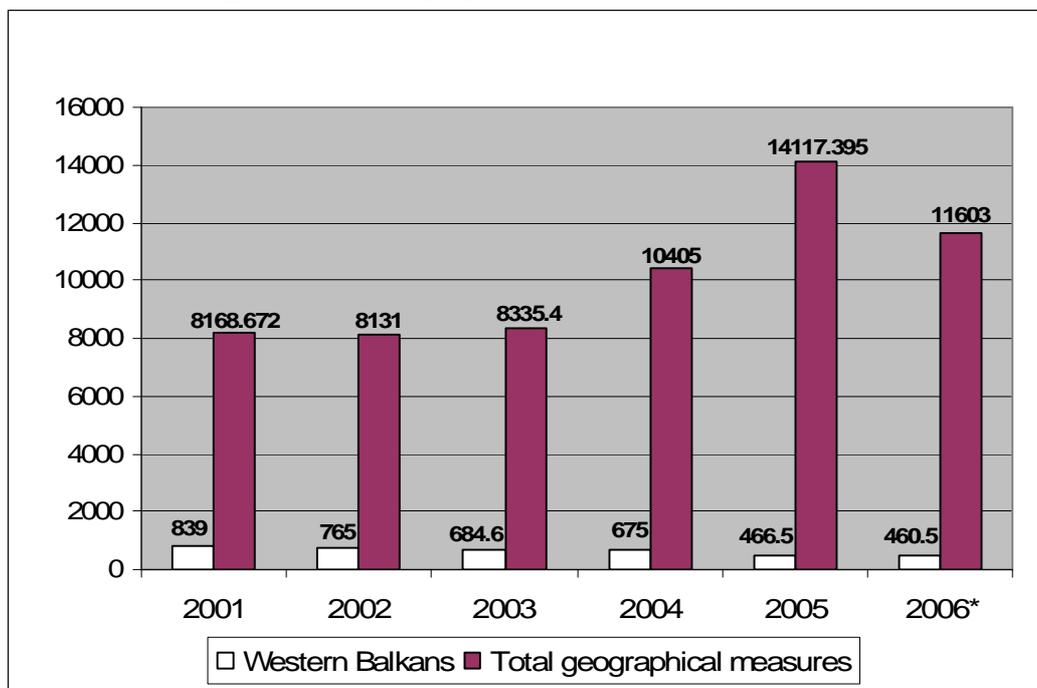
Source: Own compilation. Data from *Eurobarometer* <http://ec.europa.eu/public_opinion/standard_en.htm>; the Common Security and Defence Policy (CSDP) is foreseen as an integral part of the CFSP in the Constitutional Treaty.

Graph 11: EU citizens' support for further enlargement (2005)



Source: Own compilation. Data from *Eurobarometer 63, Public Opinion in the European Union* (Brussels: July 2005).

Graph 12: EU budget for external actions (EUR mill.)



Source: Own compilation. Data from the *European Commission – Financial Programming and Budget* <ec.europa.eu/budget/index_en.htm>.

Abbreviations and acronyms

ALB	Albania
BG	Bulgaria
BiH	Bosnia-Herzegovina (<i>Bosna i Hercegovina</i>)
CARDS	Community Assistance for Reconstruction, Development and Stability in the Balkans
CEE	Central and Eastern Europe
CEECs	Central and Eastern European Countries
CEFTA	Central European Free Trade Agreement
CFSP	Common Foreign and Security Policy
CSCE	Conference on Security and Cooperation in Europe
CSDP	Common Security and Defence Policy
DG ELARG	Directorate-General Enlargement
DG RELEX	Directorate-General External Relations
EAR	European Agency for Reconstruction
ECSC	European Coal and Steel Community
ESI	European Stability Initiative
EU	European Union
EUFOR	European Force
EUPAT	EU Police Advisory Team
EUPM	EU Police Mission
EUSR	EU Special Representative
FYROM	Former Yugoslav Republic of Macedonia
HRV	Croatia (<i>Hrvatska</i>)
IBC	International Balkan Commission
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the former Yugoslavia
ICG	International Crisis Group
IFIs	International Finance Institutions
KOS	Kosovo
OSCE	Organisation for Security and Cooperation in Europe

RO	Romania
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process
SEE	South East Europe
SCG	Serbia-Montenegro (<i>Srbija i Crna Gora</i>)
SER	Serbia
TEU	Treaty on the EU
UDHR	Universal Declaration of Human Rights