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AY 2006-07

THE ICC DEBATE AND THE EU-US STRUGGLE FOR INFLUENCE:

THE CASE OF THE BALKAN-6

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ACES Working Paper

American Consortium On European Union Studies

EU Center, Washington DC

October 2007

ABSTRACT

The objectives of the European Union (EU) and the United States (US) for the countries of the Balkan region are generally assumed to be complementary. They both stress and condition their support and assistance on the progress that these countries make with regards to economic modernization, build-up of social institutions, and respect for international law. However, this rhetoric doesn't always match the facts on the ground. Often, instead of dealing with a cohesive set of policy recommendations, the countries in the region are faced with contradictory alternatives and zero-sum choices. The debate over the development of the International Criminal Court (ICC) was such a case. It centered on whether the countries in the region should exempt US personnel from the jurisdiction of the Court while in the country and thus rendering them immune from prosecution for any crimes committed for which the US courts were not willing or able to take any action. The final outcome was mixed. Three of the countries—Croatia, Serbia (and Montenegro), and Slovenia—decided not to give in to US pressure, while the remaining three—Albania, Bosnia and Herzegovina, and Macedonia—ignored the pleas and threats of the EU and of the various international non-governmental organizations and decided to sign Bilateral Immunity Agreements (BIAs) with the US. How can one explain such divergent outcomes? I argue that the credibility of actors involved played an important role in determining whether threats coming from the US or the EU were more credible, thus tipping the scales in favor of signing BIAs with the US. However, the issue of threat credibility serves only to narrow down the choices of actors. Further determination of the outcome necessitates a look at the nature of the security context in which these countries exist and operate.

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THE ICC DEBATE AND THE EU-US STRUGGLE FOR INFLUENCE: THE CASE OF THE BALKAN-6¹

“On one hand there is the national consensus in favor of integration in the European family; and on the other hand, are strategic security interests...and the liberation of a nation cut in half over a century ago...When it comes to difficult choices, the policy-makers can not make the national interest and pragmatism subservient to public opinion.” By Marko Bello—Albanian Deputy Defense Minister, 26 May 2003.

INTRODUCTION

The objectives of the European Union and the United States for the countries of the Balkan region are generally assumed to be complementary. They both stress and condition their support and assistance on the progress that these countries make with regards to economic modernization, build-up of social institutions, and respect for international law. However, this rhetoric doesn't always match the facts on the ground. Often, instead of dealing with a cohesive set of policy recommendations, the countries in the region are faced with contradictory alternatives and zero-sum choices. The debate over the development of the International Criminal Court was such a case.

The Rome Treaty of 1998 signaling the creation of the International Criminal Court and its ratification by the 60th signatory four years later marked the climax of the trend toward individualism in international criminal, humanitarian, and human rights law, which had started fifty years earlier. However, the creation of the ICC was not equally welcomed and at times, it was violently opposed. The United States, already engaged in the global war on terror and preparing for an offensive policy aimed at the reconfiguration of the broader Middle East, worried that the creation of the ICC was fraught with risks for its vast military presence abroad.

On the other hand, for the European Union and most of its member states, not to mention the myriad of non-governmental organizations (NGOs), its creation was the realization of a decades-long effort aimed at increased accountability of individuals, irrespective of nationality, before a world tribunal. Consequently, the fierce debate that followed should have been of no surprise. Unfortunately, caught in the middle were some countries too weak or too dependent, or both, on the US and the EU for political support as well as economic and military aid, to make a principled stand regarding the finer—yet vitally important—points of the debate. The countries of the Balkan region—Albania, Bosnia and Herzegovina, Croatia, Macedonia, Serbia (and Montenegro), and Slovenia—found themselves in this unenviable position of having to make what turned out to be highly risky

¹ The author wishes to thank the American Consortium on European Union Studies for its financial support and the Institute for European, Russian, and Eurasian Studies at the George Washington University in Washington D.C., where he was in residence as a Graduate Research Fellow when this article was written. The author would also like to thank Hope Harrison, Kimberly Morgan, Erik Voeten and participants at an IERES-sponsored presentation for helpful comments on an earlier draft of this paper. The usual disclaimer applies.

decisions that were characterized by choices along a Pareto frontier,² i.e. satisfying US demands and thereby rejecting EU ones, or vice versa.

The debate in Brussels, Washington, and the various state capitals, centered on whether these countries should exempt US personnel from the jurisdiction of the Court while in the country and thus rendering them immune from prosecution for any crimes committed for which the US courts were not willing or able to take any action. The final outcome was mixed. Three of the countries—Croatia, Serbia (and Montenegro), and Slovenia—decided not to give in to US pressure, while the remaining three—Albania, Bosnia and Herzegovina, and Macedonia—ignored the pleas and threats of the EU and of the various international non-governmental organizations and decided to sign Bilateral Immunity Agreements with the US. How can one explain such divergent outcomes? I argue that the credibility of actors involved played an important role in determining whether threats coming from the US or the EU were more credible, thus tipping the scales in favor of signing BIAs with the US. However, the issue of threat credibility serves only to narrow down the choices of actors. Further determination of the outcome necessitates a look at the nature of the security context in which these countries exist and operate.

This paper is divided into five parts. First, I provide a brief overview of the origins and creation of the ICC. Second, I discuss the circumstances arising out of the US opposition of the jurisdiction of the court and the challenges it presented for the Balkan-6. Third, I provide a theoretical explanation borrowing from insights of prospect theory for why the US and the EU decided to issue threats in the first place. Then, I present two theoretical views on threat credibility to determine the actor whose preferences mattered more and to whom the policy choices of the governments of the Balkan-6 countries were directed. Last, three main hypotheses are provided and tested for explaining the divergent responses to US threats.

WHAT IS THE INTERNATIONAL CRIMINAL COURT?

Attempts to create an international criminal court date back to the establishment of the International Law Commission (ILC) in 1947, which was charged with “the progressive development of international law and its codification (Article 1, paragraph 1 of the ILC).³ The ILC began laying the foundation for an international criminal court by 1948, but the efforts were cut short by the onset of the Cold War.⁴ Following a series of events such as the Iraqi invasion of Kuwait, the dissolution of Yugoslavia, and civil conflict in various parts of Africa, the work on such a court restarted in 1993, when the ILC was asked by the United Nations to “prepare a new draft statute for an International Criminal Court.”⁵ Finally, in 1998, the UN Diplomatic Conference on Plenipotentiaries on the Establishment of an International Criminal Court met in Rome, resulting in the Rome Treaty, which gave the

² Krasner, S. D. “Global Communications and National Power: Life on the Pareto Frontier,” *World Politics* 43: 3 (April 1991), pp. 336-366.

³ Day, L. E. and T. Reilly. “The International Criminal Court: A Guide for Criminal Justice Educators,” *Journal of Criminal Justice Education* 16: 2 (October 2005), pp. 359-378.

⁴ Weller, M. “Undoing the Global Constitution: UN Security Council Action on the International Criminal Court,” *International Affairs* 78, pp. 693-712.

⁵ Day and Reilly (fn.3).

newly created ICC jurisdiction over war crimes, genocide, and crimes against humanity that occur after the court's establishment.⁶

The treaty provided that until 31 December 2000, it would be open to signature, after which date a state could be a party of it only by the formal step of ratification.⁷ The 60th ratification necessary for the treaty to enter into force was achieved on April 1, 2002 and the court came into existence on July 1, 2002. As of July 17, 2007, 139 countries had signed the treaty and 105 had ratified it, with the US and China being among the dissenters.⁸

Organizationally, the ICC is independent of the United Nations and operates as an independent international organization, although its creation was mandated by the UN. In the area of jurisdiction, the ICC continues the trend toward individualism in international criminal, humanitarian, and human rights law,⁹ meaning that unlike the International Court of Justice (ICJ), the ICC has jurisdiction over persons rather than countries. Further the jurisdiction of nation states is always respected, but only insofar as the latter make a good faith effort to prosecute the crimes of an accused individual. Otherwise, the ICC has the ability to begin a judicial process against the accused.

Under US pressure, the final text of the treaty reflected three very important changes. First, as mentioned, the ICC defers to the national courts whenever the latter is actively involved; second, prosecution can be halted for one year on renewable basis by a UN Security Council vote; and third, Article 98 of the Rome Treaty makes provisions for bilateral agreements that limit extradition to the ICC of individuals that are citizens of states that are not party to the Treaty.¹⁰

Despite such safeguards, the US continues to have outstanding concerns regarding some of the treaty provisions that deal with conditions under which cases can be brought to the ICC. Instead, the United States preferred a court where cases could be brought only by the consent of the country of the nationality of the accused and the country where the crime was committed. Further, the US felt that before the case could be brought up to the ICC, it should be referred to the UN Security Council for the approval of the investigation, prosecution, and trial proceedings.¹¹ Concerned with its large military footprint in the world, the US leaders were apprehensive that the bypassing of the UN Security Council would adversely affect its interests and ability to have a say on case selections and risk exposing US citizens to politically motivated trials.

⁶ Galbraith, J. "The Bush Administration's Response to the International Criminal Court," *Berkeley Journal of International Law* 21 (2003), pp. 683-702.

⁷ Tucker, R. W. "The International Criminal Court Controversy," *World Policy Journal* (Summer 2001), pp. 71-81.

⁸ For a complete list of members and those who have abstained from joining the ICC, see Coalition for the International Criminal Court. <http://www.iccnw.org/?mod=romesignatures> (last accessed October 30, 2007).

⁹ Day and Reilly (fn. 3).

¹⁰ Galbraith (fn. 6).

¹¹ For more on this point see Joyner, C.C. and C.C. Posteraro. "The United States and the International Court: Rethinking the Struggle between National Interests and International Justice," *Criminal Law Forum* 10 (1999), pp. 359-385; and also Day and Reilly (fn. 3).

Unable to convince his European allies, President Clinton signed the Treaty on the last day of 2000, noting however that he wouldn't recommend it for ratification in the present form. The Bush administration did little about the Treaty until April 11, 2002 when the 60th ratification of the Treaty occurred. Before that time, it participated minimally at the ICC Preparatory Sessions in February and September 2001.¹² Less than a month after the ratification of the Treaty, John R. Bolton, Under Secretary of State for Arms Control and International Security sent a letter to the UN Secretary General Kofi Annan, notifying the latter of the intent of the US not to become a party of the Treaty.¹³

However, US opposition to the ICC did not end with the 'unsigned' of the Treaty, and neither did European efforts to thwart such opposition. Some preparatory steps against signatories to the ICC had already been taken even before the ratification of the Treaty, with the U.S. Congress taking the lead. These actions have taken three forms: approaching the various countries that have ratified the ICC in an effort to conclude Bilateral Immunity Agreements, based on Article 98 of the Treaty of Rome that excludes US citizens and military personnel from the jurisdiction of the Court; congressional legislations such as the American Servicemembers' Protection Act (ASPA) and more recently the Nethercutt Amendment, which threatens to cut-off military and economic aid to countries that refuse to sign BIAs or that submitted US citizens and military personnel to the jurisdiction of the Court; and granting of the ICC immunity blanket to US troops involved in UN Security Council-mandated peacekeeping operations. This immunity was extended to the US in July 2002 and 2003, but following the Abu Ghraib debacle, the US was unable to garner enough votes for the passage of another UN Security Council vote in July 2004.¹⁴

The implementation of this three-pronged strategy on the part of United States, and especially the aggressive pursuit of BIAs backed by the threat of aid cut-off, has resulted in BIAs signed with 101 governments. However, more than half of the State Parties have resisted signing BIAs and 53 countries have publicly refused to do so. Further, only 40% of the 101 BIAs have been ratified by the respective parliaments. This dilemma on how to best respond to US pressure (as well as pressure from the European Union and NGOs) and the subsequent variety of responses to that pressure is also reflected in much of the debate that took place in the capitals of Slovenia, Croatia, Serbia (and Montenegro), Bosnia and Herzegovina, Macedonia, and Albania. Three of these countries refused to give in to US pressure and the other three relented.

US AND EU PRESSURE ON THE BALKAN-6

As already mentioned, one of the steps that the US government took to boost its bargaining power vis-à-vis other countries in an effort to enter into Article 98 agreements with them was the passing of congressional acts, such as ASPA and the Nethercutt Amendment. Both ASPA and the Nethercutt Amendment were specifically designed to put pressure on weaker countries, since they both excluded NATO and strategic non-NATO allies from the threat

¹² Galbraith (fn. 6).

¹³ Galbraith (fn. 6).

¹⁴ "Chronology: From 'Signature Suspension' to Immunity Agreements to Darfur," Coalition for the International Criminal Court. http://www.iccnw.org/documents/FS_AMICC_US_ChronologyOct2006.pdf (last accessed October 30, 2007).

of cutting off aid. In fact, the Dodd Amendment to ASPA provided the US President with a great amount of flexibility since it listed as possible mitigating factors cooperation on the war on terror or assistance in bringing to justice known war criminals. However, the threat of economic and military aid cut-off was real.

Following the ‘unsigned’ of the Treaty, the US embarked on an aggressive campaign in the various capitals of the world with the objective of obtaining immunity guarantees from these countries. The Balkans were no exception. For the best part of 2002 and 2003, US officials, including Secretary of State Colin Powell, Secretary of Defense Donald Rumsfeld and his Deputy, Paul Wolfowitz, used a carrot (continued and enhanced economic and military assistance and promise of accelerated NATO membership prospects) and stick approach to cajole, coerce, and co-op the leaders of these countries into entering in bilateral agreements with the US.¹⁵

But the US was not alone in doing so; in fact EU officials and representatives of West European governments were equally aggressive in their efforts to convince leaders in Albania, Macedonia, and elsewhere in the Balkans that the costs of entering into bilateral agreements with the US would be too high, including the possibility of delaying negotiations on future membership in the EU. Equally aggressive were a number of NGOs, most notably Amnesty International and Human Rights Watch, and others, which attempted to “educate” the leaders of these countries and provide strategies for resisting US pressure. By the time July 1, 2003—the cut-off date for qualifying for US military aid—arrived, three countries—Albania, Bosnia & Herzegovina, and Macedonia—had signed BIAs with the US, while the other three had publicly rejected the possibility of any such agreement (see Table 1).

Table 1. Treaty of Rome and BIA Ratification by Country (Balkan-6)

Country	EU Status	US Status	EU Date	US Date
Albania	Ratified	31 Jan. 2003	Ratified	19 June 2003
Bosnia & Herz.	Ratified	11 April 2002	Ratified	6 June 2003
Macedonia	Ratified	6 March 2002	Ratified	26 Oct. 2003
Croatia	Ratified	21 May 2001	Rejected	NA
Serbia & Mont.	Ratified	6 Sept. 2001	Rejected	NA
Slovenia	Ratified	31 Dec. 2001	Rejected	NA

What explains these divergent responses? We can look at two possible explanations. First, how credible the actors involved—primarily the EU and the US—were; and second, what role did domestic and/or international factors play in the mind of the decision-makers. Before we do so, however, it might be instructive to understand why the US and the EU decided that neither of them could just stand by and do nothing in response to each other’s actions. Doing so, in my view, would shed some light on the question of credibility as well.

¹⁵ Personal Interviews with Albanian government officials (May-June 2007).

PROSPECT THEORY AND US/EU THREAT EXECUTION

In the field of economics and in the rational choice literature in political science, it is assumed that actors try to “maximize their expected utility by weighting the utility of each possible outcome of a given course of action by the probability of its occurrence, summing over all possible outcomes for each strategy and selecting that strategy with the highest utility.”¹⁶ This utility maximization principle is an essential element of what is known as the “expected utility theory” which assumes that an actor’s utility for a particular good is a function of *net asset* levels of that good and that preferences over outcomes don’t depend upon *current assets*.¹⁷ Current assets affect marginal utilities and preferences over strategies, not preferences over outcomes or terminal states.¹⁸ It is generally assumed that all reasonable people obey the axioms of the theory and that in fact most people actually do, most of the time.¹⁹ However, some scholars have noted, Kahneman and Tversky being among the most prominent, that there are certain classes of choice problems in which preferences systematically violate the axioms of the expected utility theory (Kahneman and Tversky 1979; Levy 1997, Berejikian 2002).²⁰ Why and how does this phenomenon exactly manifest itself? Prospect theory seeks to provide an answer.

Contrary to expected-utility theory, empirical evidence points to the fact that people are in fact sensitive to changes in assets, *rather than net assets*, to gains and losses from a *reference* point, rather than to levels of wealth and welfare.²¹ This reference dependence is one the most important insights of prospect theory and a crucial aspect, because it implies that people treat gains and losses differently, i.e. they overvalue their losses comparable to gains or in other words, they value what they have more than what they don’t have, and that the “disutility of relinquishing a good is greater than the utility of acquiring it.”²²

Three findings are particularly relevant. First, people overweigh outcomes that are considered certain, relative to outcomes that are considered only probable. This is also referred to as the “certainty effect”.²³ Second, if we substitute gains with losses in an experiment, people become risk averse in the positive (gains) domain, but risk seeking in the negative (losses) domain. Last, the resulting value function indicates that “the carriers of value are *changes* in wealth and welfare, not their final states.” However, this should not be taken to mean that the emphasis on changes as carriers of value discounts the fact that the value of a particular change is independent of initial position. Rather, “the initial point

¹⁶ Levy, J. “Prospect Theory, Rational Choice, and International Relations,” *International Studies Quarterly* 41: 1 (March 1997), pp. 87-112.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ Kahneman, D. and A. Tversky. “Prospect Theory: An Analysis of Decision under Risk,” *Econometrica* 47: 2 (March 1979), pp. 263-292.

²⁰ Besides Kahneman and Tversky (fn. 19) and Levy (fn. 16), for a good introduction of the evidence see also Kahneman D. and A. Tversky, “Choices, Values, and Frames,” *American Psychologist* 39 (April 1984), pp. 341-50; and Kahneman, D., J.L. Knetsch, and R. H. Thaler, “The Endowment Effect, Loss Aversion, and Status Quo Bias,” *Journal of Economic Perspectives* 5 (Winter 1991), pp. 193-206; for a good summary of the state of field see Mercer, J. “Prospect Theory and Political Science,” *Annual Review of Political Science* 8 (June 2005), pp. 1-21; and Rabin, M, “Psychology and Economics,” *Journal of Economic Literature* 36 (1998), pp. 11-46.

²¹ Kahneman and Tversky (fn. 19).

²² Levy (fn. 16).

²³ Allais, M. “Le Comportement de l’Homme Rationnel devant le Risque, Critique des Postulats et Axiomes de l’Ecole Americaine,” *Econometrica* 21 (1953), pp. 503-546; quoted in Kahneman and Tversky (fn. 19).

serves as an indicator of the magnitude of change from a *referent* point that is determined by the current asset position. The value function then is defined on deviations from reference point; generally concave for gains and commonly convex for losses; and steeper for losses than for gains.”²⁴

While there is ample experimental and anecdotal evidence that such anomalies indeed manifest themselves when people are weighing choices, prospect theory has come under criticism from the rational choice camp. Levy lists several of these criticisms, of which I discuss two. First, there is the concern that since international relations deals mostly with strategic state interaction rather than individual preferences, it is not clear how transferable the theory might be. Second, and more crucially, it is unclear how an actor defines one’s reference point. Since determining the reference point has direct consequences on whether a country should be categorized under the losses or gains column, each of which would predict different outcomes, determining the reference point would be crucial. If one cannot objectively and scientifically determine a reference point then, the appeal of prospect theory becomes limited and the model unusable. We will return to the framing problem or the determination of the reference point at a later juncture. Here, we will deal with the issue of translating insights from prospect theory into the field of international relations.

While much work has been done on the topic,²⁵ of particular interest for the issue at hand is the recent literature that brings prospect theory and deterrence theory together.²⁶ The basic argument is similar to what has already been laid out above, i.e. a state would forego gains in favor of the status quo if in the gains frame; and therefore if the state were shown to defect against the status quo, we would expect to find it in the losses frame. This insight can be translated into deterrence theory, by simply asserting that “deterrence is more likely to be effective when both states are in the gains frame (since interested in the status quo by virtue of valuing what you currently have more than what you can have in the future) and less likely when either or both are in the losses frame (since the state in the losses frame will display risk seeking behavior).”²⁷

Several empirical findings from the deterrence literature are in line with this prediction. For example, the fact that powerful states often fail to deter weak states (when the latter are in the losses column) is confirmed by this theory of cognitive deterrence. Likewise, the finding that excessive bullying diminishes deterrence since it might push the state being bullied into the losses column is also consistent with prospect theory-based deterrence model.²⁸

Of the three deterrence scenarios Berejikian outlines, the model he develops for unilateral deterrence bears particular importance for our case. In this model, unilateral deterrence exists where one state is satisfied with the status quo and another is not, i.e. status quo player

²⁴ Kahneman and Tversky (fn. 19).

²⁵ In addition to the sources listed in fn. 20, for case studies see Taliaferro, J. W. *Balancing Risks: Great Power Intervention in the Periphery*, Cornell Studies in Security Affairs (Ithaca: Cornell University Press, 2004), 320 pp; Farnham, B. R. *Roosevelt and the Munich Crisis: A Study of Political Decision-Making* (Princeton University Press, 2000), 328 pp; and Berejikian, J. “A Cognitive Theory of Deterrence,” *Journal of Peace Research* 39: 2 (2002), pp. 165-183.

²⁶ Berejikian, J. (fn. 25).

²⁷ *ibid.*

²⁸ *ibid.*

(Y) is in the gains frame and the non-status quo player (X) in the losses column (see Table 2a).²⁹ If X defects, Y is faced with the choice of capitulating or executing its deterrent threat. Initially, conditions favor X. Because Y is risk averse, it is less likely to risk open conflict in an attempt to return to a more favorable position.

However, according to Berejikian, defection by X will change Y's assessment of the status quo. That is, the payouts in Table 2a demonstrate that an attack by X will pitch Y into the upper right quadrant, and thereby into a losses frame. Y can accept the certain losses in the new status quo that resulted from X's provocation, or it can retaliate. Retaliation involves a high probability of even further losses (the bottom right quadrant), but there is also the chance that the conflict might ultimately be resolved in favor of Y.

Table 2a

		Player X	
		Cooperate	Defect
Player Y	Cooperate	3, -1	-1, 2
	Defect	4, -2	-2, -3

It can be argued that this model would predict that states always carrying out their deterrence threat every time. However, while states do sometimes carry out their deterrence threats, they do not always do so. Consider Table 2b. Here, the object of dispute between states – redressing of a grievance– has less strategic importance for Y than for X. Indeed, setting right the grievance is a necessary condition of an acceptable status quo for X, but this is not so for Y. Under these conditions, defection by X will not elicit retaliation from Y because it remains in a gains frame and is risk averse.

Table 2b

		Player X	
		Cooperate	Defect
Player Y	Cooperate	3, -1	1, 2
	Defect	4, -2	-2, -3

Now, let's return to the case of the United State and its decision to issue the threat to cut off aid, thereby signaling its opposition to the efforts of the European Union. Before we can draw the proper conclusions from the models discussed above, we have to first deal with the issue of the reference point, which Levy noted was a vexing issue for prospect theory. To solve the dilemma I use two different examples with two different reference points, which

²⁹ Tables 2a and 2b presented here have been reproduced faithfully from Berejikian's modeling of deterrence.

put the US in the status quo (gains) frame and in the non-status quo (losses) frame, respectively.

The traditional approach to solving the issue of the reference point when dealing with prospect theory has been to either arbitrarily choose what appears to be a natural equilibrium point, or to fix it at the point in which changes begin to take place, meaning when the status quo begins to change. This appears to be a very arbitrary process since it is difficult if not impossible to accurately estimate such reference points. However, in our particular case, the degree of insecurity is much lower considering the visible changes and expressed preferences of the actors involved. In addition, as mentioned, by looking at two different reference points we can get some collaborative evidence of the dynamics that are at play in this case.

We start first with the signing of the Treaty of Rome in 1998. Both the United States and the European countries have been engaged up to this point and continue to engage each other in making the proper changes to the structural organization of the ICC. Both players are said to favor the status quo. However, while the US continues to favor the status quo (meaning the lack of the ratification of the Treaty, since it objects to some of the provisions), the European countries begin to shift into the losses column, since they consider the status quo unfavorable to their interests, the commitment to which they demonstrate by including the acceptance of the ICC, as an unofficial part of the *acquis communautaire*. In this case, we find ourselves in the first column, the EU is player X and the US is player Y, in Table 2a.

As already noted if X (EU) defects, Y (US) is faced with the choice of capitulating or executing its deterrent threat. Initially, conditions favor X. Because Y is risk averse (since it is in the gains column), it is less likely to risk open conflict in an attempt to return to a more favorable position. However, defection by EU will change US' assessment of the status quo. That is, the payouts in Table 2a demonstrate that an attack by X will pitch Y into the upper right quadrant, and thereby into a losses frame. Y can accept the certain losses in the new status quo that resulted from X's provocation, or it can retaliate. Retaliation involves a high probability of even further losses (the bottom right quadrant), but there is also the chance that the conflict might ultimately be resolved in favor of Y. In fact, the US does retaliate, since as mentioned earlier, *it perceives its important national interests at stake*, which drives both players in the lower right hand side quadrant, i.e. both loosing. Losses can be interpreted as either loss of clout or legitimacy over other countries. In our case, leaders and publics from all Balkan-6 countries watched with dismay the struggle between the two great powers, questioning the genuineness of the latter's manifestation of concern for the former's economic development, respect for international law, and political stability.

The reference point for the second scenario is the moment after the Treaty has been ratified on 1 July 2002. In this case, the status quo players here are the European countries (player Y) and the non-status quo player is the United States (player X). The US, being in a losses frame (since it finds the Treaty ratification unacceptable), is said to be risk seeking, and therefore decides to defect (Table 2b). The EU on the other hand is in the gains column, therefore risk averse. However, unlike the first scenario, the EU still finds itself to be in the gains frame even after the US has defected, and therefore doesn't take any significant or credible action to execute its threat. The reason for this is because the attainment of BIAs is a necessary condition for an acceptable status quo for the US, while the EU is willing to live

with the new status quo, since its concerns are more normative and not related to important, if not vital national security matters.

To sum up, prospect theory provides an invaluable insight into why countries decide to take action or remain passive in the face of structural changes. By framing the US first in the gains and then in the losses frame, we can account for US' response to structural changes. We have done a similar task in the case of the European countries. Returning to the puzzle that we posed at the beginning of this section, i.e. how US preference for an aggressive diplomatic campaign and its refusal to accept the jurisdiction of the ICC over its citizens came to be, we are now able to present a plausible explanation.

The push for the ratification of the Rome Treaty on the part of the EU drove the US toward risk-seeking behavior, thereby causing it to prefer a confrontational approach despite the risk of alienating a large segment of the international community and especially its allies, and incur loss of reputation. The European countries on the other hand, besides having lost the deterrence gamble with the US in the first instance, relented. Understanding this dynamic sheds light into how high the signing of the BIAs was in the US agenda and how far the EU was willing to go to prevent countries from signing these agreements with the US. Both of these insights enrich our understanding of whose threat was more credible and why. These are the questions to which we turn next.

MODELING THREAT CREDIBILITY

Two views on Credibility of Threat

Credibility of threat can be defined as “the perceived likelihood that the threat will be carried out if the conditions that are supposed to trigger it are met.”³⁰ Theoretical discussions on credibility of threat are many, but they fall under two general rubrics, both of which differ on the degree to which they put emphasis on the role reputation plays in the model.

View 1: “Past Actions” Theory

“Past actions” theory holds that credibility depends on one’s record for keeping or breaking commitments.³¹ The ability to make commitments or take actions that influence future payoffs would also help to determine an actor’s reliability.³² Reputation, on the other hand, is the estimation of the consistency over time of an attribute or actor’s actions.³³ It is an aggregate composite of all previous transactions over the life of the actor, and requires consistency of an actor’s action over a prolonged period of time.³⁴ Reputation works through signaling: intentions, commitments, and motives and is established when those signals are carried out. If an actor is uncertain about the motive or intentions of someone

³⁰ Press, D. G. “The Credibility of Power. Assessing Threats during the “Appeasement” Crises of the 1930s,” *International Security* 29: 3 (2004), pp. 136-169. For a more lengthy treatment of the subject see also Press, D.G. *Calculating Credibility: How Leaders Assess Military Threats*, (Ithaca: Cornell University Press, 2005), 218 pp.

³¹ *ibid.*

³² Sobel, J. “A Theory of Credibility,” *The Review of Economic Studies* 52: 4 (October 1985), pp. 557-573.

³³ Herbig, P. and J. Milewicz. “The Relationship of Reputation and Credibility to Brand Success,” *Pricing Strategy and Practice* 5: 1 (1997), pp. 25-29.

³⁴ *ibid.*

upon whom she must depend or to whose threat one must respond, the extent to which one trusts the other or perceives the threat as credible, will be based on the partner's or opponent's earlier actions. Therefore, a country with a history of broken commitments will be considered irresolute, and its new threats will not be believed.

View 2: "Current Calculus" Theory

The "current calculus" theory holds that decision-makers evaluate the credibility of an adversary's threats by assessing the balance of power and the interests at stake in a given crisis.³⁵ Thus the "current calculus" theory asserts that a country's credibility does not depend on a history of keeping commitments, rather on the prevailing capacity of the actor to carry out the threat, as well as the importance of the issue at hand. If an adversary that issues the threat and has the power to carry it out is perceived as having vital or important interests at stake, then the threat will be believed, even if the country has bluffed in the past. In this case, vital interests would be those interests that deal with state survival, while important interests relate to issues that deal with real material value that do not threaten the survival of a country. If the threatened action would likely result in failure or be very costly, and if the potential for gains would in all probability be small, the threat will be dismissed.

Theory and the Balkans

The question here is no longer whether the threat will be executed or not. We dealt with this aspect in section on prospect theory. Instead, here we are interested in the question of how countries react once a threat has been executed, but not yet carried out.³⁶ How do US threats measure up against the EU ones in the case of the ICC in the six countries we have been looking at? In other words, did either actor, based on reputational or current calculus assertions, have the upper hand? Empirical evidence points to the fact that threats from the US were more likely to be believable relative to the EU.³⁷ This doesn't mean that EU threats were seen as without a basis, however in the context of US threats US threats were perceived as more credible. A few examples might illustrate the point.

First, as "past action" theory predicts, previous failures or successes in carrying out commitments and especially threats, will tend to reinforce the reputation of the threat-issuer. The US Congress had signaled early on that it was willing to cut off aid to any country that would not sign BIAs, and in what became later known as the "Hague Invasion Act", the Congress gave the President the authority to use all means, including force, to repatriate any Americans that would be extradited by states that were party to the Treaty. It did so in 2002, before the Bush Administration had even "unsigned" the Treaty. By contrast, EU actions in the past indicated that they were *willing* to compromise on certain points. BIAs derive their name from Article 98 which was included in the Rome Treaty and which was negotiated between the Europeans and the Americans for just such bilateral agreements. Therefore, European threats that "signing such agreements ran counter to the spirit of the *acquis*

³⁵ Press, D.G. (fn. 30).

³⁶ It might seem that there is no difference between executing a threat and carrying it out. In fact, the former only means that a threat has been issued (e.g. if country A doesn't do what country B wants, it *will* withhold financial assistance), while the latter means that country B has in fact withdrawn aid.

³⁷ Personal Interviews in Albania (May-June 2007).

communautaire’ while all the way having opened the way for them, were seen as empty. More important, in early 2002, the US was able to force on the UN Security Council, against the vocal opposition of its European allies, a provision, which as noted above, granted US troops involved in UN Security Council-mandated peacekeeping operations an ICC immunity blanket. The Europeans initially opposed it, but relented after the US tied funding for the Bosnian peacekeeping to the passing of this resolution.

On the other hand, from the “current calculus” theory we would expect the US threat to be more credible relative to the EU, if the interests at stake were of a more immediate urgency to the US relative to the EU. The evidence again, points in favor of the US. First, it was clear that very important US interests were at stake. There was the issue of sidestepping, and thereby potentially weakening the UN Security Council, a forum that the US views as worthwhile preserving since it enables the US to have a veto-yielding power.

Further, given the vast US military presence overseas, the US felt that the ICC would result in tying the hands of US military personnel and officials to take actions, which they viewed to be in their self-interest. For the Europeans, the support for the ICC was a normative one and not necessarily aimed at deterring the US, rather other countries or military leaders that were suspected for committing war crimes and genocide. Therefore, the signing of the BIAs was not perceived to have fatally undermined the Treaty since the ICC would still be able to carry out its essential missions. There was of course a normative preference, dealing with the legitimacy of the Court, but this was not perceived to be as important as national security interests of the US that were at play.³⁸

While both the EU and the US might have both been perceived as being able to carry out their respective threats, the fact that these countries were in the EU’s backyard, also affected the calculations. The US could afford to cut-off aid and derail the NATO membership process for these countries without suffering immediate consequences, perhaps with the exception of the withdrawal of some troops from the theatre in Afghanistan, which would have been marginal and mostly of symbolic importance. However, the EU could ill-afford instability in the Balkans or shouldering alone the funding of peacekeeping missions in Bosnia and Herzegovina, as well as in Kosovo. Also, the US officials categorically excluded any chance of compromise, whereas EU officials equivocated and in fact provided excuses for Balkan-6 members, which in the words of the President of the European Parliament “were not to be blamed” if they caved in to US pressure.³⁹

From the above evidence it is clear that, overall, US threats were more credible relative to EU ones. However, issuing a credible threat doesn’t guarantee compliance with one’s demands. Otherwise, all six Balkan countries should have agreed to sign BIAs with the US. Why didn’t they?

³⁸ Personal Interviews in Albania (May-June 2007).

³⁹ During my personal interviews with Albanian government officials, this issue of EU not following up with its threats came up often. Some had been present in meeting with EU parliamentarians or Commissioners where the position of the EU was the only one to shoulder the blame should be the US and that there was little the Albanian government could do.

EXPLAINING CROSS-COUNTRY VARIATIONS

In this paper, I have argued that perceptions of threat credibility played an important role in the subsequent responses that these countries gave. However, the credibility of threat is a constraining factor, rather than a decisive one. In other words, the final outcome might have been different had the credibility of actors played out differently, but we are still left with the question of divergent outcomes. Explanations that move us along in the direction of a satisfactory solution to the puzzle vary. Some have suggested that developments at the domestic level, i.e. the need to hold together coalition allies or the pressure of upcoming elections, are the primary causal factors for the policy outcome.

This explanation is problematic however, and dips too early at second image accounts. It wouldn't be too difficult in fact to test it. First, it must be acknowledged that, as stated earlier, the decision whether to sign a BIA with the US or not, was not one that involved sup-optimal Pareto frontier choices, rather zero-sum ones. Whether one signed a BIA or not, it was clear that some consequences would follow. In the case of not giving in to the US, the threat of the suspension of both US military and economic aid was real and would have real consequences for the respective country's hopes of joining the NATO in the near future. The EU threat was vaguer and less convincing, but real nevertheless.

Then, how can we evaluate the domestic level of analysis explanation? Two possibilities seem particularly relevant, without having to delve too deeply in the political rhetoric of the domestic political bargaining. First, it would be safe to assume that the interests of governmental officials, in a parliamentary democratic system, are closely tied to their reelection fortunes. As such, both the likelihood of continued economic growth or distribution of economic benefits to their constituencies, as well as the level of support on the part of the electorate for the US and/or the EU would affect the position of the elected officials relative to one or the other. The following could be one way we could pose the aforementioned observations.

H 1: The greater the amount of aid received from the US relative to the EU, the greater the likelihood of cooperation with the US.

H 2: The more sympathetic the public attitudes are toward the US relative to the EU, the greater the likelihood of cooperation with the US.

While the data on both issues is generally not very good, what is available can be of some benefits for drawing some general lessons. Tables 3a and 3b contain data regarding the amount of aid given to the Balkan-6 by the US and the EU respectively from year 2000-2003. It is likely that the amount of aid given to the region is greater than the one presented here, but we are safe to assume that the patterns in the correct amount resemble those seen here. Exactly what are these patterns?

Table 3a. US Government Foreign Grants and Credit 2000-2003 (million US\$)

Country	2000	2001	2002	2003	Total
Albania	26	38	40	42	146
Bosnia & H	52	115	64	47	278
Macedonia	50	29	15	58	152
Croatia	3	18	36	52	109
Serbia & M	1	0	-51	231	181
Slovenia	2	2	7	8	19

Source: US Census Bureau

Table 3b. CARDS Programme Allocation 2000-2003 (million €)

Country	2000	2001	2002	2003	Total
Albania	33.4	37.5	44.9	46.5	162.3
Bosnia & H	90.3	105.2	71.9	63	330.4
Macedonia	13	56.2	41.5	43.5	154.2
Croatia	16.8	60	59	62	197.8
Serbia & M [*]	650.5	385.5	351.6	324.3	1711.9
Slovenia [^]	59.4	51.5	55	67.8	233.7

Source: European Union

* Includes the Republic of Serbia, the Republic of Montenegro and the province Kosovo, which is currently under UN administration. Amounts for Serbia in 2002-03 include assistance from Regional Programme for Integrated Border Management destined for the whole of FRY/Serbia and Montenegro.

^ Data for Slovenia under Phare, ISPA, and SAPARD

One conclusion we can draw is that the EU is much better and more generous at giving aid to the region across the board than the US. This should not come as a surprise considering the proximity of the region to the EU relative to the US. While Croatia did receive almost twice as much from the EU than from the US, Bosnia and Herzegovina also received a considerably larger amount of aid from the EU than from the US. Further, the gap between EU and US aid to Croatia for the period from 2000 to 2005 was due largely to the dearth of US assistance for the period from 2000 to 2001. The cases of Slovenia and Serbia do seem to support some preliminary conclusion that perhaps the amount of financial assistance is tied to level of support for one actor relative to the other. However, we are still left wondering why countries like Bosnia and Herzegovina didn't draw the same conclusion that Croatia et al did. Further, considering that the likelihood of the EU executing its threat was lower than the US one, it was very unlikely that the EU would drastically reduce assistance directed at these countries.

How about the second hypothesis? How do levels of support for the US compare with those of the EU in these countries? There are different ways to measure this support. Ideally, we would have access to survey data that poses the question in terms of whether one

prefers/favors one actor to the other. However, such data is not forthcoming. Most of the polling that has taken place in the region has been either limited to business elites or has asked the question in ways that makes it difficult to draw comparisons.

For the purposes of testing our second hypothesis, I have selected the polling done by *World Values Survey* (see Table 4a and 4b. There are some costs associated with using the data from the survey, not least being the different time periods in which the survey is conducted. However, it does provide us with the ability to compare across the six countries. Also, to the degree that US pressures were tied to NATO membership prospects, the comparison between the EU and the NATO is apt. Then what does the data tell us?

Table 4a. Confidence: The European Union

BASE =6464 Weight [with split ups]							
A great deal	14.7	41.3	14.0	6.6	7.4	16.1	3.6
Quite a lot	30.4	42.6	34.2	37.1	29.5	16.9	23.3
Not very much	33.5	12.2	35.2	43.1	46.7	29.6	34.8
None at all	21.3	3.9	16.6	13.2	16.5	37.4	38.2
Total	6021 (100%)	953 (100%)	1169 (100%)	908 (100%)	923 (100%)	1009 (100%)	1059 (100%)

Source: World Values Survey

Table 4b. Confidence: NATO

BASE =6464 Weight [with split ups]							
A great deal	15.6	49.5	10.7	11.3	7.1	16.8	1.1
Quite a lot	24.8	36.9	27.6	44.3	29.8	10.4	4.6
Not very much	27.9	9.1	38.6	33.5	43.2	27.7	15.6
None at all	31.6	4.5	23.1	11.0	20.0	45.1	78.7
Total	6098 (100%)	963 (100%)	1169 (100%)	918 (100%)	921 (100%)	1014 (100%)	1112 (100%)

Source: World Values Survey

Again, it is difficult to provide support for our hypothesis that support (confidence) for the EU or the US (NATO) would have sent the government officials any signals that could have been interpreted consistent with their final policy choices. With the exception of Albania (at 83.9%), the percentage of the population in other countries that had a great deal/quite a lot of confidence in the EU never exceeds 50%. According to other surveys, in the case of Slovenia and Croatia numbers get better by the end of 2003, but this was due to very intense top-down efforts on the part of the respective governments that were interested in a positive outcome when putting the question of EU and NATO membership to a vote.

Very little changes when the question is asked about confidence in the NATO. Here again, Albania is the exception with 86.4% saying they have a great deal to quite a lot of confidence. Croatia, surprisingly considering the BIA debate, has a majority of the population (55.6%) expressing confidence. The number for Slovenia is unchanged at 36.9%,

while in both Macedonia and Bosnia and Herzegovina, two countries that granted BIAs to the US, less than 50% of the population (27.2% and 48.3% respectively) has confidence in the NATO. Not surprisingly given their recent experience with the NATO, of those surveyed in Serbia (not including Montenegro) only 5.7% had confidence in the organization.

It is clear from the above discussion that neither financial assistance nor public opinion give sufficiently clear signals that lead to the subsequent course of actions followed by the governments of each country. This is not to say that domestic determinants of behavior are irrelevant, rather by focusing on them too early we might miss other important explanations at the systemic level that constrain and account for state behavior. Exactly what could these structural constraints be? I propose that the broader security context in which these countries operate might tell us quite a bit about whether a country will choose to sign a BIA or refuse to do so.

We can then suggest a third alternative:

H 3: The more prominent security considerations (including frozen conflicts, territorial disputes, and internal instability) are in a country, the greater the likelihood that country will cooperate with the US and defect from the EU.

Two points are in order here. First, it must be stressed that the NATO and the EU are seen as occupying different niches along the economic-security continuum. Second, while we might be tempted to see preferences along the economic-security spectrum, or preference for earlier membership to the EU relative to the NATO, as a reflection of domestic competition, it would seem more apt, considering the evidence, to assert instead that structural factors such as the presence or absence of wars and instability *are the most important* sources that shape domestic preferences.

While both the EU and the NATO emphasize the need for candidate countries to progress along fairly similar trajectories that include political stabilization, economic development, and respect for international law: it is also true that the EU is seen primarily as a vehicle for economic growth, whereas the NATO is considered mainly as a guarantor and a means of achieving security, both domestically as well externally.⁴⁰ Certainly, no country would want to choose one or the other, but when faced with a zero-sum choice, a country where (in)security is a more pressing issue relative to economic concerns, will choose to court the NATO rather than the EU (and vice versa).

A mitigating factor, especially when faced with an impossible choice, might be what the country might consider to be the prospects for membership in one organization or the other. The case of Albania and Croatia illustrate this point quite well. No doubt that integration into the Euro-Atlantic institutional framework is a stated objective of both countries.⁴¹ Yet,

⁴⁰ Zielonka, J. "Conclusion" in Zielonka, J. and Pravda, Alex (eds.). *Democratic Consolidation in Eastern Europe*, Vol. 2, (Oxford Studies in Democratization: Oxford University Press, 2001), 568 pp.

⁴¹ Croatia came around to this view mostly at the beginning of the new millennium after ending its isolationist/nationalist blend of foreign policy. See Ivica Racan, "Croatia and Euro-Atlantic Integration," *Woodrow Wilson Center Meeting Report # 256*, June 6, 2002;

between 2000 and 2003, the Albanian government realized that the NATO membership track was progressing along at a good speed, while the prospects for EU membership, while good, seemed over the horizon.

As a result, it decided to make good on its offer to the US government regarding the use of Albanian troops, airspace, ports, and bases in the context of war on terror, by first sending 30 special commando troops in Afghanistan and later sending 70 more to Iraq in April 2003. A year later, when the Spanish government decided to withdraw its contingent of 1300 troops from Iraq, the Albanian government decided to contribute another 130 special troops that would be based in and around Mosul. In the middle of these developments, Albanian efforts seemed to bear fruit when both US Secretary of State Colin Powell and US Secretary of Defense Donald Rumsfeld praised Albanian efforts and promised to increase funding in order to speed up Albania's efforts in addressing outstanding membership demands. This sentiment was further buttressed by a meeting the North Atlantic Council, headed by NATO Secretary General Lord Robertson, held in Albania on the membership prospects of the country.

On the European front, Albania's prospects were going well, but at a much slower pace. The EU proposed first the new Stabilisation and Association Process (SAP) for five countries of South-Eastern Europe, including Albania in 1999. Finally by June 2003, at the Thessaloniki Summit, the SAP becomes confirmed as the EU policy for the Western Balkans, having gone through a lengthy process starting with the extension of duty-free access to EU market for products from Albania in 2000, to the Feira European Council (June 2000) stating that all the SAP countries are "potential candidates" for EU membership; to the Commission recommending the undertaking of negotiations on Stabilisation and Association Agreement (SAA) with Albania. The Göteborg European Council (June 2001) then invited the Commission to present draft negotiating directives for the negotiation of a SAA and in 2002, Negotiating Directives for the negotiation of a SAP with Albania were adopted.

Finally on 31 January 2003, EU Commission President Romano Prodi officially launched the negotiations for a SAA between the EU and Albania (the first step in what will be a lengthy process). This protracted process didn't make the Albanian politicians any less anxious for joining the EU, but there was a realization, especially in the context of the upcoming 2004 enlargement and discussion over the prospects of the Turkish membership, that the EU enlargement process might have run its course in the short to medium-term.⁴²

The Croatian story is not unlike that of Albania, except for one important detail: Croatia's hopes for membership in both the EU and the NATO as early as 2002 were quite good. In his speech on June 6, 2002 at the Woodrow Wilson Center, the then Prime Minister, Ivica Racan stated that "Croatia is aware of the fact that it will not be invited to join the Alliance at the Prague NATO summit in November 2002. However, Croatia expects to be recognized as a strong candidate and a front-runner for the next round of enlargement."⁴³ He then added with equal optimism that "while making every possible effort to prepare the

http://www.wilsoncenter.org/index.cfm?topic_id=1422&fuseaction=topics.publications&doc_id=7437&group_id=7427

⁴² Personal Interviews in Albania (May-June 2007).

⁴³ Racan, fn. 41.

country for EU membership by 2006, we plan to submit our application for candidacy to the EU early next year.”⁴⁴

Racan’s optimism was not unfounded. Croatia first launched the SAP with the EU in November 2000 and by 29 October 2001 it had signed a SAA. The Croatian government formally applied for EU membership on 21 February 2003 and on April 2004, the European Commission issued a positive opinion on Croatia’s application for EU membership application, followed in June 2004 by a declaration of the European Council confirming Croatia as candidate country. Meanwhile, on the NATO front, the Croatian government had expressed its dissatisfaction with having been grouped with Macedonia and Albania as members of the Adriatic Charter, a regional cooperation organization sponsored by the NATO, in preparation for future membership in the alliance.

A source of this dissatisfaction was the fact that the Croatian government saw the region as inherently unstable and wished to distance itself from it, focusing instead on the economic integration of the country into the heart of Europe. The thinking was that the international community, especially the United States and the EU, would remain involved in the region—particularly in Bosnia-Herzegovina (and Kosovo)—to help them fully achieve integrity, independence and integration into the European mainstream,⁴⁵ while Croatia would move on and away from instability-prone hotspots. It is noteworthy that this policy approach accomplished exactly what it set out to do, i.e. increased the prospects of Croatia’s membership in the EU. However, certain choices, such as the one dealing with BIAs, had consequences beyond EU membership prospects and might have hurt Croatia’s bid for joining the NATO at an earlier date.

We might be tempted to see these preferences for quicker integration into one organization over the other as originating wholly from the interaction of different interests at a domestic political setting. However, in my view, this is not the case. It would seem more apt, considering the evidence, to assert instead that structural factors such as wars and instability are sources that shape these domestic preferences. Indeed, if we look at Table 5⁴⁶ there seems to be a rough correlation between the incidence of conflict and the decision to sign a BIA with the US.⁴⁷ In other words, countries that have a more heightened sense of insecurity, be that from internal or external sources, will prefer a closer relationship with NATO and consequently avoid being cut off from aid related to the achievement of that goal, relative to traditional economic assistance.

⁴⁴ Racan (fn.40).

⁴⁵ Ibid.

⁴⁶ For the conflict timeline, I have chosen to highlight time-periods which can be clearly isolated as opposed to considering them as in the case of Croatia between 1991 and 1995 for example one continuous one. The terms used for the description of the conflict are also arbitrarily simplified; the purpose being only to evoke some notion of what was at stake.

⁴⁷ The case of Serbia and Montenegro is the clear outlier and would seem to undermine our argument. In fact, it only makes our point that systemic factors constrain behavior of domestic political actors. In most of the conflicts Serbia and Montenegro (former Yugoslav Republic) was pitted against the NATO. Hence, the decision not sign a BIA with the US is a logical consequence deriving from such factors.

Table 5: Conflict Timeline

Country		
<i>Albania</i>	1997; 1999	<i>Internal; Border Skirmishes</i>
<i>Bosnia & H.</i>	1995	<i>Independence</i>
<i>Macedonia</i>	2001-03	<i>Internal</i>
<i>Croatia</i>	1991; 95	Independence; Internal/Border Dispute
<i>Serbia & M.</i>	'91; '95; '99	External; External; Internal/Border Disputes
<i>Slovenia</i>	1991	Independence

Indeed, in the case of Albania (as in the case of all or most countries in the region), the modernization and transformation of its military apparatus depends entirely on US-originated military aid. This aid includes Foreign Military Financing (FMF) that provides for clothing, individual equipment, and field equipment for coalition missions, support the development of niche military capabilities and help modernize the Albanian military. The International Military Education and Training (IMET) program supports Albania's NATO aspirations by providing both field and company-grade officers with training and professional development opportunities.

In addition, IMET provides English language training; professional military education for officers, tuition for attendance at U.S. military academics; and mobile training teams to assist the implementation of human resources, training, and logistics systems reforms. These two programs are further complemented by grant transfers related to Excess Defense Articles (EDA) directed to Albania's force modernization plan in the context of its NATO membership plan; the Export Control and Related Border Security (EXBS); NADR Anti-Terrorism Assistance (ATA) aimed at upgrading and financing anti-terrorism efforts; and the U.S. Small Arms/Light Weapons Destruction Program aimed at shoring up domestic instability via the removal of unauthorized weapons. For the FY 2005, this aid amounted to US\$ 4.5 million, an amount scheduled to increase in subsequent ones.⁴⁸ This story can be retold with very few changes for Macedonia and Bosnia and Herzegovina.

It can be argued that the withholding of these funds would have made Albania's quest for joining the NATO, and to one degree or the other that of other countries in the region, an impossible one. The decision then to sign a BIA or not had real consequences for the likelihood of being able to join the alliance sooner rather than later. For Croatia this dilemma had real consequences, since albeit closer to becoming a member of the alliance than either Albania or Macedonia, it is now on track to joining the NATO during the same wave of enlargement as its two poorer neighbors.⁴⁹

⁴⁸ U.S. State Department. "U.S. Aid to Europe and Eurasia," *Bureau of European and Eurasian Affairs Report* (2005). <http://www.state.gov/documents/organization/60653.pdf> (last accessed October 30, 2007).

⁴⁹ Unlike Albania, Bosnia and Herzegovina, and Macedonia, Croatia and Serbia and Montenegro did not receive any funding under either IMET or FMF. Slovenia had already been on track to joining the alliance in 2004, and therefore was eligible under the rule excepting NATO members for some funding.

The argument can be made here also that perhaps Croatia was in less of a need of such funding than its southern neighbors and therefore could afford to take such risks. This however only reinforces our argument about the effect that the incidence of conflict and insecurity can have on a) a country's perception of the risks it can take; and b) the ability to move away from a security-dominated paradigm. None of the countries that signed BIAs with the United States had made this paradigm shift from a security-dominated foreign policy and further, none of them could afford to ignore security considerations. In Albania, the experience of the civil unrest verging on civil war of the late 1990s had left the political elites shaken and mindful of the crucial role the international community and especially the United States had played.⁵⁰ Moreover, the issue of Kosovo was the 800-pound gorilla in the room, which no politician dared to ignore and about which every politician was aware that US help and support was indispensable. As the then Deputy Defense Minister opined to the Albanian public, when it came to matters of national interest, there was little room for political disagreements.⁵¹

On the other hand, in the case of Croatia, the wars of the first half of the 1990s had resulted in rather conclusive outcomes, with the outcome being a more stable domestic and external security environment. To the degree that external actors continued to stir up the past, as it happened in the case of the International Criminal Tribunal on Yugoslavia (ICTY), this only provided even more incentive to respond in a negative fashion to US overtures. Even more important, both Croatia's *Strategic Defence Review 2005* (SDR)⁵² and its *Foreign Policy Aims*⁵³ as stated by its mission representatives to the NATO, full membership in the European Union is given the place of honor, followed by membership in the NATO.

Further, the documents also state clearly the Croatian government's perception of risk as low. The following is a statement from its SDR,

The likelihood of a conventional conflict—in which Croatia's territory would be part of a larger battlefield or area of hostilities in the coming years—is very low. A likely aggressor that could potentially threaten Croatia's security would do so with conventional means and is not expected to possess highly sophisticated military capabilities.⁵⁴

Instead, the focus has shifted into other areas of concern,

Threats are assuming a new character. In the future, it will be even more difficult to distinguish between military and non-military components of threats.... The emergence of new threats and risks correspondingly call for military reforms and the development of new capabilities. The fact that a direct military threat to Croatia is highly unlikely allows for a comprehensive reform of its armed forces. The perception of a very high probability of facing asymmetric, trans-national threats and having to deal with complex security issues justify the need to develop new, specific and adequate responses.⁵⁵

⁵⁰ Personal Interviews with Albanian government officials (May-June 2007).

⁵¹ Bello, M. "Why the Parliament should ratify the Nano-Powell agreement," *Gazeta Shqetull*, 26 May 2003.

⁵² Ministry of Defence of Croatia, *Strategic Defence Review 2005*.

⁵³ Mission of the Republic of Croatia to the North-Atlantic Treaty Organisation, Brussels *Foreign Policy Aims*. <http://nato.mfa.hr/?mh=53&mv=231> (last accessed October 30, 2007).

⁵⁴ See fn. 51.

⁵⁵ *ibid.*

If we contrast this perception of the environment with that put forth by the Albanian *National Security Strategy 2004*⁵⁶ the difference becomes clear. This is how the Albanian government perceives the threat of armed conflict,

Threats and dangers of a transnational nature include regional and foreign dangers, in themselves. Military force usage, or of force in any other forms that endanger sovereignty, independence and integrity of the country, *are a danger* for the Albanian Republic. Regional destabilization, *through revival of desire for the nationalistic feelings and ethnic conflicts performance, presents transnational danger for the Albanian Republic*⁵⁷

Also, with regards to the dangers of domestic instability, the document states that “[p]olitical instability is a risk for the security of the Republic of Albania and protection of national interests.”⁵⁸

It is clear, from the evidence presented above that Albanian and Croatian perceptions of the security context in which they exist and operate are different. The argument that I have constructed sees such diverging perceptions as a consequence of more systemic differences, ones that have their root and/or are related to the incidence of conflict in a particular area or country. It is in a way by shaping the perceptions of one’s threats and risks that systemic factors impinge upon the policy outcomes of different countries. In the case of the Balkan-6, the divergence among the different policy choices was accentuated by the zero-sum nature of those choices.

CONCLUSION

Most of the current research on the European Union and the United States has focused on either areas of convergence or competition. In the latter case, almost always, inordinate attention has been paid to trade disagreements between the two countries. Another area of research has focused on the relationship between the EU, US, and international organizations (IOs) vis-à-vis the newly democratizing countries of Central and Eastern Europe (CEECs). However, very little attention has been paid to the intersection of these two research agendas, i.e. areas where the EU-US disputes spill over into their relationships with CEECs.

This essay has attempted to begin addressing this issue by focusing on the way small countries, such as Albania, Croatia, Macedonia and others respond to these pressures when faced with choices that take place along the Pareto frontier. Whatever the outcome, it is obvious that these countries stand to lose from such disagreements. Moreover, the US and the EU also stand to lose legitimacy, respect, and influence by treating these countries as collateral damage. It is also possible that domestic stability in these countries can be jeopardized as a result of delayed reforms and integration.

Fortunately, many of these instances can be avoided if the EU and the US decide to coordinate their policies in the region. One way of approaching this issue of coordination is by recognizing that both have compelling interests in the region. The EU certainly by virtue

⁵⁶ Republic of Albania. *National Security Strategy 2004*.

⁵⁷ *ibid.* *emphasis added*.

⁵⁸ *ibid.*

of its place and role has the attention of the countries in the region; but many of these countries feel equally attracted to the United States and may choose to cooperate with the latter rather than with the former on certain issues. This need not be a contentious issue and certainly not one that is played out on the backs of these smaller countries.

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