The Impact of EU Human Rights Commitments on Its Trade Negotiations
Case Study: Serbia

Abstract:
The article examines the impact of EU human rights commitments on its trade negotiations with Serbia. The analysis was conducted based on available data from trade agreements, international reports assessing human rights in Serbia, EU expansion strategies, press conferences, and official statements of European institutions. The impact of EU human rights commitments on its trade negotiations with Serbia is examined through four variables (rationale, definition, priority, conditionality) in the years 2003–2013. It is shown that the EU actively uses the principle of conditionality and is a strong normative player.

Keywords:
Human rights, negotiations, trade, conditionality, external activity of the EU

Trade plays an important role in the EU’s efforts to promote peace, stability, freedom, and economic prosperity in the Western Balkans (European Commission, Trade 2013).

Serbia wishes to become a member state of the European Union (EU) and was, along with other Western Balkans countries, identified as a potential candidate for EU membership during the Thessaloniki European Council summit in June 2003. Consequently, it gained candidate status in 2012 (European Commission 2013). The combination of the economic dependence of Serbia on the EU and the determination of the Serbian government to become a EU member provides ample room for the European Union to apply conditionality. Smith defines political conditionality as a linkage, by a state or international organization, of perceived benefits to another state (aid, trade concessions, cooperation agreements, political contacts or international organization membership), to the fulfillment of conditions relating to the protection of human rights (HRs) and the advancement of democratic principles (Smith 1998).

Since the fourth EU enlargement (1995: Austria, Finland, Sweden) the importance of traditional EU values (Art. 2 Treaty of European Union, TEU) incorporation into the accession process has been gradually growing. Moreover, regular reviews of the EU pre-accession strategy have led to an even stricter scrutiny of the present acceding country, candidate countries and potential

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1 Further studies addressing conditionality include Schimmelfennig (2012); Trauner (2009); Cremona (2004); Schimmelfenig, Sedelmeier (2004); Tocci (2004).
candidates to their compliance with human rights and democratic standards (Fraczek 2012: 204). The accession criteria have been first formulated by European Council at its meeting in Copenhagen in 1993. These criteria cover acquis communitaire, political criteria and economic criteria. In the light of the political criteria, since the very first enlargement strategy paper which is available on the website of the European Commission of 2005, the European Union has stressed the necessity of promotion of Union’s core values, on one hand, and the cooperation with International Criminal Tribunal for the former Yugoslavia (ICTY), on the other. Schimmelfennig and Sedelmeier define the enlargement as: “a process of gradual and formal institutionalization of organizational rules and norms” (Schimmelfennig, Sedelmeier 2002: 503).

There have not been many studies addressing trade negotiations from both a normative and an economic perspective. With such a combination having only been briefly touched upon by Hafner-Burton (2009) and K. E. Smith (2003), this paper seeks to bridge this current gap in research, developing on the case study presented earlier on Bosnia and Herzegovina. Consequently, it aims to contribute to academic debate by providing a second case study focused on Serbia. This paper seeks to analyse the impact of the EU’s commitment to human rights on its trade negotiations with Serbia. I will also analyse the consistency with which the EU policy is applied. I will, therefore, look at the relationship between the variables described below and seek to answer the question: “What is the impact of the EU’s commitment to human rights on its trade negotiations in the case of Serbia?” Based on studies which address normative power of global powers, (Hafner-Burton 2009; Tocci, Hamilton 2008; Manner 2006; K. E. Smith 2001) the three hypotheses are:

1. The EU acts as a normative power in its trade negotiations with third countries.
2. The EU favours its economic interests over its commitment to HRs when conducting trade negotiations with third countries.
3. If there is conditionality, then third countries will take HRs commitments more seriously.

As Mower suggests, there are only two incentives to include references to human rights in bilateral treaties. First, because it is the right thing to do, given the moral values of a nation, or second, because doing so would serve the nation’s interests (Mower 1987: 23). Such a division implies that any external action led by idealism would inherently concern HRs because of a determination to pursue moralism. Moreover, it may also be part of a ‘normative power image’. This has not been the general trend within international politics since 1945. Violations of HRs in a given country may potentially threaten neighbouring countries. As a result, a country incorporating HRs in its external actions may actually be following realism because of the security implications and interests involved.
This seems to be the only relevant explanation as to how realism could account for the emergence of HRs within international relations.

That said, normative issue studies have been largely undertaken within the framework of constructivism. As Smith states, it is within the framework of constructivism that international law is part of the social structure of the international system. As a result, international law not only affects the state’s identity but also its interests (Smith 2010: 5). Given these three different theoretical explanations for the emergence of HRs within international relations, this paper also seeks to answer the question as to which of these theories dominates within the EU External Action Service in the Serbian case. As such, this theoretical question refers to hypothesis (2), stating that the “EU favours its economic interests over its commitment to HRs within its trade negotiations with third countries”.

There are three data sets in this paper. Firstly, the below data was obtained from treaties concluded between the European Union and Serbia. These encompass Stabilisation and Association Agreements (SAA) and the Interim Agreements on Trade and Trade-Related Issues, as well as the relevant Progress Reports from 2005–2012 and Enlargement Strategies from 2005–2012 regarding Serbia, as available. Secondly, in terms of human rights, this paper will make use of online reports by Human Rights Watch (one of the world’s leading independent organisations dedicated to defending and protecting human rights). Lastly, the data described above was compared and contrasted with the statements and information provided by the European Commission (EC) and the Council on their official websites, as well as a wide range of press conferences organised by the EU institutions. This paper is conducted from the EU point of view, hence, sources from other sides are not used.

Zemanová (2007: 27) suggests that when analysing external action it is crucial to critically observe the date. Then the date should be structured into homogeneous units of thought, and in order to do so, it is necessary to know the context of the respective external action, its forms of decision-making process, and its types of targets and instruments. Moreover, when analysing a specific part of external action, which certainly include HRs, it requires a specific approach, which corresponds to the nature of the field. This implies that it is necessary to carefully choose relevant factors which will be, consequently, analysed.

I will work with the following independent variables: rationale, definition and priority, which were part of the methodology in Mower’s work on human rights in 1987. Mower presented his model as a model for the foreign policy of the United States of America. Mower’s methodology serves as a source in this research even though the methodology of this research has been modified so that it could be effectively applied to the EU External Action. Therefore, only selected variables of Mower’s research that are described in detail below are applied in this paper. Moreover, the dependent variable in this case is the conditionality.
This is because it is the most common instrument within the EU External Action, and the conditionality directly impacts the outcome of the EU External Action Policies; which is the protection of human rights within the case study further introduced.

Rationale clarifies what drives the EU to pursue HRs in a certain region. It seeks to analyse the incentives that countries have to pursue HRs abroad. Definition states which HRs are being analysed. A country may either focus only on the 1st generation of HRs: civil and political rights, or on the 2nd generation of HRs: economic, social and cultural rights. Accordingly, in this area, I will analyse which kind of rights within the International Bill of Human Rights\(^2\) are being pursued by the EU with regard to Serbia. Priority demonstrates the importance of HRs within trade negotiations. What is the position of HRs within trade negotiations? “The question of priority to be given to human rights is really a contemporary expression of the old debate between ‘realists’ and ‘idealists’”(Mower 1987: 27). Moreover, as Mower further argues, the conceptual framework of any external action is evident not only in the official statements explaining the rationale for HRs policies, but in the kinds of decision made when the pursuit of this policy threatens the nation’s other interests. For example, when strategic or security-related interests are at stake (1987: 27). In other words, it also clarifies what purpose HRs serve within the External Action. External Action on human rights inherently covers a wide range of national goals. These may be ethical, humanitarian, power-political or security-related goals. Hypothesis (1) “The EU acts as a normative power within its trade negotiations with third countries” will be tested within this variable of priority as will hypothesis (2) “EU favours its economic interests over its commitment to HRs within its trade negotiations with third countries”. Conditionality, being the dependent variable, is affected by the independent variables. To explain, as soon as the following questions are answered: Why is human rights pursued abroad? (rationale), Which human rights does the EU External Action focus on? (definition); and What is the human rights relation to other foreign policy agenda? (priority), the EU may, consequently, make the preferential trade agreements conditional in respect to HRs. As a result, this provides a state with a clear incentive to pursue human rights. Therefore, hypothesis (3) “If there is conditionality, then third countries will take HRs commitments more seriously” will be tested within this variable of conditionality. In sum, all these variables unfold the role of the HRs agenda in negotiating the PTAs and as such effect the protection of HRs in Serbia. The following scheme shows the data analysis graphically.

\(^2\) The International Bill of Human Rights is the formal title given to the Universal Declaration of Human Rights (1948), the International Convenant on Civil and Political Rights (1966) with its two Optional Protocols and the International Convenant on Economic, Social and Cultural Rights (1966). However, the two convenants only entered into force before 1976 after a sufficient number of countries ratified them.
As Figure 1 shows, four variables are applied when conducting my research. I will seek to capture their causal effects on the protection of human rights in Serbia. Furthermore, I will assess whether conditionality influences the level of impact that the independent variables have on HRs protection in the Serbian case. This research is based on qualitative data gained from the preferential trade agreements (PTAs), progress reports, enlargement strategies, and the EU’s official statements provided mainly by the Commission and the Council. The tool of this qualitative analysis is process tracing because the aim is to analyse the trajectories of change and causation between EU action and the protection of human rights in Serbia. Process tracing focuses on the unfolding of events or situations over time and, consequently, it captures the key steps in the process, which will allow for a good analysis of change and sequence (Collier 2011: 825). Therefore, for the purpose of this research, the key stages of the accession process are defined on a scale of 0–4, namely (0) the Stabilisation and Association Process (SAP)\(^3\) is confirmed through the EU’s Policy for the Western Balkans; (1) opening of the negotiations for the Stabilisation and Association Agreement (SAA)\(^4\); (2)

\(^3\) The Stabilisation and Association Process (SAP) is the EU’s policy towards the Western Balkans, established with the aim of European integration. Western Balkan countries are involved in a progressive partnership with a view to stabilising the region and the eventual establishment of a free-trade area.

\(^4\) SAAs are signed by an associated country and all EU member states. These agreements allow tariff-free access, financial and technical assistance, providing that a given country successfully undertakes economic and/or political reforms, as well as in the area of human rights. These agreements are highly beneficial for the associated countries and are based on conditionality principle. The aim of SAAs is to reform and improve the domestic politics systems of the associated countries, bringing them closer
signing and eventual entry into force of the SAA and Interim Agreement on Trade and Trade-Related Issues; (3) membership application; and (4) recognition as a candidate country.

1. Analysis

During the existence of Yugoslavia, Serbian nationals not only inhabited Serbia but they also formed minority groups in most other areas such as in Bosnia and Herzegovina (BiH), Croatia and Montenegro. The revived spirit of Serbian nationalism found a political advocate and leader in the communist Slobodan Milošević (Denich 1994: 371). The intention of the Serbs was to increase their influence on the decision-making process through greater representation in the governing bodies. Milošević agreed with the declaration of independence of Slovenia and Macedonia as these were considered, in terms of nationality, relatively homogenous units. However, he only agreed with the declaration of independence in Croatia if the Serbian majority inhabiting the north of Croatia became integrated into the ‘new’ Yugoslavia. Nevertheless, this requirement was considered incompatible with the idea of a Croatian national state. As a result, an armed conflict broke out. Furthermore, this was not the only problem that arose. BiH also wanted to become an independent state. However, this idea was contrasted with the wish of the Bosnian Serbs who favoured the idea of the ‘new’ Yugoslavia. Moreover, BiH has territories that are significant to those of Serbian national identity (Heuberger, Vyslonzil 2006: 34). As a result, an armed conflict broke out, and this conflict spread throughout BiH’s territory and to all its nationals: Croats, Bosniaks and Serbs were all involved. The conflict turned extremely bloody and ethnic cleansing occurred. Denich claims that the term ‘ethnic cleansing’ was not known within the global vocabulary until the violent dismemberment of Yugoslavia actually took place (1994: 367).

The international community failed to avoid bloodshed, including the massacre in Srebrenica led by Bosnian Serbs Radovan Karadić and Ratko Mladić who were, consequently, accused of war crimes. This war finally ended with the Dayton Peace Agreement, which was concluded in 1995. Serbia ended up in a federation with Montenegro under the official name of the new state: Federal Republic of Yugoslavia (FRY).5

The EU-Serbian relationship improved after the resignation of Milošević as Yugoslav president in 2000. In 2003, Serbia got involved in the Stabilisation and Association Process (SAP). In 2005, the negotiations were launched for Stabilisation and Association Agreement (SAA).

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5 Nevertheless, in 2006 there was a referendum in Montenegro and its habitants decided that they want to become an independent country. Two years after that also Kosovo declared its independence.
Protection of Human Rights in the Republic of Serbia

On the 30th of September 2006, Serbia adopted its new constitution which came into force in 2007. Until the adoption of the new constitution, human rights were enshrined in the 1990 Constitution of Serbia. The former constitution included a much smaller catalogue of human rights than the new constitution. However, even though the current constitution provides better provisions on human rights, its legitimacy remains dubious given the absence of any public debate prior to its adoption (Belgrade Centre for Human Rights, Human Rights in Serbia 2008: 42, 43). Moreover, Ratko Marković argues that the new constitution has a predominantly political purpose given that at present there is no member state of the EU whose constitution contains so many words about human and minority rights. It would seem that Serbia is a leading country in Europe by the number of human rights and concern for the protection of HRs this constitution contains (Marković 2006: 5, 11).

Within the international context, Serbia is bound by all international human rights treaties ratified by the former Socialist Federal Republic of Yugoslavia (SFRY), Federal Republic of Yugoslavia and the State Union of Serbia and Montenegro (SaM). "Under the Constitution of Serbia, the generally accepted rules of international law and ratified treaties shall be an integral part of the national legal system and applied directly (Art. 16 [2]). In addition, Article 18 prescribes the direct application of human and minority rights guaranteed by the generally accepted rules of international law and ratified international treaties" (Belgrade Centre for Human Rights, Human Rights in Serbia 2008: 43).

Moreover, it has to be stressed that given the fact that the European Union itself cannot become a party to the European Convention on Human Rights (ECHR), every candidate country is therefore required to ratify this treaty of the Council of Europe. The Republic of Serbia became a member state of the Council of Europe in April 2003 and ratified the ECHR in March 2004 (Council of Europe 2013). Hence, Serbia has already ratified all of the main international human rights instruments (European Commission 2012b: 13).

Rationale

The EU has not made any distinctions according to specific countries when explaining the rationale behind its activities in the Western Balkans. Firstly, gi-

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ven the fact that the protection of HRs is considered as a core value of the EU in its establishing treaties, and secondly, given that the EU has committed itself to the promotion of its core values in its External Action, it can be said that the protection of HRs is a matter of principle. As per my analytical framework, this claim can be further confirmed by monitoring the EU’s rationale for Enlargement over a certain period.

Phase (0) is defined by the Council conclusion from the Thessaloniki Summit (2003) where Serbia was granted potential candidate status along with the other Western Balkan countries. At this summit the EU reiterated its traditional values and encouraged the Western Balkan countries to follow a common path within EU integration through adopting the European standards (European Council 2003).

The beginning of phase (1) starts in October 2005 as the SAA negotiations were launched. This phase covers EU Enlargement Strategy Papers between the years 2005–2007. Firstly, in 2005, the Commission in its Enlargement Strategy stated that: “After generations of division and conflict, the EU is peacefully creating a united Europe. The Western Balkans is a particular challenge for the EU. Enlargement policy needs to demonstrate its power of transformation in a region where states are weak and societies divided. The EU cannot abandon its responsibilities to ensure security, stability and prosperity on its own continent and further afield” (European Commission 2005). Secondly, the following year, the Commission confirmed that the very essence of EU integration is to overcome the divisions in Europe and to contribute to the peaceful unification of the continent. Nevertheless, it is also stated that enlargement, which had already taken place, helped to increase European competitiveness and prosperity. Subsequently, this has brought the EU direct benefits (European Commission 2006a). In other words, the matter of utility, as Mower suggests, complements the matter of principle in EU External Action. Lastly, according to the Commission, the two main benefits which possible EU enlargement may bring are: strategic (stability, security, conflict prevention) benefits and economic interests (European Commission 2007: 2). These benefits are both rather utility-related and, therefore, they may be interpreted as a possible shift in EU incentives, where the matter of utility suddenly became more stressed when comparing it to the previous strategy papers.

In April 2008 the SAA and the Interim Agreement on Trade and Trade-Related Issues were signed, therefore, phase (2) began. Within this phase EU Enlargement Strategy Papers between the years 2008–2009 are covered. To begin with, in 2008 the principles of the preceding strategy (2007) were confirmed. However, the EC reiterates that the EU’s perspective has contributed to peace and stability (European Commission 2008a: 2). This may be perceived as an attempt of the EU to justify its interest in the Western Balkans by normative
rhetoric. Secondly, the subsequent Strategy Paper (2009) continues to enhance the normative aspect of EU Enlargement by demonstrating its positive effect on the countries that became members within the fifth enlargement. According to the EC, progress has been achieved mainly in democracy consolidation and rule of law (European Commission 2009a: 2).

In December 2009 Serbia officially applied for the EU membership and that moves it into phase (3). Within this phase EU Enlargement Strategy Papers 2010–2011 are applied. Commission admits that the benefits of possible further EU enlargement may not have been efficiently communicated to the public. This probably reflects the beginning of public reluctance with regards to further enlargement given the fact that the EU was already affected by the financial crisis; which was already in its third phase. Therefore, the EU reiterates that: “EU’s enlargement process contributes to stability in Europe and to the security and well-being of its citizens. It is in the mutual interest of the EU and enlargement countries to open discussions on difficult negotiating chapters early in the process. This process aims to bring the enlargement countries up to European standards in all areas covered by the EU treaties and thereby help the EU to attain its own objectives” (European Commission 2010a: 2). Here we see that again, both the matter of principle and the matter of utility are present. The following year the Commission continued with the same rhetoric, addressing both normative and economic aspects of further EU enlargement. It claims that through the Enlargement Policy, the EU extends its zone of peace, stability, democracy and prosperity. Moreover, it argues that the difficulties that the Eurozone faced demonstrated the interdependence of the countries not only within the EU, but also beyond (European Commission 2011a: 2). This suggests that it is in the EU’s interest (matter of utility) to facilitate change with the countries outside the EU so that they come closer to its standards.

In March 2012, Serbia was granted a candidate status and phase (4) began, therefore, this phase covers the EU Enlargement Strategy 2012–2013. This strategy states: “Addressing risks of instability in the Western Balkans is manifestly in our joint interests, ... The enlargement process supports advocates of reform in the region, further entrenching its post-war democratic transition. It helps avoid the potentially far higher costs of dealing with the consequences of instability. Strengthening stability and democracy in south-east Europe is also an investment in deep and sustainable democracy in the EU’s wider neighbourhood” (European Commission 2012a: 3). The EU’s argument that instability in the

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7 Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Bulgaria, Romania.

8 The European Central Bank divides the development of the financial crisis into three main phases: (1) start of market turbulences (August 2007); (2) Lehman Brothers bankruptcy (September 2008); (3) start of sovereign and banking crisis (May 2010).
region may bring along additional higher costs, demonstrates again the presence of the matter of utility within its External Action.

To sum up, the analysis above relating to the Enlargement Strategy Papers provided by the Commission in the years 2005–2012 shows that the EU External Action in the Western Balkans was driven by both: the matter of principle and the matter of utility. These are not necessarily mutually exclusive. In the Serbian case both of them were applicable. The protection of HRs is one of the factors which influence the stability of the region (matter of principle) and as such it, consequently, allows for the EU business penetration (matter of utility). The first one tended to be more proclaimed at the beginning of the accession negotiations; and the latter needed to be stressed by the Commission mainly when the EU started to face the consequence of the financial crisis in order to justify its policy to the European citizens. However, both of them were present throughout the period observed.

Definition

Within phase (0) the conclusion of the summit states that the countries commit themselves to take certain measures aiming at achieving European standards because of shared values (European Council 2003). However, this conclusion does not cover any specific HRs that needs to be pursued, except in stating that any division along ethnic lines is incompatible with European standards (European Council 2003). Nevertheless, the Commission also provides a Progress Report 2005 which was issued in November 2005 and since the SAA negotiations were launched in October 2005, it is obvious that the report can only refer to the period before the official opening of negotiations took place, and that is why this report is also covered in this (0) phase.

The first positive step towards the improvement of the HRs situation is that by April 2005 Serbia and Montenegro\(^9\) managed to implement the commitments which they undertook when joining the Council of Europe in 2003 (European Commission 2005: 17). This report covers an assessment of a wide range of both civil/political rights; for example, torture and ill-treatment prevention, prison conditions, freedom of religion and expression, non-discrimination; and economic/social and cultural rights, for example, gender equality, children rights, rights of socially vulnerable and disabled persons, labour, social and minority rights. The major concerns are defined as follows: (1) no progress has been made on enforcing the Serbian Law on the Accountability for Human Rights Violations (European Commission 2005: 18); (2) no comprehensive anti-discriminatory law has been adopted; (3) ratification of the European Social Charter is pending (European Commission 2005).

\(^9\) In 2005 Serbia and Montenegro still formed one single country.
Within phase (1) the Progress Reports from 2006–2008 are applied. In 2006 the ratification of the European Social Charter was still pending and minor progress was seen with regard to children’s rights because Serbia ratified the International Labour Organisation Convention 182 concerning the prohibition of child labour (European Commission 2006b). The 2006 report, in contrast to the 2005 report, mentions the fight against impunity and concludes that in the observed year, eight persons (including former police officers) were indicted in relation to mass graves being identified in Serbia.

Further positive findings show that better cooperation was observed between the police and the prosecution services, which enabled the trials of several war criminals. Another positive step is the newly adopted constitution in September 2006, which explicitly prohibits torture (European Commission 2007). The 2008 Progress Report stated that Serbia had ratified all major HRs instruments, yet the ratification of the European Social Charter was not achieved in this phase (1). The report concludes that the legal and institutional framework for the observance of HRs is already in place, however, its implementation is still unsatisfactory. With regard to the fight against impunity, the Commission appealed to Serbia to strengthen its cooperation so that the cases of war crimes and crimes against humanity could be transferred and those involved extradited (European Commission 2008b).

The SAA and the Interim Agreement on Trade and Trade-Related Issues were signed in April 2008 in Luxembourg which moved Serbia into phase (2) within the analytical framework where only the Progress Report 2009 is applied. The European Social Charter was finally ratified in May. According to the 2009 Progress Report, not only is the international framework for the observance of HRs already in place in Serbia (as it was already stated in 2008), but also the observance of international HRs law was improved. However, the Commission appealed to the Serbian authorities to fight against impunity at all levels. It further suggests that Serbia shall enhance its understanding of international standards and appeals to Serbia to establish a mechanism which would prevent torture; which is an obligation derived from the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment which took place already in 2006 (European Commission 2009b).

Freedom of religion, expression and assembly are all guaranteed by the Constitution, however, incidents occasionally occur (European Commission 2009b). The EC further states that there has been some progress in terms of children’s and women’s rights as national strategies were adopted in December 2008 and in February 2009. Furthermore, the minority situation improved because, firstly, in March 2009 the Law on Prohibition of Discrimination was adopted, and secondly, in August 2009 the Law on Minority and National Councils was also
adopted (European Commission 2009b). This has been perceived as a big step towards more efficient protection of HRs in Serbia. In short, phase (2) has been a very fruitful phase where Serbia sought to address the EU’s concerns.

This positive development encouraged Serbia to officially apply for EU membership in December 2009, which moved it into phase (3). In this phase, Progress Reports 2010 and Analytical Report 2011 are applied. The findings of both of the reports suggest that the EU continues to praise the HRs protection framework which is already in place and which is in line with the European standards. However, it reiterates that enforcement and effective implementation are crucial (European Commission 2010b, 2011b). The biggest progress made during this phase was the fact that the Serbian parliament adopted the above-mentioned mechanism to prevent torture in July 2011 (European Commission 2011b).

In March 2012 the European Council granted Serbia candidate country status which moved it into the current phase (4). In this phase the Progress Report 2012 is applied. The National Mechanism for Prevention of Torture began to work, however, it needed further strengthening. In regards to women’s Serbia signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (European Commission 2012b). According to the Human Rights Watch World Report 2013, the three main HRs concerns in Serbia are the prevention of torture and ill-treatment, non-discrimination and freedom of expression. Since the enforcement of the prohibition of torture is questioned in all Progress Reports on Serbia from 2005–2012, it surely constitutes one of the major problems in terms of HRs. The Human Rights Watch further argues that despite the fact that Serbia was granted candidate status, it did very little to improve its human rights records (2013). Even though the EU praised Serbia in its Progress Report (2012) for some progress on the prevention of torture and ill-treatment, and also on the related issue – the prison system – some findings were unsatisfactory. For example, the Ombudsman, acting as of January 2012, as the National Prevention Mechanism against torture, held his first inspections of prisons. His findings demonstrated that the prison system is still facing serious problems due to overcrowding with over 11,500 prisoners for some 5,000 to 6,000 places (European Commission 2012b: 13).

However, the World Report states that Serbia has made some progress in the protection of sexual minorities. For example, in February, Simo Vladicic was sentenced to a three-month jail term for making threats against lesbian, gay, bisexual and transgender (LGBT) people via a Facebook group called “500,000 Serbs against Gay Pride” (Human Rights Watch 2013). This ruling clearly shows that any discriminatory proclamation is not acceptable.

Even though, when presenting the Enlargement Package 2012 at a press conference in Brussels, the commissioner for enlargement Füle stated: “We continue to prioritise strengthening the freedom of expression in the accession pro-
cess" (Füle 2012), which was a rather general statement concerning all aspirant countries, no other requirements regarding the protection of human rights were mentioned in the Serbian case. This leads to the conclusion, that even though the EC Progress Reports on Serbia (2005–2012) analysed and monitored developments in both civil/political rights and economic/social and cultural rights in depth, the human rights may not constitute a priority for the EC in the Serbian accession process. As per my analytical framework, it can be concluded that, in terms of a human rights definition, the EU (1) has been consistent in its approach towards Serbia in the years 2005–2012; (2) has been monitoring wide range of HRs.

Priority

When analysing the variable of priority it is important to consider the EU-Serbian trade and, consequently, to see what the economic interests on both sides are. The following graph captures the evolution of the mutual trade in the years 2005–2013.

Graph 1: EU Trade Flows and Balance, 2005–2013

The following table 1 shows that in terms of the Serbian share of the total EU imports, on one hand, and the Serbian share of the total EU exports, on the other, the importance of Serbia for the EU is absolutely negligible.

<table>
<thead>
<tr>
<th>Trade</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imports (%)</td>
<td>0.1</td>
<td>0.2</td>
<td>0.3</td>
<td>0.3</td>
<td>0.3</td>
<td>0.3</td>
<td>0.3</td>
<td>0.3</td>
<td>0.4</td>
</tr>
<tr>
<td>Exports (%)</td>
<td>0.3</td>
<td>0.5</td>
<td>0.7</td>
<td>0.7</td>
<td>0.6</td>
<td>0.6</td>
<td>0.6</td>
<td>0.6</td>
<td>0.6</td>
</tr>
</tbody>
</table>

Source: European Commission (2014); self-prepared.

Furthermore, the table 2 presents the most important EU trading partners for the 2013. Serbia ranked on the 38th place. In short, from the EU perspective, there are no material motives for the Serbian accession process.

Tab. 2: EU Top Trading Partners 2013

<table>
<thead>
<tr>
<th>Rank</th>
<th>Partner</th>
<th>Total Trade Value (Mio EUR)</th>
<th>Share in Extra-EU (%)</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>USA</td>
<td>484,228</td>
<td>14.2</td>
</tr>
<tr>
<td>2.</td>
<td>China</td>
<td>428,324</td>
<td>12.5</td>
</tr>
<tr>
<td>3.</td>
<td>Russia</td>
<td>326,253</td>
<td>9.5</td>
</tr>
<tr>
<td>4.</td>
<td>Switzerland</td>
<td>263,857</td>
<td>7.7</td>
</tr>
<tr>
<td>5.</td>
<td>Norway</td>
<td>140,187</td>
<td>4.1</td>
</tr>
<tr>
<td>6.</td>
<td>Turkey</td>
<td>128,133</td>
<td>3.7</td>
</tr>
<tr>
<td>7.</td>
<td>Japan</td>
<td>110,570</td>
<td>3.2</td>
</tr>
<tr>
<td>8.</td>
<td>South Korea</td>
<td>75,810</td>
<td>2.2</td>
</tr>
<tr>
<td>9.</td>
<td>Brazil</td>
<td>73,085</td>
<td>2.1</td>
</tr>
<tr>
<td>38.</td>
<td>Serbia</td>
<td>16,509</td>
<td>0.5</td>
</tr>
</tbody>
</table>


However, bringing in a politically unstable country, which does not comply with the laws, values and norms of the community would be risky for the stability of the Union as a whole. The conclusion from the Thessaloniki Summit, which is the starting point for my analytical framework (phase 0) reads: “Respect of international law, inviolability of international borders, peaceful resolution of conflicts and regional co-operation are principles of the highest importance, to which we are all committed. We vigorously condemn extremism, terrorism and violence, be it ethnically, politically or criminally motivated” (European Council 2003).
Phase (1) covers the period from 2005–2008. The history of the accession process of Serbia shows that the EU has always praised the progress of Serbia in certain fields in a given stage. Firstly, in the communication of 2005 when progress regarding cooperation with the ICTY was made, the EU launched the SAA negotiations. However, in 2006, Serbia limited its cooperation and the negotiations were called off (European Commission 2013). Nevertheless, in 2007, Serbia committed itself to cooperate fully with the ICTY and the SAA was, consequently, initiated. This demonstrates the importance of cooperation with the ICTY in the Serbian case. In other words, there is no doubt as to what was the focal point of the negotiations in this phase.

In April 2008 the SAA and the Interim Agreement on Trade and Trade-Related Issues were signed (start of phase 2). The EU considers the protection of human rights as an essential element of both of these treaties. The SAA refers to human rights even more than the temporary Interim Trade Agreement: the SAA refers to the protection of human rights in its preamble but also within its treaty in Art. 2, and Art. 5, in which it states: “International and regional peace and stability, the development of good neighbourly relations, human rights and the respect and protection of minorities are central to the Stabilisation and Association process” (SAA 2008). However, even though protection of human rights constitutes a key principle for the SAA with Serbia, the Commission does not refer to it as the key requirement in the Serbian accession process. The development of the accession process implies that the key requirements are: (1) full cooperation with the ICTY; and (2) normalisation of relations with Serbian neighbours – mainly Kosovo; which is the crucial point of the accession process in the Serbian case.

Even though both of these key requirements do not seem to fit as HRs requirements, it can be argued that they implicitly mean the protection of human rights because any potential conflict could spur human rights violations. The EU seeks to avoid this because the war which took place in the 1990’s was the most cruel armed conflict in Europe since the end of the 2nd World War. Therefore, a key objective of the EU is to elevate Serbia to European standards as much as possible as a means of ensuring security and stability in the region. They do this through simultaneously demonstrating the EU’s commitment to traditional values through trade incentives. As a result, the fact that the EU has placed an emphasis on regional peace and stability implies that the incentives that drive EU action in the case of Serbia are security-related. Therefore, it confirms that the EU acts as a normative power within its trade negotiations with Serbia so the hypothesis (1) “The EU acts as a normative power within its trade negotiations with third countries” has been confirmed. Though, the Progress Reports 2005–2012, as discussed above, showed that the protection of HRs is not the driving force, yet this aspect does not make the EU a non-normative power.
It can be argued that once the Interim Agreement is in force, the EU already benefits economically and it is rather difficult to state whether it is an instrument or the goal. I argue that if it was not a temporary agreement that can be cancelled any time, then this argument may be relevant. However, this is not the case. Why then is the SAA not in force yet? (July 2013). This confirms that the Interim Agreement should have only given Serbia an incentive to cooperate better. The Delegation of the EU to the Republic of Serbia best explains its aim: “The process of strengthening trading links between the economies of South Eastern Europe is an important part of the EU’s wider strategy of growth and stability in the region” (Delegation of the EU to the Republic of Serbia 2013). Eventually, it showed the expected results because two month later the Serbian police arrested Radovan Karadžić. Consequently, Serbia wanted to gain the advantages of the situation and officially applied for membership in 2009 (phase 3). In 2010 the ratification process of the SAA started, which again gave an incentive to Serbian officials and Ratko Mladić was arrested the following year (European Commission 2013). This demonstrates the use of positive conditionality in practice over time. The EU is a very important trading partner for Serbia. As the following table shows, in 2012 the EU applied for 61.4% share of total Serbian trade.

Tab. 3: Serbian Top Trading Partner, 2012

<table>
<thead>
<tr>
<th>Rank</th>
<th>Partner</th>
<th>Value (Mio EUR)</th>
<th>Share in Extra-EU (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>World</td>
<td>23,526</td>
<td>100.0</td>
</tr>
<tr>
<td>1.</td>
<td>European Union</td>
<td>14,443</td>
<td>61.4</td>
</tr>
<tr>
<td>2.</td>
<td>Russia</td>
<td>2,284</td>
<td>9.7</td>
</tr>
<tr>
<td>3.</td>
<td>Bosnia-Herz.</td>
<td>1,212</td>
<td>5.2</td>
</tr>
<tr>
<td>4.</td>
<td>China</td>
<td>1,096</td>
<td>4.7</td>
</tr>
<tr>
<td>5.</td>
<td>Montenegro</td>
<td>717</td>
<td>3.0</td>
</tr>
<tr>
<td>6.</td>
<td>For. JRep. Mac.</td>
<td>607</td>
<td>2.6</td>
</tr>
<tr>
<td>7.</td>
<td>Turkey</td>
<td>489</td>
<td>2.1</td>
</tr>
<tr>
<td>8.</td>
<td>Kazakhstan</td>
<td>332</td>
<td>1.4</td>
</tr>
<tr>
<td>9.</td>
<td>USA</td>
<td>324</td>
<td>1.4</td>
</tr>
<tr>
<td>10.</td>
<td>Switzerland</td>
<td>234</td>
<td>1.0</td>
</tr>
<tr>
<td></td>
<td><strong>European Union</strong></td>
<td><strong>14,443</strong></td>
<td><strong>61.4</strong></td>
</tr>
</tbody>
</table>

As a result, conditionality is a key element of the negotiation process with Serbia. The key political criteria that have been set for Serbia can be summarized as follows: rule of law, struggle against corruption, protection of human rights, cooperation with the ICTY and pursuing good neighbour relations with Kosovo. As already explained above, good neighbourhood relations with Kosovo and, consequently, the cooperation with the ICTY are both human rights related issues.

In March 2012, Serbia was granted candidate country status (phase 4), which, therefore covers the years 2012–2013. Rather generally, Füle stated, within the Enlargement Package 2012: “We also stress the importance of regional cooperation and reconciliation in the Western Balkans and, of course, good neighbourhood relation. It is crucial to address bilateral issue, normalising relations, closer regional cooperation. Bilateral issues should not hold up the accession process” (Füle 2012). More directly, Füle assessed the Serbian performance by stating that it is on its way to sufficiently fulfilling the political criteria and the conditions within the Stabilisation and Association Process. However, it has to focus on the rule of law, the independence of key institutions and lastly, to continue in its constructive engagement in regional cooperation and its relations with its neighbours (Füle 2012). These are the key priorities within the accession process with Serbia as articulated by the Commissioner for Enlargement.

The very first agreement on principles that regulated and normalized relations was adopted on the morning of 22nd April, 2013 by Serbia and Kosovo. The response of the European Union was immediate: “The European Commission considers that Serbia has fulfilled the key priority task of taking steps towards achieving the visible and sustainable improvement in relations with Kosovo: Serbia has completely fulfilled all political criteria set by the Accession and Stabilization Agreement” (Delegation of the EU to the Republic of Serbia 2013). The key statement here is “Serbia has completely fulfilled all political criteria”, which demonstrates that the crucial requirement set by the EU regarding the normalization of relations with Kosovo (which is also HRs-related issue as discussed above) has been, from the EU point of view, fulfilled. Therefore it can be argued, that the protection of HRs for the EU in the case of Serbia is crucial. Moreover, it is not only rhetoric, but given the fact that the SAA did not come into force yet, it confirms that the EU sees protection of HRs as its priority in the EU-Serbian negotiations.

However, according to Mower’s description of the priority variable, it can be stated that in the case of Serbia there is actually no problem of priorities because considerations of national interests as traditionally defined, as well as commitments to human rights clearly converge. In other words, pursuing human rights in Serbia (in the sense of requiring protection of HRs, full cooperation with the ICTY and good neighbourhood relations with Kosovo) serves the EU’s security
interests. Therefore, it can be concluded, that the external action of the EU in the case of Serbia, is led by realism. Nevertheless, the hypothesis (2) EU favours its economic interests over its commitment to HRs within its trade negotiations with third countries has not been confirmed because in negotiations with Serbia, the EU does not have a single reason to favour its economic interests, and as a result, the EU does not favour its economic interests over its HRs commitments.

Conditionality

The European Union has stressed the necessity of cooperation with the ICTY since the very first enlargement strategy of 2005. The following citation confirms the use of conditionality in the Serbian accession process, as well as the importance of its cooperation with the ICTY. “The EU must remain rigorous in demanding fulfilment of its criteria, but fair in duly rewarding progress. Aspirant countries can only proceed from one stage of the process to the next once they have met the conditions for that stage. Moreover, the Commission is prepared to recommend the suspension of progress in case of a serious and persistent breach of the EU’s fundamental principles, or if a country fails to meet essential requirements at any stage. Such requirements include cooperating with the ICTY” (European Commission 2005). This communication further states that the negotiations will be based on a country’s own merits and that the EU expects Serbia to comply fully with the political criteria. In the case of a serious breach of the EU’s values, such as liberty, democracy, human rights, fundamental freedoms and the rule of law, accession negotiations may be suspended (European Commission 2005). “Serbia and Montenegro achieved significant progress in cooperation with the ICTY in the run-up to the Commission Report on the preparedness to start SAA negotiations, in particular delivering a significant number of indictees to The Hague Tribunal. Since then there continues to be good cooperation with regard to waivers to witnesses and access to documents, though this process is still sometimes obstructed by parts of the administration and the army. Serbia and Montenegro has made some further, though limited, progress to bring remaining fugitives to justice. This progress must be continued until full cooperation with ICTY is achieved“ (European Commission 2005). Based on this progress, the negotiations for the SAA were launched in the fall of 2005, which shows the sequence of actions taken on both sides. In sum, the EU has successfully used positive conditionality in phase (1) with its relations with Serbia in the sense that it started to negotiate the market access to the European market based on the progress that was made by Serbia.

As mentioned above according to EC complete fulfilment of the political criteria was already reached in 2012.
Within phase (2), the EU used the temporary access to its market as a ‘carrot’ and, consequently, Serbia enhanced its cooperation with the ICTY. As a result, the Bosnian Serb Radovan Karadžić, who was one of the main actors of the massacre in Srebrenica, was caught by the Serbian police and handed over to the court. Consequently, when the ratification process of the SAA took place in 2010 within phase (3), it provided the Serbs with further incentives to cooperate and, as a result, the second person responsible for the Srebrenica massacre, and also the military leader, Ratko Mladić, was arrested and extradited to the Hague in 2011.

Furthermore, one of the key aspects of EU-Serbian negotiations was the requirement to improve and stabilize the mutual relationship with Kosovo. This was managed in April 2013 and as such may be perceived as the highlighting of the conditionality used within phase (4). Moreover, the Commission reacted immediately and recommended the Council to open EU membership negotiations talks with Serbia. It can be concluded that in the case of Serbia, the conditionality has worked very well and the human rights and human rights related requirements have been taken seriously by Serbia. In other words, the hypothesis (3) “If there is conditionality, then there is more chance that HRs will be taken seriously by third countries” has been in the Serbian case confirmed.

**Conclusion**

Human Rights are already an essential part of the EU External Action and as such it affects fields such as trade. The conclusion of this paper shows that the EU has been playing a highly normative role in its trade negotiations with Serbia. Second, the EU has not favoured its economic interests over its commitment to HRs when conducting trade negotiations. Third, the fact that there is an impact of the EU’s commitment to HRs on its trade negotiations is unquestionable.

These conclusions have been established by analysing four variables (rationale, definition, priority and conditionality) and applying the process tracing method. The following are my findings: (1) complying with normative values is required as a pre-condition for the trade agreements coming into force (conditionality); (2) the trade agreements which were concluded refer to the protection of HRs.

From this research, we can understand a few policy implications. I believe that the EU will continue to apply such conditionality because they have shown their determination in this regard. Since the findings illustrate that Serbia committed itself to sign and, consequently, ratify many HRs agreements, which means that at least the HRs situation de jure has improved significantly throughout the period observed, we can understand that this practice is effective
in some way. The EU will likely continue to strengthen its policies relating to HRs and use its trade negotiations as a tool to enforce the norms related to human rights; especially since its economic power is its strongest tool.

However, further research on this topic is needed. It should encompass more case studies from the region so that a generalisation can be made about the EU’s power in enforcing human rights through its trade negotiations.
References:


Summary: The Impact of EU Human Rights Commitments on its Trade Negotiations Case Study: Serbia

The aim of this paper is to analyse the impact of the EU commitment to Human Rights on its trade negotiations with Serbia. The data collected was from completed trade agreements, human rights reports, progress reports and enlargement strategies, as well as a wide range of press conferences and statements made by various European institutions. The positioning by the EU of human rights commitments within their trade negotiations are analysed through four variables (rationale, definition, priority and conditionality) over a ten year period from 2003-2013 by using a process tracing method. These trade negotiations demonstrate that the EU has been playing a highly normative role in such negotiations with Serbia using actively the principle of conditionality.

Keywords: Human Rights, Negotiations, Trade, Conditionality, EU External Action

JEL: F15