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From Rags to Riches: Croatia and Albania's EU Accession Process through the Copenhagen Criteria and Conditionality

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COMMENT

FROM RAGS TO RICHES: CROATIA AND ALBANIA'S EU ACCESSION PROCESS THROUGH THE COPENHAGEN CRITERIA AND CONDITIONALITY

*Genta Stafaj**

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* J.D. Candidate, 2015, Fordham University School of Law. This Comment is my humble contribution to Albania, the country that holds my fondest childhood memories. I hope that its future will be bright and its past never forgotten. I also dedicate it to my family and my grandmothers. My sincere thanks to Professor Paolo Galizzi for sharing his knowledge on international law, Maria A. Fufidio for her invaluable guidance, and the editors and staff of the *Fordham International Law Journal*.

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INTRODUCTION

In the well-known fairy tale of rags to riches, a poor hardworking girl is transformed into a princess with the help of her fairy godmother and her magic wand. In the European enlargement version of this fairy tale, the girl is the Western Balkan countries, the fairy godmother is the European Commission, and the magic wand is the Copenhagen criteria and the policy of conditionality. Unlike the head-to-toe princess transformation that takes a simple tap of the fairy godmother’s wand, the accession process for Western Balkan countries consists of a drawn-out, do-it-yourself reform process that only leads to piecemeal transformation.

On July 1, 2013, Croatia became the twenty-eighth member of the European Union, a process that took a decade to complete.¹ Amidst celebration, however, the message that rippled through Western Balkan nations was two-fold and contradictory: (1) the European Union continues to be committed to the region, and Western Balkan countries can work to mirror Croatia’s success, but (2) the European Union is

1. See *Croatia Celebrates on Joining EU*, BBC NEWS (July 1, 2013), <http://www.bbc.co.uk/news/world-europe-23118035> (reporting that after ten years since its application for membership, Croatia became the twenty-eighth Member of the European Union); see also Honor Mahony, *Croatia Becomes 28th EU Member State*, EU OBSERVER (July 1, 2013, 9:03 AM), <http://euobserver.com/enlargement/120688> (noting that Croatia became a Member of the European Union a decade after starting the accession process).

developing “enlargement fatigue” from the accession of new countries and is wary of further expansion.²

Conscious of the fact that countries lose the initiative to continue the necessary reforms once they become members, the European Union has made the path to accession more demanding.³ In June 2003, the European Council of Thessaloniki reiterated its resolve to support the Western Balkan countries in their accession to the European Union.⁴ The Council clarified that the Stabilization and Association Agreements (“SAAs”), outlining the new conditions necessary for membership under the Stabilization and Association Process (“SAP”), would serve as the primary contractual agreements guiding the membership process.⁵ For Western Balkan

2. See Paula M. Pickering, *The Constraints on European Institution’s Conditionality in the Western Balkans*, 63 EUR. ASIA STUD. 1939, 1941 (2011) (noting that many EU Member States are suffering from enlargement fatigue which affects their commitment to West Balkan states other than Croatia); Naftali Bendavid, *Fule Says the EU Should Expand Further, But With Care*, WALL ST. J., Oct. 16, 2013, <http://blogs.wsj.com/brussels/2013/10/16/fule-says-the-eu-should-expand-further-but-with-care/> (discussing the progress made by West Balkan countries towards accession and the “enlargement fatigue” developed by some of EU leaders); see also *EU Enlargement: The Next Seven*, BBC NEWS (July 1, 2013), <http://www.bbc.co.uk/news/world-europe-11283616> (explaining that Croatia’s accession was seen as a strong signal of EU commitment to the region, but also citing surveys suggesting widespread enlargement fatigue in Europe).

3. See John O’Brennan & Esmeralda Gassie, *From Stabilization to Consolidation: Albanian State Capacity and Adaptation to European Union Rules*, 11 J. BALKAN & NEAR E. STUD. 61, 61 (2009) (arguing that attitudes regarding enlargement have hardened and EU conditionality requires that Western Balkan countries reform prior to membership); see also Mahony, *supra* note 1, para. 6 (noting that the path to joining the European Union has become more exacting); *Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2013–2014*, COM (2013) 700 final, at 2 (Oct. 16, 2013) [hereinafter *Enlargement Strategy 2013–2014*] (acknowledging that the accession process is more rigorous and comprehensive than in the past).

4. See Presidency Conclusions, Thessaloniki European Council (June 19 & 20, 2003) (reiterating the Council’s determination to fully and effectively support the European perspective of the Western Balkan countries once they meet the established criteria); see also Florian Trauner, *From Membership Conditionality to Policy Conditionality: EU External Governance in South-Eastern Europe*, Address at the European Union Consent Conference 6 (Nov. 16–17, 2007) (stating that at the European Council of Thessaloniki, the Council endorsed the Thessaloniki agenda of European integration for Western Balkan countries).

5. See Arolda Elbasani, *EU Enlargement in the Western Balkans: Strategies of Borrowing and Inventing*, 10 J. S. EUR. & BALKANS 293, 302–03 (2008) (discussing the attempt of the Thessaloniki Summit to strengthen the association of EU policies in Western Balkans and to identify the Stabilization and Association Agreements (“SAAs”) as the only contractual agreement for EU membership); see also *Enlargement Strategy 2013–*

countries, this means a long and challenging climb to EU accession with additional membership conditions set out in the SAAs that serve as prerequisites to the satisfaction of the standard EU membership criteria, known as the Copenhagen criteria.⁶

Croatia is the first EU acceding country to complete the SAP through adherence to the prerequisite requirements of the SAA and Copenhagen criteria.⁷ As such, Croatia may serve as a model for other Western Balkan countries in their road to EU accession.⁸ Among these countries is Albania, which formally began the EU accession process on June 12, 2006, after signing an SAA with the European Union.⁹ While attempting to emulate Croatia as a model for this process, Albania has encountered delays, with the SAA and negotiation process taking three years to complete.¹⁰ Additionally, Albania has not yet been granted candidate status for EU membership, which is typically granted

2014, *supra* note 3, at 1 (reiterating that at the Thessaloniki Summit the Western Balkan countries were granted a clear path to EU membership subject to fulfillment of the Copenhagen criteria and Stabilization and Association Process conditions).

6. Conditions for Membership, EUROPEAN COMMISSION, <http://ec.europa.eu/enlargement/policy/conditions-membership/> (last visited Oct. 27, 2013) (stating that in the case of Western Balkans countries, additional conditions for membership are set out in the SAAs); *see also* Enlargement Strategy 2013–2014, *supra* note 3, at 1 (affirming all Western Balkan countries were granted EU membership subject to fulfillment of Copenhagen criteria and the conditions of the Stabilization and Association Process).

7. *See* Dejan Jovic, *Croatian EU Membership and the Future of the Balkans*, in UNFINISHED BUSINESS: THE WESTERN BALKANS AND THE INTERNATIONAL COMMUNITY 201, 208 (Vedran Dzihic & Daniel Hamilton ed., 2012) (noting Croatia's integration into the European Union after completing the Stabilization and Association Process ("SAP") process); *see also* Enlargement Strategy 2013–2014, *supra* note 3, at 1 (stating that Croatia was the first country to complete the SAP).

8. *See* Jovic, *supra* note 7, at 208 (suggesting that Croatia's successful integration into the European Union is likely to encourage other candidates and potential candidates); *see also* Enlargement Strategy 2013–2014, *supra* note 3, at 1 (stating that Croatia serves as an example of the positive effect of the enlargement process).

9. *See* Anduena Gjevori, *The Rights of Albanian Nationals Under the Stabilization and Association Agreement Between Albania and the European Communities*, 4 MEDITERRANEAN J. SOC. SCI. 439, 440 (2013) (stating that the SAA between Albania and the European Union was signed on June 12, 2006); *see also* *Key Dates to Albania's Path Towards the EU*, DELEGATION OF THE EUROPEAN UNION TO ALBANIA, http://eeas.europa.eu/delegations/albania/eu_albania/political_relations/index_en.htm (last visited Oct. 30, 2013) (listing the key dates for Albania's progress towards becoming an EU Member).

10. *See* *EU Enlargement: The Next Seven*, *supra* note 2 (noting that Albania's negotiations for the SAA took three and a half years to complete which was three times longer than it took for Croatia); *see also* Gjevori, *supra* note 9, at 440 (stating that the SAA for Albania entered into force for compliance on April 1, 2009).

early on in the accession process.¹¹ It was only recommended for candidate status in October 2013, seven years after beginning this process.¹²

In light of this discussion, Part I of this Comment briefly reviews the process of accession to the European Union, outlining the key criteria necessary for membership under the Maastricht Treaty and the Copenhagen criteria. Part I also examines the SAP and the additional conditions imposed by the SAAs on Western Balkan countries. Part II analyzes the SAP in context through a comparison of the accession processes for Croatia and Albania. Part II then assesses the application of the prerequisite criteria and the Copenhagen criteria in each case. Finally, Part III argues that the willingness to allow Western Balkan countries to begin this process is undermined by the lack of a defined timeline for the fulfillment of the accession criteria and the strict adherence to the conditions of the SAAs as a prerequisite to membership. This creates disillusionment with this process, as the road to EU accession seems arbitrarily slow and laborious for candidate states. Instead, the European Union should adhere to a transparent and accountable process, and employ the power imbalance created through its policy of conditionality to effect the necessary change in the Western Balkan countries.

I. THE CRITERIA FOR EU MEMBERSHIP AND THE PROCESS OF ACCESSION FOR WESTERN BALKAN COUNTRIES

Part I.A reviews the historical development of the EU accession process and the key criteria that must be met by

11. See Memorandum from the European Commission to the European Parliament and the Council 1, MEMO/13/888 (Oct. 16, 2013) (indicating the first recommendation made by the Commission that Albania be granted candidate status); see also *Progres-Raporti i KE Rekomandon: Shqiperise t'i Jepet Statusi. Ja 5 Prioritetet*, BALKANWEB, Oct. 16, 2013, <http://www.balkanweb.com/kryesore/1/ke-publikon-progres-raportin-2013-rekomandon-shqiperise-ti-jepet-statusi-153849.html> (reporting that the European Commission finally recommended Albania for candidate status).

12. See Memorandum from the European Commission to the European Parliament and the Council, *supra* note 11 (recommending that Albania be granted EU candidate status on condition that it continues its fight against organized crime and corruption); see also *Progres-Raporti i KE Rekomandon: Shqiperise t'i Jepet Statusi. Ja 5 Prioritetet*, *supra* note 11 (reporting that Albania was recommended for candidate status in the Commission's 2013 progress report).

candidate states for EU membership. Part I.B details the accession process for Western Balkan countries in light of the SAP framework and the unique characteristics of the Western Balkan region.

A. The Development of the EU Accession Process

In 1957, six European countries signed the Treaty of Rome, establishing the present day European Union.¹³ Since its inception, the European Union has undergone a number of enlargements, the most recent being the accession of Croatia to create twenty-eight EU Member States.¹⁴ In 1992, the Treaty on European Union (“TEU”), known as the Maastricht Treaty, established that any European country respecting the core principles of the Treaty could apply for EU membership.¹⁵ These core principles include liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.¹⁶

In 1993, recognizing the need for evaluation guidelines, the European Council meeting in Copenhagen expanded the formal requirements for EU membership, creating the Copenhagen criteria.¹⁷ This criteria for membership is assessed by the European Commission and includes: (1) political criteria—stable institutions guaranteeing democracy, rule of law,

13. See KRISTIN ARCHICK, CONG. RESEARCH SERV., RS21344, EUROPEAN UNION ENLARGEMENT 2 (2013) (reporting that in 1957, six European Coal and Steel Community Members, Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany, signed the Treaty of Rome which became known as the European Union); see also Huguette Laermans & Paul Roosens, *The Enlargement of the European Union*, 18 EKONOMSKA MISAO PRAKSA 397, 398 (2009) (stating that six countries signed the Treaty of Rome in 1957 starting the EEC, now called the European Union).

14. See *Member Countries of the European Union*, EUROPEAN UNION, <http://europa.eu/about-eu/countries/member-countries/> (last visited Nov. 3, 2013) (providing a list of current EU Member States totaling 28 Member States following Croatia’s accession); see also Archick, *supra* note 13, at 3 (noting that Croatia’s accession brought the Union to 28 Member States).

15. Consolidated Version of the Treaty on European Union art. 49, 2012 O.J. C 326/13, at 70 [hereinafter TEU]; see also ARCHICK, *supra* note 13, at 5 (explaining that according to the Maastricht Treaty, any European country could apply for EU membership if it met certain political and economic criteria)

16. TEU, *supra* note 15, art. 6(1), 2012 O.J. C 326/13, at 19.

17. See generally European Council in Copenhagen, *Conclusions of the Presidency* (Jun. 21–22, 1993), available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf (focusing on the decisions made by the Copenhagen European Council regarding the accession process).

human rights, and respect for and protection of minorities; (2) economic criteria—a functioning market economy able to cope with the competitive pressure and market forces within the Union; and (3) legal criteria—a candidate country’s ability to undertake the obligations of membership and implement the *acquis communautaire*.¹⁸ The *acquis communautaire* consists of the binding body of common rights and obligations applicable to all EU Member States that must be acquired by candidate states in order to become EU members.¹⁹ The lack of clear definitions for the material terms of the Copenhagen criteria has been criticized as problematic given the potential for its inconsistent application.²⁰ Nevertheless, the ensuing Parts explore the general understanding of each criterion that has developed over the years through application.

1. Political Criteria

The Copenhagen political criteria can be divided into two major branches: (1) democracy and the rule of law, and (2) human rights and respect and protection of minorities. In evaluating the political criteria, the Commission looks primarily

18. Presidency Conclusions, Copenhagen European Council (June 21–22, 1993); see Tanja A. Borzel & Thomas Risse, *One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law*, CENTER FOR DEVELOPMENT, DEMOCRACY, AND THE RULE OF LAW, STANFORD UNIVERSITY (Apr. 27, 2005) http://www.eu-newgov.org/database/PUBLIC/P23000-02-CLU302_One_size_fits_all.pdf (listing the three conditions for EU membership established by the Copenhagen European Council of 1993). The *acquis communautaire* consists of the binding body of common rights and obligations applicable to all EU Member States that must be acquired by candidate states in order to become EU members.

19. Presidency Conclusions, Madrid European Council (Dec. 15–16, 1995) (noting the added requirement for candidate countries to acquire the *acquis communautaire* before EU membership); see Paulina Rezler, *The Copenhagen Criteria: Are They Helping or Hurting the European Union*, 14 *TOURO INT’L L. REV.* 390, 392–93 (2011) (noting that the Madrid European Council added the *acquis* requirement to achieve uniform legislation throughout the European Union).

20. See Rezler, *supra* note 19, at 396 (arguing that the lack of definitions for the Copenhagen criteria can lead to inconsistent interpretations of the conditions applied to candidate countries); see also Ian Ward, *The Culture of Enlargement*, 12 *COLUM. J. EUR. L.* 199, 203 (2005) (arguing that the concepts forming the Copenhagen criteria are “notoriously vague” and the impression imparted by the criteria is “one of critical vagueness”); Tanja Marktler, *The Power of the Copenhagen Criteria*, 2 *CROATIAN Y.B. EUR. L. & POL’Y* 343, 348 (2006) (noting the difficulty in ascertaining the meaning and application of the Copenhagen criteria).

at the democracy and the rule of law branch of this inquiry.²¹ An evaluation of democracy and the rule of law encompasses a number of factors, including elections, separation of powers among the branches of government, and anti-corruption measures.²² A country vying for EU membership must undertake the necessary measures to ensure free and fair multiparty elections and to include opposition parties in parliamentary appointments.²³ The executive branch of the candidate country must also have a unified system of civil service, a decentralized and reformed administration, accountability, and transparency.²⁴ The Commission emphasizes the importance of a stable and independent judiciary branch, composed of capable judges who can handle cases efficiently, which in practice has translated into greater weight placed on this element during the evaluation of applicant countries.²⁵ Similarly, the Commission

21. See Marktler, *supra* note 20, at 351 (stating that the Commission combines democracy and rule of law in its evaluation); see also Christophe Hillion, *The Copenhagen Criteria and Their Progeny*, in *EU ENLARGEMENT: A LEGAL APPROACH* 1, 3 (Christophe Hillion ed., 2004) (noting that the Copenhagen political criteria is based on principles of liberty, democracy, respect for human rights and fundamental freedoms, and rule of law).

22. See Dimitry Kochenov, *Behind the Copenhagen Façade. The Structure and Meaning of the Copenhagen Political Criterion of Democracy and The Rule of Law*, 8 *EUR. INTEGRATION ONLINE PAPERS* 1, 14 (2004) (identifying five main areas of scrutiny related to the assessment of the democracy and rule of law criterion: elections, the functioning of the legislature, the functioning of the executive, the functioning of the judiciary, and anti-corruption measures); see also Marktler, *supra* note 20, at 349–51 (noting that under the democracy and rule of law criterion, major attention is given to elections, the functioning of the executive, judiciary, and legislature, and corruption).

23. See Geoffrey Pridham, *EU Enlargement and Consolidating Democracy in Post-Communist States—Formality and Reality*, 40 *J. COMMON MKT. STUD.* 953, 960 (2002) (indicating that the necessary measures for democracy and rule of law include holding municipal elections, an institution of direct elections for state president, and the involvement of opposition parties in parliamentary appointments); see also Kochenov, *supra* note 22, at 14–16 (stating that the Copenhagen political criteria may be satisfied by “free and fair elections,” a Parliament that operates satisfactorily, is respected, has an opposition partaking in its activities, and allows for minority representation).

24. See Marktler, *supra* note 20, at 350–51 (noting the importance of adequate management, effectiveness, and executive transparency for democracy and the rule of law); see also Kochenov, *supra* note 22, at 18 (listing the main issues that the Commission focuses on in assessing the executive branch of a candidate country).

25. See, e.g., *Albania 2012 Progress Report*, at 11, SWD (2012) 334 final (Oct. 10, 2012) (outlining the factors generally used to assess the efficiency of the judiciary in a candidate country); see also Kochenov, *supra* note 22, at 20 (providing a list of factors considered in assessing the functionality of a candidate country’s judiciary, including

requires that effective anti-corruption measures be in place as part of this inquiry.²⁶ This component of the political criterion aims to combat the widespread corruption plaguing the governments of applicant countries which include Serbia, Montenegro, the Former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, and Albania.²⁷

The Copenhagen political criterion also includes the Commission's evaluation of human rights and minority protection in the candidate country.²⁸ The human rights element is based on an evaluation of a country's fundamental human rights and international agreements on human rights.²⁹ The respect and protection of minorities, on the other hand, focuses on the ratification and implementation of the Framework Convention for the Protection of National Minorities, the first legally binding multilateral instrument pertaining to the general protection of national minorities.³⁰

the independence of the branch and the effective enforcement of the court's decisions).

26. See Kochenov, *supra* note 22, at 24 (indicating that the last element of the structure of the Copenhagen political criterion of democracy and the rule of law relates to anti-corruption measures); see also Marktler, *supra* note 20, at 351 (indicating that corruption is an element under the principles of democracy and the rule of law).

27. See Kochenov, *supra* note 22, at 25 (noting that the Commission recognizes the widespread corruption in candidate countries in various sectors); see also Marktler, *supra* note 20, at 351 (noting the widespread corruption in candidate countries).

28. See European Commission, *Croatia 2011 Progress Report*, at 8–9, SEC (2011) 1200 final (Oct. 12, 2011) (indicating human rights and the protection of minorities are elements considered by the Commission under the Copenhagen political criterion); see also Marktler, *supra* note 20, at 352 (noting that human rights and minority protection also fall within the Copenhagen political criterion).

29. See generally European Parliament, *Democracy and Respect for Human Rights in the Enlargement Process of the European Union*, Briefing No. 20 (Apr. 1, 1998), available at http://www.europarl.europa.eu/enlargement/briefings/pdf/20a1_en.pdf (noting accession to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and freedom of expression and association are some of the fundamental human rights assessed under the Copenhagen political criterion); Marktler, *supra* note 20, at 352 (indicating that generally accepted fundamental rights and international agreements are used by the Commission in their assessment of candidate countries' compliance with the Copenhagen political criteria).

30. See Marktler, *supra* note 20, at 352 (discussing the need for candidate countries to implement the Framework Convention for the Protection of National Minorities); see also Council of Europe, *Framework Convention for the Protection of National Minorities and Explanatory Report*, H(95)10 pmbL (Feb. 1995), available at [http://www.coe.int/t/dghl/monitoring/minorities/I_AtGlance/PDF_H\(95\)10_FCNM_ExplanReport_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/I_AtGlance/PDF_H(95)10_FCNM_ExplanReport_en.pdf) (explaining the intention of the

Particular importance is placed on the protection of the Roma minority, which is discriminated against in many candidate countries.³¹

2. Economic Criteria

The Copenhagen economic criterion is also a twofold inquiry, requiring candidate countries to have (1) functioning market economies, and (2) the capacity to cope with competition and market forces within the European Union by the date of accession.³² Under the condition for a functioning market economy, the Commission monitors a number of sub-criteria, such as macroeconomic stability, free interplay of market forces, and an adequate legal system for regulating the economy in the applicant country.³³ The second sub-condition, the ability to cope with competition and market forces within the European Union, is assessed on the basis of factors which include the existence of a market economy, trade and investment integration with the European Union, and adequate

Framework Convention for the Protection of National Minorities as a legally binding instrument concerned with the protection of national minorities).

31. See European Commission, *Support for the Roma and Communities in Central and Eastern Europe* 4, http://ec.europa.eu/enlargement/pdf/brochure_roma_oct2003_en.pdf (stating that the situation of minorities such as the Roma is “taken into consideration in assessing the capacity of candidate countries to become Members of the European Union”); see also Marktler, *supra* note 20, at 352 (noting the lack of progress by candidate countries in implementing the Framework Convention for the Protection of National Minorities especially with regards to the Roma minority).

32. See European Commission, *Economic Accession Criteria*, http://ec.europa.eu/economy_finance/international/enlargement/criteria/ (last visited Nov. 5, 2013) (explaining that the Copenhagen economic criteria requires acceding countries to be functioning market economies, and “to have, by the date of accession, the capacity to cope with competition and market forces within the EU”); European Commission, *Progress Towards Meeting the Economic Criteria for EU Accession: The EU Commission’s 2012 Assessments*, in *EUROPEAN ECONOMY 1, OCCASIONAL PAPERS 122* (Dec. 2012), available at http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp122_en.pdf [hereinafter *European Economy*] (identifying the existence of “a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union” as the Copenhagen economic criteria).

33. See European Commission, *Economic Accession Criteria*, *supra* note 32 (listing the sub-criteria required for being a functional market economy); see also *European Economy*, *supra* note 32, at 2 (providing the sub-criteria applied by the Commission in examining the existence of a functional market economy); Marktler, *supra* note 20, at 353 (citing the elements taken into consideration by the Commission in assessing a functional market economy).

sectorial and enterprise structures.³⁴ The Commission's inquiry into these subcategories is intended to provide a snapshot of the viability of the applicant country's economy.³⁵

3. Legal/*Acquis* Criteria

Finally, the Commission assesses a candidate country's legal system and ability to take on the legal obligations of EU membership and to adopt, implement, and enforce the *acquis communautaire*.³⁶ The *acquis* is defined as the binding body of common rights and obligations applicable to all EU Member States.³⁷ Within this penumbra of EU laws fall all treaties, directives, regulations, decisions, declarations and resolutions, international agreements, and the judgments of the European Court of Justice.³⁸ In fulfilling the Copenhagen *acquis* criterion, a candidate country must undergo legal affinity by both

34. See European Commission, *Economic Accession Criteria*, *supra* note 32 (providing a list of what is required to be competitive in the European Union); see European Economy, *supra* note 32, at 2 (explaining in greater detail the factors used to assess a country's capacity to withstand competitive pressure and market forces within the European Union); Marktler, *supra* note 20, at 354 (citing the definition used by the Commission in determining a country's capacity to withstand competitive pressure and market forces within the European Union).

35. See Marktler, *supra* note 20 (describing the subcategories of the elements used to evaluate an applicant country's economy); see also European Economy, *supra* note 32 (noting some of the factors used to assess the capacity of an applicant country's capacity economy).

36. See Christen B. Jacobsen, *Implementing the Acquis Communautaire – The Fight Over 80.000 Pages* 5 (Riga Graduate Sch. L., Working Paper No. 7, 2002) (noting that all candidate countries must formally accept the *acquis communautaire* and demonstrate the capacity to become constructive and loyal EU Members); see also Hillion, *supra* note 21, at 8 (explaining that the applicant country has to demonstrate the ability to take on the obligations of membership, which entail the acceptance and observance of the *acquis communautaire*).

37. *Enlargement—Acquis*, EUROPEAN COMMISSION, http://ec.europa.eu/enlargement/policy/glossary/terms/acquis_en.htm (last visited Nov. 6, 2013) (defining *acquis* as “the body of common rights and obligations that is binding on all the European Union Member States”); see Vaughne Miller, *The EU's Acquis Communautaire*, SN/IA/5944, at 2 (Apr. 26, 2011) (noting that the *acquis* is the accumulated body of EU law and obligations from 1958 to date).

38. See *Enlargement—Acquis*, *supra* note 37 (listing what the European Union *acquis* comprises of); see also Jacobsen, *supra* note 36, at 6–7 (dividing the *acquis* into fifteen different groups and identifying the wide variety of EU laws that fall within each group).

accepting the evolving nature of EU law and making EU law part of, and superior to, national law.³⁹

The Commission has divided all current EU rules into thirty-five different policy fields, known as chapters.⁴⁰ The chapters provide the rules of regulation within the European Union, from the free movement of goods, workers, services, and capital, to company law and science and research.⁴¹ For each chapter, the applicant country must negotiate the conditions and timing of the adoption, implementation, and enforcement of the rules within the country.⁴² The candidate countries are required to adopt the *acquis* in its entirety, but can negotiate about when and how each chapter shall be implemented during the accession process.⁴³ The Commission analyzes the applicant country's legal system through a process called screening, determines when each chapter should be adopted, and later closes each chapter after the relevant area of EU law fully implemented into the applicant's national legal structure.⁴⁴

39. See Jacobsen, *supra* note 36, at 7 (explaining that candidate countries must accept the dynamic nature of EU law and that EU law takes priority over national law); see also Marktler, *supra* note 20, at 355 (noting the importance that the Commission has given to the effective incorporation of community legislation into national legislation by candidate countries).

40. *Conditions for Membership*, *supra* note 6 (stating that the *acquis* is divided into 35 different policy fields); see also Miller, *supra* note 37, at 2 (noting that in preparing to join the European Union, acceding states must accept all the existing *acquis* which covers 35 policy areas).

41. *Chapters of the Acquis*, EUROPEAN COMMISSION, http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index_en.htm (last visited Nov. 6, 2013) (listing all 35 chapters of the *acquis* and providing a brief summary of what each chapter entails); see also *Croatia 2011 Progress Report*, *supra* note 28, at 25–66 (providing a list and analysis of all the chapters used to assess Croatia's ability to assume the obligations of membership).

42. See *Conditions for Membership*, *supra* note 6 (noting that the conditions and timing for the candidate's adoption, implementation and enforcement of the *acquis* is negotiated by chapter); see also Marktler, *supra* note 20, at 354–55 (discussing the negotiation process for candidate countries in adopting the European Union *acquis*).

43. See *Conditions for Membership*, *supra* note 6 (stating that the chapters themselves are not negotiable but the "candidates essentially agree on how and when to adopt and implement them"); see also *The Accession Process for a New Member State*, EUROPA, http://europa.eu/legislation_summaries/enlargement/ongoing_enlargement/114536_en.htm (last visited Nov. 6, 2013) (providing an overview of the negotiation process for candidate countries).

44. See *The Accession Process for a New Member State*, *supra* note 43 (noting that the Council decides unanimously on the opening of a chapter and the benchmarks on the basis of the Commission's recommendations); see also *Steps Towards Joining*,

Failure to adopt substantial reforms or discontinued efforts by the candidate country in meeting the benchmarks for a chapter can cause a closed chapter to reopen and suspension of open chapters.⁴⁵ Otherwise, once the applicant country accepts the *acquis* and adopts each chapter necessary for accession into their national legal system, an Accession Treaty is signed to complete this process.⁴⁶

B. *The “Uniqueness” and Accession Process of the Western Balkan Countries*

The European Union’s interest in the Western Balkan transition after the fall of Communism spurred aspirations of political and economic growth in the region, while providing the European Union with a way to achieve stability and diplomacy among these contentious states.⁴⁷ The result was the development and implementation of a regional approach by the European Union towards the Western Balkans, a region encompassing Albania and all the former Yugoslavian states, with the exception of Slovenia.⁴⁸ This regional approach was

http://ec.europa.eu/enlargement/policy/steps-towards-joining/index_en.htm (last visited Nov. 6, 2013) (providing a detailed explanation of the process of negotiation).

45. See *The Accession Process for a New Member State*, *supra* note 43 (stating that a chapter can be reopened if the reforms are deemed insufficient); see also *Steps Towards Joining*, *supra* note 44 (noting that the Commission can reopen closed chapters if it is no longer satisfied with the candidate country’s progress in that policy field).

46. See *The Accession Process for a New Member State*, *supra* note 43 (explaining that the Accession Treaty is signed when the Commission considers the candidate country’s reforms sufficient); see also *Steps Towards Joining*, *supra* note 44 (stating that even after the signing of the Accession Treaty, an acceding country must continue reforms to ensure that everything is completed before the Treaty becomes final and binding).

47. See LUCIA VESNIC-ALUJEVIC, EUROPEAN INTEGRATION OF WESTERN BALKANS: FROM RECONCILIATION TO EUROPEAN FUTURE 19 (2012), *available at* http://thinkingeurope.eu/sites/default/files/publication-files/european_integration_of_western_balkans.pdf (observing that the European Union’s primary interest was in stabilizing the region since each country expressed interest in joining the European Union); see also Borzel & Risse, *supra* note 18, at 10 (suggesting that given the European Union’s earlier success in consolidating democratic transition through enlargement as a transformation tool, membership conditionality was employed as an instrument to stabilize the Western Balkans region which the European Union considers vital to its geopolitical interests).

48. See Council Regulation 533/2004, 2004 O.J. L 86/1 (identifying Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, and the former Yugoslav Republic of Macedonia as the countries that compose the Western Balkans for SAP framework); see also Aleksandar Kostadinov, *FDI Performance Index of Western Balkan*

adopted during the Helsinki Council and became known as the SAP.⁴⁹ Part I.B analyzes the accession process as applied to Western Balkan countries through the SAP framework. This Part then places the SAP in context by exploring the “uniqueness” of the Western Balkan region.

1. The Accession Process for Western Balkan Countries

The SAP creates extra requirements for accession vis-à-vis applicant countries from the Western Balkan region. It is guided primarily by the principle of conditionality, under which the European Union reserves the right to unilaterally impose sanctions and provide incentives in response to a candidate country’s compliance with the Copenhagen criteria and EU conditions.⁵⁰ Thus, the conditionality of the SAP allows the European Union to singlehandedly control the pace of the accession process in Western Balkan states.⁵¹

The SAP has three central aims: (1) political stability and swift transition to a market economy; (2) regional cooperation; and (3) the likelihood of EU membership.⁵² To achieve these

Countries, 1 ANALYTICA J. 18 (2008) (stating that the Western Balkan refers to Albania, Bosnia and Herzegovina, Croatia, Macedonia, Serbia, and Montenegro).

49. Dimitar Bechev, *Carrots, Sticks and Norms: The EU and Regional Cooperation in Southeast Europe*, 8 J. S. EUR. & BALKANS 27, 35 (2006) (stating that the Helsinki Council decided to replace its Regional Approach with the SAP); see Elbasani, *supra* note 5, at 295-99 (outlining the history and development of the Regional Approach into the SAP for the Western Balkan countries).

50. See Liu Zuokui, *EU’s Conditionality and the Western Balkans’ Accession Roads*, 2 J. ON EUR. PERSP. W. BALKANS 79, 83-84 (defining positive and negative conditionality policy employed by the European Union in achieving its objectives in the Western Balkan countries); see also Enik Pogace, *Examining European Community Law Principles in a New Legal Context: Placing the Stabilization and Association Agreement Under the Constitutional Legal Framework of Albania I*, 10 (Queen Mary Sch. L. Legal Stud., 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1732546 (noting that conditionality has been engraved into the Copenhagen criteria by providing incentives or restraints for candidate states to become EU Members).

51. See Gorica Atanasova, *Does Europeanization Equal Democratisation?*, 1 ANALYTICA J. 1, 6-7 (2008) (noting the asymmetry in power over the process that arises out of conditionality); see also Heather Grabbe, *Europeanization Goes East: Power and Uncertainty in the EU Accession Process*, in THE POLITICS OF EUROPEANIZATION 303, (Kevin Featherstone & Claudio M. Radaelli eds., 2003) (arguing that conditionality gives the European Union greater control over the accession process).

52. See *2005 Enlargement Strategy Paper*, at 2-4, COM (2005) 561 final (Nov. 9, 2005) (setting forth the European Union’s enlargement policy and insisting on the principle of conditionality for Western Balkan countries); *Steps Towards Joining*, *supra* note 44 (presenting the aims of the SAP).

aims and incentivize Western Balkan countries' compliance with SAA requirements, the European Union employs a number of different tactics. For example, the European Union may employ trade concessions in the form of duty-free access to EU markets, economic and financial assistance through its Instrument for Pre-Accession Assistance ("IPA"), reconstruction, stabilization and development assistance, and, most importantly, SAAs, to meet the requirements of the SAP.⁵³

Moreover, SAAs provide both a legal and institutional framework for the accession process. On the one hand, they regulate relations between the Member States and the candidate country by functioning as a contractual relationship with legal effects under Article 218 of the Treaty on the Functioning of the European Union ("TFEU").⁵⁴ On the other hand, they provide for mechanisms and bodies charged with the implementation, administration, and monitoring of all areas covered by the SAA.⁵⁵ The SAA covers a multitude of legal areas that are divided into ten titles that includes political dialogue, regional cooperation, free movement of goods and workers, and financial cooperation.⁵⁶ Upon receipt of an application for membership by a candidate country, the Commission issues a

53. See *Steps Towards Joining*, *supra* note 44 (listing the instrumentalities employed by the European Union in guiding Western Balkan countries through the SAP); see also Bechev, *supra* note 49, at 35–36 (noting that the European Union agreed under the SAP framework to open its markets to allow Western Balkan countries duty-free access and to provide economic and financial assistance).

54. Consolidated Version of the Treaty on the Functioning of the European Union art. 218, 2012 O.J. C 326/47, at 144–46 [hereinafter TFEU]; see Gjevori, *supra* note 10, at 440 (noting that the SAAs are EU association agreements that have legal effects in different legal orders under Article 218 of the TFEU); see also Pogace, *supra* note 50, at 17 (indicating that the SAA represents a contractual relation and a legal instrument between the European Union and the candidate country under Article 310 of the Treaty Establishing the European Community which is not Article 218 of the TFEU).

55. See Pogace, *supra* note 50, at 16 (discussing the SAA between Albania and the European Union); see also *Proposal for a Council Decision Concerning the Signature of the Stabilisation and Association Agreement between the European Communities and its Member States and the Republic of Croatia on Behalf of the European Community*, COM (2001) 371 final (Sep. 9, 2001) [hereinafter *SAA between European Community and Croatia*] (providing an example of an SAA).

56. See Pogace, *supra* note 50, at 16 (listing the titles that are included in the SAA between Albania and the European Union); see also *SAA between European Community and Croatia*, *supra* note 57 (providing a more extensive list of the titles it contains).

formal recommendation and feasibility report to the European Council on whether to sign an SAA.⁵⁷

The SAA leads the accession process when it enters into force and only lapses when a candidate country obtains EU membership.⁵⁸ Within its framework, the Commission designates short and medium-term priorities for the candidate country to implement during the accession process in order to meet the accession criteria.⁵⁹ In this regard, the SAAs have become a key part of the pre-accession phase and the Commission presents to the Council its opinion on whether the applicant country should be granted candidate status based on the country's positive progress towards implementing the SAA.⁶⁰

For Western Balkan countries, the road to the European Union begins with the submission of a formal application to join the European Union, triggering a sequence of evaluation procedures.⁶¹ The candidate country then proceeds to negotiate

57. See Archick, *supra* note 13, at 5 (indicating that the Commission issues a formal opinion on the aspirant country, after which the Council decides whether to accept the application); see also *2005 Enlargement Strategy Paper*, *supra* note 52, at 10 (stating that the Commission can recommend to the Council in a feasibility report whether and under what conditions the SAA negotiations should begin).

58. Council Regulation 533/2004, on the Establishment of European Partnerships in the Framework of the Stabilisation and Association Process, 2004 O.J. L 86/1 (stating that the SAA provides the framework for the Western Balkan country's accession process until their integration into the European Union).

59. See Bruno S. Sergi & Qerim Qerimi, *The Process of EU Enlargement Towards South-Eastern Europe: Current Challenges and Perspectives*, 2007 *SOUTH-EAST EUR. REV. LAB. & SOC. AFF.* 57, 58 (2007) (describing the Accession Partnership and explaining that a candidate country must fulfill short-term and medium-term priorities designated by the Union in order to make progress towards meeting the accession criteria); see also Qerim Qerimi, *South-east Europe's EU Integration: Dreams and Realities*, 2002 *SOUTH-EAST EUR. REV. LAB. & SOC. AFF.* 43, 45 (2002) (noting that the Union indicates short- and medium-term priorities for the candidate country to implement in making progress towards fulfilling the accession criteria).

60. See *2005 Enlargement Strategy Paper*, *supra* note 52, at 10 (indicating that upon proper implementation of the SAA, a country can move to the next phases of candidate status and then accession negotiations); see also European Commission, *EU Enlargement Fact Sheet*, available at http://ec.europa.eu/enlargement/pdf/publication/factsheet_en.pdf (documenting the main steps to EU accession and noting that if the Commission has a favorable opinion of the applicant country's status, the Council may decide to consider the applicant a candidate country).

61. See *On the Path to EU Membership: The EU Enlargement Process*, EU INSIGHT 2 (Dec. 2010) (noting that a country starts the process for EU membership by submitting an application resulting in a number of evaluations); see also ARCHICK, *supra* note 13, at 5 (explaining that when a country submits an application to join the European Union, it triggers a complex process of evaluation).

an SAA, which determines the specific conditions that must be met by that country along with the Copenhagen criteria.⁶² As mentioned, the SAA imposes specific requirements for the member state and does not cover all of the conditions and criteria for EU membership, thus the Commission closely monitors a candidate country's compliance with both the SAA conditions and the Copenhagen criteria.⁶³ Compliance under the SAA and Copenhagen criteria typically occurs in stages, with the Commission submitting its evaluations through annual progress reports to the European Council and the European Parliament.⁶⁴

An applicant is granted candidate status at some point during this evaluation of its progress in meeting the SAA and Copenhagen criteria, and later enters accession negotiations.⁶⁵ A satisfactory conclusion of negotiations leads to the submission of the Draft Accession Treaty for approval of the Council, the Commission, and the European Parliament.⁶⁶ The approved treaty is signed and submitted to all Member States and the candidate country for ratification in accordance with their

62. See Benjamin Rey, *Fact Sheets on the European Union – The Western Balkans*, EUROPEAN PARLIAMENT (Jan. 2014), available at http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_6.5.2.html (describing the accession process under the SAP framework for Western Balkan countries); see also *Croatia: Stabilisation and Association Agreement Negotiations with Croatia Concluded*, IP/01/688 (May 14, 2001) (discussing the SAA negotiations between Croatia and the European Union).

63. See *Conditions for Membership*, *supra* note 6 (noting that the Commission closely monitors compliance with the SAA and the Copenhagen criteria); see also Borzel & Risse, *supra* note 18, at 11 (stating that the Commission monitored and reported the progress of each candidate).

64. See *Conditions for Membership*, *supra* note 6 (noting that the Commission keeps the Council and European Parliament informed throughout the process by submitting regular reports, strategy papers, and clarifications on conditions for further progress); see also Borzel & Risse, *supra* note 18, at 9 (stating that the Commission reported on the progress of each candidate country and made recommendations for improvements in an annual report presented to the European Council).

65. See *supra* notes 42–45 and accompanying text (discussing the negotiation process once a candidate country enters the negotiations stage).

66. See *On the Path to EU Membership: The EU Enlargement Process*, *supra* note 63 (indicating that after negotiations are concluded to the satisfaction of both sides, a Draft Accession Treaty is submitted for approval to the Council of the European Union, the European Commission, and the European Parliament); see also *EU Enlargement Fact Sheet*, *supra* note 62 (stating that the accession treaty must be approved by the Council of the European Union, the European Commission, and the European Parliament).

respective constitutional rules.⁶⁷ Finally, the candidate country becomes an EU Member State on the date specified in the treaty.⁶⁸

2. Why the Western Balkan Region Presents a Unique Case

The collapse of Communism and the violent disintegration of the Federal Republic of Yugoslavia saw the emergence of new polarized and variegated nation states plagued by limited democratic experience, weak institutions that impeded politico-economic progress, and dysfunctional economies.⁶⁹ Realizing the new nations' need for guidance, the European Union undertook significant efforts to sustain the regional transition to multiparty democracies and market economies.⁷⁰ The slow reform process and the lack of cooperation within the Western Balkan region, however, earned the region the label of Europe's "black hole."⁷¹ The effective implementation of the European Union's regional approach required the European Union to

67. See *supra* note 46 and accompanying text (describing the process for an accession treaty between the candidate country and the Member States).

68. See *Steps Towards Joining*, *supra* note 44 (stating that a candidate country becomes a full EU Member on the date laid down in the treaty); see also *On the Path to EU Membership: The EU Enlargement Process*, *supra* note 63 (indicating that the candidate country becomes an EU Member State once the treaty enters into force on its scheduled date).

69. See Leeda Demetropoulou, *Europe and the Balkans: Membership Aspiration, EU Involvement and Europeanization Capacity in South Eastern Europe*, 3 *SOUTHEAST EUR. POL.* 87, 87–88 (2002) (describing the effects that the collapse of Communism and the disintegration of Yugoslavia had on the Balkan region); see also Panagiotou, *supra* note 54, at 358–59 (illustrating the impact of communism and its aftermath in Albania as an example of the transition for other countries in the Balkan region).

70. See Sergi & Qerimi, *supra* note 61, at 61 (observing that following the post-communism changes that took place in the Balkan region the European Union undertook a series of measures to ensure the continued transition to multiparty democracies and market economies); see also Gergana Noutcheva, *EU Conditionality And Balkan Compliance: Does Sovereignty Matter?* 1 (Apr. 17, 2006) (unpublished Ph.D. dissertation, University of Pittsburgh) (on file with author) (reporting that the incentives provided by EU membership stimulated reform in the establishment of liberal democracies and market economies during the transition period for Western Balkan countries).

71. See Atanasova, *supra* note 51, at 1 (indicating that despite belonging to Europe geographically, the Western Balkans have been labeled as the 'black hole' of the continent); see also Gaelle Perio, *EU-Western Balkan Relations: The European Bermuda Triangle?*, *EUROPEAN ISSUE* (Feb 20, 2011), at 6, available at <http://www.robert-schuman.eu/en/doc/questions-d-europe/qe-195-en.pdf> (arguing that the Balkans are the 'black hole' and cause of problems within the European Union).

perform a balancing act whereby its priorities of stabilization and regional cooperation in the Western Balkans were weighed against the individual state competition created by the SAP, as only states that worked to conform and meet the requirements for accession moved forward in the accession process.⁷² Conditionality became the European Union's instrument of choice in achieving this balance, and the cornerstone of the SAP.⁷³

While adopting the European Union *acquis* was sufficient to ensure membership during the first four Western Europe enlargements, the EU enlargement strategy became even more stringent toward the Western Balkan countries, with conditionality taking the form of a "carrot and stick" policy.⁷⁴ The guaranteed access to different SAP stages provided powerful incentives for compliance with the political and economic conditions.⁷⁵ The European Union also believed that conditionality alongside the Copenhagen criteria would allow

72. See Jacques Rupnik, *The Balkans as a European Question*, in *THE WESTERN BALKANS AND THE EU: 'THE HOUR OF EUROPE'* 17, 20 (Jacques Rupnik ed., 2011) (recognizing that the question of whether the European Union can develop a coherent regional approach relates back to the debate on the regional priorities of the Stability Pact versus the individual competition encouraged by the SAP); see also Atanasova, *supra* note 51, at 1 (juxtaposing two dimensions of the European Union approach towards the Western Balkans, namely, the European Union's role as a soft arbiter focused on mediation and conflict resolution in the region and the prospect of membership offered to Western Balkan countries).

73. See Zuokui, *supra* note 50, at 83–84 (analyzing conditionality as it is applied to Western Balkan countries by the European Union); see Tina Freyburg & Solveig Richter, *National Identity Matters: The Limited Impact of EU Political Conditionality in the Western Balkans* 1 (Nat'l Ctr. Competence Res., Working Paper No. 19, 2008) (affirming that conditionality is aimed to induce behavioral adaptation by the applicant Western Balkan countries in response to incentives offered by the European Union); see also Elbasani, *supra* note 5, at 299 (identifying conditionality as the "very 'cement of the SAP'").

74. See Zuokui, *supra* note 50, at 83–84 (defining positive and negative conditionality as the "carrot and stick" policy employed by the European Union in achieving its objectives in the Western Balkan countries); see also Pogace, *supra* note 50, at 10 (noting that conditionality has been engraved into the Copenhagen criteria by providing incentives or restraints for candidate states to become EU Members).

75. See Trauner, *supra* note 4, at 7 (commenting on the fact that access to different stages of the SAP provides an incentive for Western Balkan countries to comply with EU conditionality); see also Zuokui, *supra* note 50, at 83–84 (identifying EU membership, trade preferences and participation in programmes as some of the benefits Western Balkan countries derive from satisfying political and economic conditions).

the Commission to impartially assess a candidate country's compliance and thereby result in merit-based accession.⁷⁶

The unique social, economic, and political character of the Western Balkan region, along with its reputation as a source of organized crime, unwanted migrant labor, and other problems, seems to shed light on the development of the SAP and SAAs as a key part of the accession process for Western Balkan countries.

II. *PLACING IT ALL IN CONTEXT: ACCESSION IN CROATIA AND ALBANIA*

Part II analyzes the application of both the SAP and the Copenhagen criteria to candidate countries by closely examining the process in two Western Balkan countries, Croatia and Albania. Part II.A provides a brief overview of the benefits derived from the accession for both the European Union and the Western Balkan countries. It further examines Croatia's accession process and juxtaposes it with Albania's accession process in order to provide a nuanced understanding of the accession criteria and SAP as applied.

A. Balancing Mutual Benefits

An analysis of the accession process for Western Balkan countries gives rise to the question of why a Western Balkan country would want to embark upon such a lengthy process? What is gained? For Western Balkan countries, participation in the accession process and EU membership carries geopolitical and economic benefits that are difficult to overlook.⁷⁷ From 2007 to 2013, over the span of just six years, the Western Balkan

76. See Kochenov, *supra* note 22, at 23 (arguing that the Copenhagen criteria and EU's conditionality were used to introduce a system on the basis of which the Commission could impartially assess a candidate country's compliance with its conditions and criteria); see also Zuokui, *supra* note 50, at 92 (affirming that the European Union emphasizes the objectivity of conditionality that the Commission must apply to all candidates equally and at all times).

77. See Bartol Letica, *Europe's Second Chance: European Union Enlargement To Croatia And The Western Balkans*, 28 *FLETCHER F. WORLD AFF.* 209, 215 (2004) (indicating that applicant states want to join the European union because of the economic and geopolitical benefits that come with membership); see also Qerimi, *supra* note 61, at 46 (explaining that the first motivation for Western Balkan countries to join the European Union was the desire to change to pluralist democracies and have access to economic benefits).

candidate countries received close to EU€12 billion in funding through the IPA program to help in institution building, cross-border cooperation, and rural, regional, and cross-border development.⁷⁸ The visa liberalization process, which allowed visa-free travel to the European Union, is another benefit derived from the accession process and employed by the European Union to incentivize the strengthening of reform efforts.⁷⁹ The European Union also offers a political security dimension, which allows leaders in candidate countries to implement changes, such as introducing new legislation that would otherwise be domestically unpopular.⁸⁰ Moreover, EU membership enables the Western Balkan countries to disentangle themselves from the past by giving them a sense of belonging within Europe.⁸¹

The benefits that flow from Western Balkan membership are also advantageous to the European Union. The Western Balkan countries are considered the European Union's "backyard" and have strong economic and social ties to other

78. See European Commission, *Overview—Instrument for Pre-accession Assistance*, http://ec.europa.eu/enlargement/instruments/overview/index_en.htm (last visited Mar. 12, 2014) (providing an overview of the IPA, its purpose and its legal basis); see also 2011 ANNUAL REPORT ON FINANCIAL ASSISTANCE FOR ENLARGEMENT 5, (2012), available at http://ec.europa.eu/enlargement/pdf/key_documents/2012/2011_ipa_annual_report_with_annex_new_en.pdf (discussing the IPA as applied to the Western Balkan countries).

79. See Florian Trauner, *EU Justice and Home Affairs Strategy in the Western Balkans: Conflicting Objectives in the Pre-Accession Strategy* 1, 14 (Ctr. for Eur. Policy Stud., Working Paper No. 259, 2007) (noting the European Union's use of visa liberalization to effect change in the Western Balkan countries); see also Igor Stiks, *The European Union and Citizenship Regimes In the Western Balkans*, in *THE WESTERN BALKANS AND THE EU: 'THE HOUR OF EUROPE'*, *supra* note 72, at 123, 129 (explaining the importance of visa liberalization for the European Union and how it is employed towards the Western Balkan countries).

80. See Mustafa Turkes & Goksu Gokgoz, *The European Union's Strategy Towards the Western Balkans: Exclusion or Integration?*, 20 E. EUR. POL. & SOCIETIES 659, 665 (2006) (noting that security plays an important role in motivating candidate countries to join the European Union); see also Letica, *supra* note 79, at 216 (explaining that EU membership allows leaders of Western Balkan countries to implement changes that would not garner popular support and also insulates them from bureaucratic and interest group pressures).

81. See Letica, *supra* note 79, at 216 (explaining the symbolic value of belonging that joining the European Union carries for Western Balkan countries); see also Turkes & Gokgoz, *supra* note 82, at 664–65 (observing the desire of individual Western Balkan countries to dissociate themselves from their past and "rid themselves of the dreaded name 'the Balkans'").

Member States.⁸² Without control over the region, this can have a negative spillover effect that can compromise the Union's security and stability.⁸³ Thus, through the integration of the Western Balkan countries, the European Union can avoid the shame of losing its sphere of influence and geo-strategic position, increase its international presence, and simultaneously preserve its community-based identity.⁸⁴ Moreover, the Western Balkans house the most pro-Western Muslim and secular communities in Europe and the Islamic world, providing both geopolitical and economic benefits.⁸⁵ From the European Union's standpoint, conditionality in the accession process can be translated into a formula that benefits both the Western Balkan countries and the European Union: compliance with the European Union's requirements equals new perquisites for the Western Balkans which in turn equals better control over the region and less problems for the European Union.⁸⁶

82. See Adam Balcer, *Putting European House in Order: The EU and the Western Balkans*, in *IN SEARCH OF A NEW PARADIGM: THE WESTERN BALKANS AND THE EU INTEGRATION* 7, 21 (2013), available at http://www.demoservices.home.pl/www/files/demos_paradigm.pdf (emphasizing the geographical proximity and the close links between the Western Balkans and the European Union); see also Noutcheva, *supra* note 72, at 234 (noting the Western Balkan's geographical location as the European Union's backyard).

83. See Balcer, *supra* note 82, at 21 (highlighting the potential for a domino effect from the Western Balkan countries that can destabilize the European Union); see also Noutcheva, *supra* note 72, at 234 (stating that the European Union is most interested in maintaining security and stability).

84. See Noutcheva, *supra* note 72, at 2 (discussing the different reasons for European Union's enlargement policy); Perio, *supra* note 73, at 8 (indicating that the European Union would not want to lose its sphere of influence over the Western Balkans to the United States); see also Turkes & Gokgoz, *supra* note 80, at 666 (arguing that the accession of the Western Balkan countries would increase the European Union's international presence).

85. See Balcer, *supra* note 82, at 22–23 (emphasizing that the importance of the Western Balkans for the European Union derives from their large native Muslim communities); see also Perio, *supra* note 73, at 8 (asserting the importance of the multifariousness of religions and ethnicities in the Western Balkans for the European Union).

86. See generally Zuokui, *supra* note 50 (explaining the impact of conditionality on economic, political and legal reform in Western Balkan countries); Elke Thiel, *European Integration of Albania: Economic Aspects* 1 (Bamberg Econ. Res. Grp., Working Paper No. 49, 2004) (stating that although EU membership may be the ultimate goal, the accession process is what brings the rewards).

B. *Case Studies: The Application of the Accession Criteria to Croatia and Albania*

In light of the foregoing discussion and the context it provides, this Part examines the EU accession process in two Western Balkan countries, Croatia and Albania.⁸⁷ An analysis of Croatia, which was the first Western Balkan country to successfully complete the SAP and become an EU Member State, provides a fuller understanding of the Western Balkan accession process from inception to completion.⁸⁸ This process is then compared to Albania's ongoing accession. The comparison between the two countries serves to highlight the effect that the requirements under the SAP and the policy of conditionality has had in significantly slowing down the overall process for Western Balkan countries.⁸⁹

87. *See supra* Part I.B and Part II.A and accompanying notes.

88. *See supra* notes 1, 6 and accompanying text.

89. *See supra* note 8–12 and accompanying text.

TABLE 1: Timeline Comparing Croatia and Albania's EU Accession Process

Date	Key Stages for Croatia	Key Stages for Albania
November 2000	SAP is launched by the EU as the policy to govern accession for the five countries of South-Eastern Europe (the Balkan countries)	
October 2001	Croatia and the EU sign the SAA	
January 2003		Negotiations for SAA between Albania and EU launched
February 2003	Croatia submits formal application for EU membership	
June 2003	Thessaloniki European Council confirms the application of SAP and SAAs to the Western Balkan countries	
April 2004	Commission issues positive opinion on Croatia's application for EU membership	
June 2004	Croatia obtains the status of candidate country and the Council sets entry negotiations to begin in 2005	
February 2005	SAA for Croatia enters into force	
October 2005	ICTY confirms Croatia's cooperation, screening stage of accession negotiations begins and accession negotiations are launched	
June 2006		
April 2009		SAA for Albania enters into force and

		Albania submits application for EU membership
June 2011	Accession negotiations formally end for Croatia – last of 35 negotiated chapters is closed meaning Croatia implemented the <i>acquis communautaire</i> and was ready to undertake the obligations of EU membership	
October 2011	Commission adopts favorable opinion of Croatia’s accession to the EU and issues last progress report	
December 2011	Croatia and the 27 EU Member States sign the EU Accession Treaty	
June 2012		Commission issues opinion on Albania’s application for EU membership and lays out 12 key priorities to be fulfilled in view of opening accession negotiations
October 2012		Commission recommends that Albania be granted candidate status
July 2013	Croatia joins the EU	
December 2013		EU Member States vote to postpone decision on whether to grant Albania candidate status until June 2014

C. Croatia's Road to the European Union

Having declared its independence from the Yugoslav Federation in 1991, Croatia's sovereignty and the process of state-building were afflicted by a number of tribulations.⁹⁰ For Croatia, EU membership was not only viewed as the best means of escaping the regional and national problems facing a newly independent country, but also as a return to Europe.⁹¹ From the outset, Croatia was a frontrunner for EU membership in the Western Balkan region because of its developed economy, stronger institutional framework, and more stable political environment.⁹² It maintained this positive trajectory toward member status by signing an SAA in October 2001, and formally applying for membership shortly after on February 21, 2003.⁹³ The European Union also appeared keen to make Croatia a member, granting Croatia candidate status just one year after its application for membership. For Albania, on the other hand, even a four-year time lapse was insufficient to obtain candidate status.⁹⁴ This momentum, however, came to an abrupt halt on March 16, 2005, a day before the scheduled commencement of accession negotiations, when the Commission concluded that Croatia's cooperation with the International Criminal Tribunal

90. See Jovic, *supra* note 7, at 205 (discussing Croatia's declaration of independence, its limited sovereignty and subsequent problems); see also Noutcheva, *supra* note 72 (explaining the aftermath of the dissolution of the Federal Republic of Yugoslavia).

91. See Jovic, *supra* note 7, at 206 (explaining that Croatians emphasize the European roots of national identity and saw EU membership as a way of "departing from the Balkans" and "returning back home"); see also Letica, *supra* note 79, at 216 (highlighting that besides the economic and geopolitical benefits, EU membership held a symbolic value for Croatia because it proved that they belonged to Europe).

92. See *Croatia 2011 Progress Report*, *supra* note 28, at 3 (stating that the SAA between Croatia and the European Union was signed in October, 2001 and providing timeline for subsequent steps towards accession); see also Trauner, *supra* note 4, at 10 (providing a brief description and timeline of Croatia's accession process).

93. See *Croatia 2011 Progress Report*, *supra* note 28, at 3 (stating that the SAA between Croatia and the European Union was signed in October 2001 and providing timeline for subsequent steps towards accession); see also Trauner, *supra* note 4, at 10 (providing a brief description and timeline of Croatia's accession process).

94. See European Commission, *Key Findings on the 2011 Progress Report on Croatia 2*, MEMO/11/688 (Oct. 12, 2011) (providing key dates for Croatia's accession process); see also Florian Trauner, *EU Justice and Home Affairs Strategy in the Western Balkans: Conflicting Objectives in the Pre-Accession Strategy* 8 (Ctr. for Eur. Policy Stud., Working Paper No. 259, 2007) (noting that the Council granted Croatia the status of candidate in June 2004).

for the Former Yugoslavia (“ICTY”) was insufficient.⁹⁵ The ICTY, a body created by the United Nations to try leaders of genocide and war crimes, reported that for over four years Croatia failed to extradite the fugitive General Ante Gotovina, who was indicted for war crimes.⁹⁶ The European Union, therefore, conditioned Croatia’s accession on cooperation with the ICTY, separate and aside from its satisfaction of the traditional Copenhagen criteria, pursuant to the added requirements for accession imposed by SAAs under the SAP.⁹⁷

Croatia had difficulty meeting the political component of the Copenhagen criteria amid the added conditional requirements imposed by the EU and allowed by the SAP.⁹⁸ Not only was Croatia required to comply with the traditional Copenhagen political criteria, but also had to comply with the additional requirements under the SAA of cooperation with the ICTY and regional cooperation with other Western Balkan states.⁹⁹ These additional political conditions generated considerable domestic resentment in Croatia where many saw mandatory cooperation with the ICTY as an EU attack on

95. See Archick, *supra* note 13, at 6 (asserting that the start of accession talks for Croatia’s was delayed because EU Members believed that Croatia was not cooperating sufficiently with the International Criminal Court for the Former Yugoslavia (“ICTY”) in apprehending a war suspect); see also Bechev, *supra* note 49, at 40 (stating that failure of the Croatian government to cooperate with the ICTY resulted in the postponement of membership negotiations).

96. See Freyburg & Richter, *supra* note 75, at 10 (pointing out that the extradition of General Ante Gotovina was the crucial case for Croatia’s compliance with the ICTY criterion); see also Letica, *supra* note 79, at 221 (positing that the “case of General Ante Gotovina became the ultimate measure of Croatia’s cooperation with the Tribunal”).

97. See *2005 Enlargement Strategy Paper*, *supra* note 52, at 3 (emphasizing that the European Union will apply fair and rigorous conditionality towards applicant countries especially with regards to cooperation with the ICTY); see also Freyburg & Richter, *supra* note 75, at 10 (indicating that the Council decided to schedule accession talks with Croatia on condition that they fully comply with the ICTY).

98. See Marktler, *supra* note 20, at 360 (discussing the requirement for cooperation with the ICTY under the political criteria); see also *2005 Enlargement Strategy Paper*, *supra* note 52, at 20 (indicating under the political criteria for membership that problems arose with Croatia regarding the requirement of full cooperation with the ICTY).

99. See Marktler, *supra* note 20, at 360 (discussing the requirement for cooperation with the ICTY under the political criteria); see also *2005 Enlargement Strategy Paper*, *supra* note 52, at 20 (indicating under the political criteria for membership that problems arose with Croatia regarding the requirement of full cooperation with the ICTY).

Croatia's sovereignty and national identity.¹⁰⁰ The European Union sent a clear message in response—it valued the conditionality that it was allowed under the SAP and an applicant country's failure to comply would bring the accession process to an abrupt standstill.¹⁰¹

As for the traditional Copenhagen political criteria, from an early stage in the accession process the Commission concluded that Croatia was a functioning democracy with stable institutions that guaranteed the rule of law.¹⁰² Croatia continued to have free and fair elections and respected fundamental human rights.¹⁰³ Yet, throughout Croatia's accession process, the protection of minorities, especially the Serbs and Roma, and the implementation of agreements with the force of law that facilitated the return of Serb refugees, were flagged as areas for political improvement.¹⁰⁴ Further, issues with the judicial system

100. See Freyburg & Richter, *supra* note 75, at 11 (characterizing the Croatian protests to cooperation with the ICTY as “attacking the sovereignty of the Croatian state,’ ‘insulting the Croatian identity,’ and ‘defaming the holy homeland war’”); see also Jovic, *supra* note 7, at 205 (observing that since Croatia declared its independence, many felt that its sovereignty had been very limited by its obligations towards the ICTY).

101. See Freyburg & Richter, *supra* note 75, at 9 (noting that the European Union consistently followed a policy of conditionality regarding cooperation with the ICTY where non-compliance was a ‘knock-out’ criterion for membership); see also 2005 *Enlargement Strategy Paper*, *supra* note 52, at 6 (emphasizing that the “sustained full cooperation with the ICTY will remain a requirement for progress throughout the accession process” and that “[l]ess than full cooperation with ICTY at any stage will affect the overall progress of negotiations and could lead to the suspension of the negotiations”).

102. See European Commission, *Croatia: Commission Recommends Opening of Accession Negotiations* 1, IP/04/507, at 1 (Apr. 20, 2004) (indicating that Croatia met the democracy and rule of law elements of the Copenhagen political criteria); see also Marktler, *supra* note 20, at 360 (noting that Croatia was considered by the Commission a functioning democracy with functioning institutions that guarantee the rule of the law).

103. See *Croatia: Commission Recommends Opening of Accession Negotiations*, *supra* note 102, at 1 (indicating that Croatia met the elements of the Copenhagen political criteria); see also Marktler, *supra* note 20, at 360 (noting that Croatia was considered to have met some aspects of the Copenhagen political criteria).

104. See Croatia 2011 Progress Report, *supra* note 28, at 8–13 (assessing Croatia's compliance with the human rights and the protection of minorities requirement of the Copenhagen political criterion); see also 2005 *Enlargement Strategy Paper*, *supra* note 52, at 5 (asserting that Croatia needed to make additional efforts in improving the situation of minorities and facilitate the return of refugees).

and the fight against corruption were among the criteria demanding the greatest reform.¹⁰⁵

Despite its initial setback in satisfying the Copenhagen political criteria and the additional requirements under the SAP, Croatia eventually cooperated with the ICTY and began accession negotiations.¹⁰⁶ Croatia also established bilateral relations with neighboring countries and took regional initiatives as evidence of its regional cooperation.¹⁰⁷ Progress under the political criterion was short-lived, however, and in December 2008, the negotiation process was stalled for ten months when neighboring Slovenia, an EU member, blocked Croatia's accession due to a dispute over the maritime border in the Gulf of Piran.¹⁰⁸ Since a single EU Member State has the power to halt EU accession of candidate countries, it was not until September 2009 that Slovenia decided to allow accession negotiations to continue and detach the border dispute from Croatia's EU membership bid.¹⁰⁹

105. See Marktler, *supra* note 20, at 360 (documenting the Commission's recommendation that Croatia increase its efforts to fight against corruption and reform the judicial system); see also *Croatia: Commission Recommends Opening of Accession Negotiations*, *supra* note 104, at 2 (indicating that Croatia needs additional efforts in the field of judicial reform and fight against corruption).

106. See Archick, *supra* note 13, at 6 (noting that accession talks with Croatia opened in October 2005 upon determination by the European Union that Croatia was in full compliance with the ICTY); see also 2005 Enlargement Strategy Paper, *supra* note 52, at 21 (indicating that in October 2005 the Council decided to move forward with accession negotiations after concluding that the condition for cooperation with the ICTY had been met by Croatia).

107. See 2005 Enlargement Strategy Paper, *supra* note 52, at 5 (noting that Croatia had made good progress on regional cooperation in terms of regional initiative and bilateral relations with neighbors); see also Croatia 2011 Progress Report, *supra* note 28, at 13–16 (discussing Croatia's progressing in meeting the regional issues and international obligations requirement under the Copenhagen political criteria).

108. See Elitsa Vucheva, *Slovenia to Block Croatia EU Accession Talks*, EUOBSERVER, Dec. 18, 2008, <http://euobserver.com/enlargement/27314> (reporting that Slovenia blocked Croatia's accession talks due to a long-running border dispute between the two countries); see also Archick, *supra* note 13, at 6 (noting that Croatia's accession talks were stalled in December 2008 when EU Member Slovenia began blocking negotiations because of a border dispute).

109. See *Slovenia Unblocks Croatian EU Bid*, BBC NEWS (Sept. 11, 2009) <http://news.bbc.co.uk/2/hi/8250441.stm> (informing that Slovenia decided to lift its block on Croatia's accession bid in September 2009); see also Alina Mungiu-Pippidi, *A House of Cards? Building the Rule of Law in the Balkans*, in *THE WESTERN BALKANS AND THE EU: 'THE HOUR OF EUROPE'*, *supra* note 72, at 145, 167 (noting that Slovenia's blockade of Croatia's EU accession efforts ended in September 2009).

For the most part, Croatia avoided similar tribulations in meeting the Copenhagen economic criteria because gross domestic product (GDP), inflation, unemployment, literacy and life expectancy data indicated that Croatia was almost twice as developed as other Western Balkan countries and more developed than some EU members.¹¹⁰ As a functioning market economy, Croatia was able to achieve a considerable degree of macroeconomic stability, low inflation, and a developed infrastructure and labor force.¹¹¹ While the Commission did require certain specific added economic reforms for Croatia, particularly regarding its high external indebtedness, weak judicial and administrative structures, unemployment, and slow privatization, Croatia took affirmative steps to act on these required changes.¹¹² For example, Croatia made progress in containing the rising deficit and stabilizing the gross external debt.¹¹³ As a result, the Commission concluded that Croatia would be able to cope with competitive pressures and market forces within the European Union if it continued its reform and removed any lingering weaknesses.¹¹⁴

110. See Leticia, *supra* note 79, at 217 (stating that Croatia was more developed in all key economic indicators than the Western Balkan countries and the new members joining the European Union in May 2004); see also Rupnik, *supra* note 74, at 21 (emphasizing that based on economic performance Croatia could have joined the European Union with Romania and Bulgaria in 2007).

111. See European Economy, *supra* note 32, at 10 (noting that Croatia is a functioning market economy maintaining an appropriate macroeconomic policy and low inflation); see also Croatia 2011 Progress Report, *supra* note 28, at 16–23 (reporting on Croatia’s progress in meeting the requirements under the functioning market economy aspect of the Copenhagen economic criteria).

112. See *Main Findings of the Comprehensive Monitoring Report on Croatia’s State of Preparedness for EU Membership*, at 5, COM (2012) 601 final (Oct. 10, 2012) [hereinafter *Croatia’s State of Preparedness for EU Membership*] (providing a summary of Croatia’s progress in meeting the Copenhagen economic criteria and highlighting the areas requiring continued reform); see also European Economy, *supra* note 32, at 6–10 (reporting on the need for continued structural reforms and privatization).

113. See *Croatia’s State of Preparedness for EU Membership*, *supra* note 116, at 5 (noting Croatia’s development in meeting the Copenhagen economic criteria); see also European Economy, *supra* note 32, at 6–10 (discussing the Copenhagen economic criteria for Croatia).

114. See European Economy, *supra* note 32, at 10 (indicating that the implementation of structural reforms would enable Croatia to cope with competitive pressures and market forces within the European Union in the near term); see also *Croatia’s State of Preparedness for EU Membership*, *supra* note 114, at 5 (repeating that structural reforms would enable Croatia to cope with competitive pressures and market forces within the European Union in the near term).

Croatia also demonstrated that it was capable of taking on the legal obligations of EU membership by adopting and implementing EU legislation to align itself with the *acquis*.¹¹⁵ From an early stage Croatia was able to implement EU legislation into its national legal system, specifically in the areas of freedom of movement for workers, company law, intellectual property rights, financial services, economic and monetary policy, statistics, trans-European networks, science and research, education and culture, as well as foreign security and defense policy.¹¹⁶ Yet, even after accession negotiations were closed and Croatia was deemed to have met all of the conditions set in negotiation, a few outstanding issues remained.¹¹⁷ These issues pertained to the *acquis* chapters dedicated to the right of establishment and freedom to provide services, agriculture and rural development, food safety, veterinary and phytosanitary policy, fisheries, regional policy and coordination of structural instruments, and environment.¹¹⁸ Additionally, the European Union required Croatia to reform its tax regime to finalize the

115. See, e.g., *Croatia 2005 Progress Report*, at 48–109, SEC (2005) 1424 (Nov. 9, 2005) (listing all the *acquis* chapters that were negotiated for Croatia and the Commission’s assessment for each chapter); see also *Croatia 2011 Progress Report*, *supra* note 28, at 25–65 (providing the *acquis* chapters and Croatia’s progress in each chapter).

116. See *Croatia’s State of Preparedness for EU Membership*, *supra* note 112, at 15 (providing a summary of all the *acquis* chapters where the Commission deemed Croatia to have met its commitments and requirements); see also *Enlargement Strategy and Main Challenges 2011–2012*, at 34–38, COM (2011) 666 final (Oct. 12, 2011) (summarizing the progress made by Croatia in meeting the benchmarks for each *acquis* chapter).

117. See *Croatia’s State of Preparedness for EU Membership*, *supra* note 112, at 5 (noting that although Croatia continued to make progress in adopting and implementing EU legislation, the Commission identified a number of issues requiring further attention by the date of membership); see also *Monitoring Report on Croatia’s Accession Preparations*, at 10 (Apr. 24, 2012), available at http://ec.europa.eu/commission_2010-2014/fule/docs/news/20120424_report_final.pdf (indicating that although Croatia had achieved a good level of alignment in most *acquis* chapters a limited number of issues still remained).

118. See *Monitoring Report on Croatia’s Accession Preparations*, *supra* note 117, at 11–12 (providing a brief description of all the *acquis* chapters assessed by the Commission as needing increased efforts on Croatia’s part); see also *Croatia’s State of Preparedness for EU Membership*, *supra* note 112, at 35–38 (summarizing the Commission’s evaluation of Croatia’s progress in meeting the benchmarks for each *acquis* chapter).

restructuring process for its national shipyards, pursuant to its specific obligations under its SAA.¹¹⁹

Croatia and the EU Member States signed an Accession Treaty on December 9, 2011, after Croatia substantially adopted the *acquis* and concluded negotiations regarding the satisfaction of the remaining obligations under the SAA and the Copenhagen criteria.¹²⁰ Article 36 of this treaty required the Commission to provide six monthly progress assessments on Croatia's efforts to implement the remaining negotiated commitments.¹²¹ Finally, Croatia became a Member of the European Union on July 1, 2013, after all remaining SAA obligations and outstanding Copenhagen criteria were met and the treaty was ratified by the national parliaments of all Members States.¹²²

D. Albania's Road to the European Union

Despite being grouped with the former Yugoslavian states, Albania's accession experience varies from the process in Croatia and presents and highlights the disparate effects that the conditionality principle of the SAP can have on accession for Western Balkan countries. Having been an independent and sovereign state since 1912, Albania did not face the territorial status and border-drawing conflicts that other former

119. See European Commission, *State Aid: Commission Approves Changes to Restructuring Plan of Croatian Shipyard 3.Maj* 1, IP/13/565 (Jun. 19, 2013) (reporting that Croatia's EU accession act provided for privatization of all shipyards in financial difficulty before July 1, 2013); see also Croatia 2011 Progress Report, *supra* note 28, at 4 (stating that Croatia brought its "tax regime on coffee into line with its SAA obligations" and "complied with State aid rules in relation to the shipyards in difficulty").

120. See *Monitoring Report on Croatia's Accession Preparations*, *supra* note 117, at 2 (indicating that accession negotiations with Croatia were closed as a result of Croatia fulfilling all the benchmarks set in the negotiated chapters and the Accession Treaty was signed by Member States and Croatia on December 9, 2011); see also Croatia's State of Preparedness for EU Membership, *supra* note 112, at 2 (specifying that after accession negotiations with Croatia were closed and the Commission rendered a favorable opinion, the Accession Treaty was signed on December 9, 2011).

121. Treaty of Accession of Croatia art. 36, Apr. 24, 2012, 2012 O.J. L 112/10.

122. See Croatia 2011 Progress Report, *supra* note 28, at 4 (specifying that after the accession treaty is ratified by the present Member States and Croatia in line with their constitutional requirements, Croatia becomes an EU Member on July 1, 2013); see also Mahony, *supra* note 1 (noting that Croatia became an EU Member on July 1, 2013).

Yugoslavian nations encountered.¹²³ Albania's ethnic homogeneity also allowed it to avoid the domestic inter-ethnic problems that threatened the stability of other countries in the region.¹²⁴ Particularly during the Kosovo crisis, Albania's restrained response in not waging war for the genocide of Albanian-Kosovars by Serbia enabled it to largely elude the threat posed to the country's stability.¹²⁵ Furthermore, Albania's governmental secularism contributed to the harmony between its Islam, Catholic, and Eastern Orthodox religions.¹²⁶

Despite these differences with Croatia and other Yugoslavian nations, Albania began its accession process in early 2003, years after Croatia.¹²⁷ Immediately after commencing SAA negotiations, these discussions ceased because the Commission expressed serious concerns about Albania's political system and its efforts in fighting corruption and organized crime.¹²⁸ SAA

123. See Panagiotou, *supra* note 54, at 360 (noting that unlike the states that emerged from the dissolution of Yugoslavia, Albania had been an independent state and did not have the same territorial and border issues that faced its neighboring countries); see also Pogace, *supra* note 50, at 4–5 (providing a brief history of Albania).

124. See Panagiotou, *supra* note 54, at 360 (explaining that Albania lacks inter-ethnic problems because it is almost entirely ethnically homogeneous unlike most other countries in the region); see also About Albania, ALBANIAN MINISTRY OF FOREIGN AFF., http://www.mfa.gov.al/index.php?option=com_content&view=article&id=5402%3AArreth-shqiperise&catid=46%3AArreth-shqiperise&lang=en (last updated July 12, 2010) (indicating that Albania's population consists of ninety-five percent Albanians, three percent Greek, and two percent other ethnicities).

125. See Panagiotou, *supra* note 54, at 361 (observing that during the 1999-2000 crisis in Kosovo, Albania's response was decidedly restrained denying any interest in pursuing unification with an independent Kosovo); see also O'Brennan & Gassie, *supra* note 3, at 81 (noting Albania's responsible attitude to regional issues such as the Kosovo crisis).

126. See *Albania Profile*, BBC NEWS (Sept. 26, 2013), <http://www.bbc.co.uk/news/world-europe-17679574> (indicating that along with neighboring Kosovo, Albania has a Muslim majority); see also Panagiotou, *supra* note 54, at 61 (explaining the history behind Albania's secularism and noting its role in maintaining peace among its Catholics, Eastern Orthodox, and Muslim groups).

127. See *Croatia Profile: Timeline*, BBC NEWS (Jul. 24, 2013), <http://www.bbc.co.uk/news/world-europe-17217954> (presenting a chronology of key events for Croatia); see also *Albania Profile: Timeline*, BBC NEWS (Sep. 26, 2013), <http://www.bbc.co.uk/news/world-europe-17681099> (providing a chronology of key events for Albania).

128. See Pogace, *supra* note 50, at 9 (recounting that SAA negotiations between Albania and the European Union were frozen as the Commission expressed concerns about Albania's political process and its efforts in fighting corruption and organized crime); see also Arolda Elbasani, *EU Administrative Conditionality and Domestic Downloading: The Limits of Europeanization in Challenging Contexts* 16 (Kolleg-

negotiations with Albania were not finalized until 2005, after the Albanian Parliamentary elections brought the Democratic Party into power.¹²⁹ The SAA agreement between Albania and the European Union was signed on June 12, 2006.¹³⁰

The process was stalled for Albania due to the discretion afforded to the European Union to condition accession on the adoption of added political requirements. Albania did not meet the specific political obligations imposed by the SAA over the traditional Copenhagen criteria. It did not fulfill its SAA obligations of electoral and judiciary reform shortly after it signed the SAA and an agreement on visa facilitation because of the political parties' lack of cooperation and constructive consensus.¹³¹ The political stalemate that followed the 2009 elections led the Commission to conclude that, although a democracy, Albania lacked effective and stable democratic institutions.¹³²

Albania faced political challenges that affected the fulfillment of its SAA conditions and the Copenhagen criteria, namely, needed reforms to the judicial system and the fight

Forscherguppe, Working Paper No. 2, 2009) (noting that the delay in concluding the SAA negotiations was due primarily to irregular elections and political instability).

129. See O'Brennan & Gassie, *supra* note 3, at 65 (noting that the political transition brought by the 2005 elections led to the signing of the SAA between Albania and the European Union); see also Elbasani, *supra* note 127, at 16–17 (describing the 2005 elections as an important political test for Albania in progressing with SAA negotiations).

130. See O'Brennan & Gassie, *supra* note 3, at 65 (stating that the SAA agreement for Albania was signed on June 12, 2006); see also Elbasani, *supra* note 127, at 16 (noting the date that the SAA agreement was signed between Albania and the European Union).

131. See *Albania 2007 Progress Report*, at 7, SEC (2007) 1429 (Nov. 6, 2007) (reporting that “the political parties’ lack of will to cooperate continued to hold back reforms needed to fulfill SAA obligations”); see also *Enlargement Strategy Papers and Main Challenges 2007-2008*, at 20, COM (2007) 663 final (Nov. 6, 2007) (stating that democratic culture and constructive dialogue between parties should be developed so as to make the political system function effectively and transparently).

132. See *Commission Opinion on Albania’s application for membership of the European Union*, at 5, COM (2010) 680 (Nov. 9, 2010) (reporting that the effectiveness and stability of democratic institutions had not been sufficiently achieved by Albania in part because of the confrontational and unconstructive dialogue following the political stalemate of the June 2009 elections); see also *Enlargement Strategy and Main Challenges 2009-2010*, at 22, COM (2009) 533 (Nov. 14, 2009) (noting that since the June 2009 elections, the cultural dialogue between the political parties deteriorated which obstructed parliamentary work and delayed key reforms).

against corruption and organized crime.¹³³ Under the human rights and protection of minorities obligations of the Copenhagen criteria, Albania needed to address domestic violence, ensure gender equality, prevent discrimination against persons with disabilities and Roma minorities, and ensure the independence of the media.¹³⁴ Moreover, as was the case with Croatia, Albania must satisfy the additional regional cooperation condition under its SAA agreement.¹³⁵ The main political roadblock in fulfilling this SAA condition remains the ratified bilateral immunity agreement with the United States.¹³⁶ This treaty grants exemptions from the jurisdiction of the International Criminal Court (“ICC”) and does not align with the EU position.¹³⁷

Furthermore, Albania’s economic plight posed a significant challenge in its ability to meet the Copenhagen economic criterion. Albania emerged from the communist regime of repression and isolation as the poorest country in Europe.¹³⁸

133. See *Albania 2012 Progress Report*, *supra* note 25, at 11–16 (emphasizing that reform of the judicial system and fight against corruption and organized crime continue to be key priorities that need greater reform on Albania’s part); see also *Enlargement Strategy 2013–2014*, *supra* note 3, at 19 (listing among the key priorities that Albania must meet in order for accession negotiations to commence, reform to the judicial system and fight against corruption and organized crime).

134. See *Albania 2013 Progress Report*, at 10–11, SWD (2013) 414 final (Oct. 16, 2013) (providing the Commission’s assessment of Albania’s efforts in meeting the human rights and the protection of minorities aspect of the Copenhagen political criteria); see also *Enlargement Strategy 2013–2014*, *supra* note 3, at 33 (noting the areas in the field of human rights where Albania needs to make further progress).

135. *Council Decision on the Principles, Priorities and Conditions Contained in the European Partnership with Albania and Repealing Decision 2006/54/EC*, Mar. 19, 2008, 2008 O.J. L 80/1.

136. See *Albania 2012 Progress Report*, *supra* note 25, at 23–24 (reporting on Albania’s constructive role in regional cooperation and the problem posed by its bilateral immunity agreement with the US exempting it from International Court of Justice’s (“ICJ”) jurisdiction); see also *Albania 2013 Progress Report*, *supra* note 137, at 11–12 (noting that although Albania continued to play a constructive role in regional cooperation it needs to align itself with EU’s position regarding Albania’s bilateral immunity agreement with the US).

137. See *Albania 2012 Progress Report*, *supra* note 25, at 23–24 (stating that Albania needs to align itself with the European Union position regarding the ICC); see also *Albania 2013 Progress Report*, *supra* note 134, at 11–12 (reporting that Albania has still to align itself with the European Union position regarding the jurisdiction of the ICC).

138. See O’Brennan & Gassie, *supra* note 3 (noting that in the transition from communism, Albania continued to be plagued by problems of chronic poverty, underdevelopment and corruption which among other things, made it the poorest country in

Since then, Albania has made progress towards becoming a functioning market economy by maintaining macroeconomic stability and low inflation.¹³⁹ The large public debt and budget deficit along with high unemployment, however, produce a vulnerable economy exposed to structural weaknesses domestically and economic volatility globally.¹⁴⁰ Albania needs to address these structural weaknesses in order to cope with competitive pressures and market forces within the European Union and meet its Copenhagen economic criteria.¹⁴¹

Albania continues to enhance its ability to take on the obligations of EU membership under the SAA and the Copenhagen *acquis* criterion by aligning its state legislation with the EU legislation.¹⁴² Of the thirty-five *acquis* chapters negotiated, Albania still needs to ensure the enforcement of intellectual property rights, reform the energy sector, reinforce environmental protection, and improve the fields of employment and social policy, free movement of workers, and

Europe); *see also* Panagiotou, *supra* note 54, at 358–62 (describing the lasting effects of the isolationist communist regime in Albania especially on the economy of the country making it the poorest in Europe).

139. *See* European Commission, *Key Findings of the 2012 Progress Report on Albania* 2, MEMO/12/763 (Oct. 10, 2012), (indicating that Albanian economy maintained macroeconomic and inflation stability and made progress towards becoming a functioning market economy); *see also* Enlargement Strategy 2013–2014, *supra* note 3, at 33 (reporting that Albania made progress towards becoming a functioning market economy and was able to maintain macroeconomic stability and low inflation).

140. *See* European Economy, *supra* note 32, at 49–56 (summarizing Albania’s progress in meeting the Copenhagen economic criteria and highlighting some of the challenges that Albania continues to face); *see also* Enlargement Strategy 2013–2014, *supra* note 3, at 33–34 (setting forth the high budget deficit and increased public debt along with high unemployment as some of the short-term priorities that must be addressed to avoid economic vulnerability to structural weaknesses and global economic volatility).

141. *See* European Economy, *supra* note 32, at 49–56 (discussing Albania’s progress in meeting the Copenhagen economic criteria); *see also* Enlargement Strategy 2013–2014, *supra* note 3, at 33–34 (noting the structural weaknesses that Albania must address in order to meet the Copenhagen economic criteria).

142. *See* Commission’ *Opinion on Albania’s Application for Membership of the European Union*, at 8, COM (2010) 680 (Nov. 9, 2010) [hereinafter Commission’ *Opinion on Albania’s Application*] (establishing that the Commission evaluates Albania’s ability to assume the obligations of membership through two indicators: the obligations set out in the SAA and progress with the adoption, implementation, and enforcement of EU *acquis*); *see also* *Enlargement Strategy and Main Challenges 2012-2013*, at 54, COM (2012) 600 final (Oct. 10, 2012) (assessing Albania’s progress in meeting the SAA conditions and the Copenhagen *acquis* criteria).

public procurement.¹⁴³ The major challenge, however, remains the inefficient implementation and enforcement of legislation due to Albania's limited administrative and judicial capacities.¹⁴⁴ Although Albania still must implement specific changes to meet the conditions imposed by the SAA and the traditional Copenhagen criteria, it was recommended for candidate status in 2013, after holding competitive and orderly parliamentary elections.¹⁴⁵

As a consequence of this recommendation, the Commission conditioned candidate status on five key priorities drawn from the SAA and Copenhagen criteria. These priorities, not imposed on Croatia, included the continued implementation of public administration reform, further efforts in reforming judicial institutions, determined efforts in the fight against corruption and organized crime, and reinforcement of human rights protection and anti-discrimination policies.¹⁴⁶ Despite satisfying these specific obligations, imposed by virtue of the discretion given to the European Union under the SAP and conditionality

143. See *Enlargement Strategy 2013–2014*, *supra* note 3, at 34 (identifying the *acquis* chapters where further efforts are needed on Albania's part); see also Commission's Opinion on Albania's Application, *supra* note 141, at 8–10 (summarizing the Commission's findings on the *acquis* chapters where Albania needs to undertake additional efforts).

144. See *Key Findings of the 2012 Progress Report on Albania*, *supra* note 141, at 2 (emphasizing that "sustained efforts are needed to strengthen administrative capacity for the implementation and enforcement of legislation"); see also Commission's Opinion on Albania's Application, *supra* note 143, at 10–12 (specifying that Albania needs considerable adjustments of the legal and institutional framework and significant strengthening of administrative and implementation capacities).

145. See *Enlargement Strategy 2013–2014*, *supra* note 3, at 18–19 (stating that the elections of June 2013 were assessed as competitive and genuinely respective of fundamental freedoms and the Commission recommended that Albania be granted candidate status); see also Christina Vasilaki, *Albania Progress Sufficient for Candidate Status, Says the EC*, NEW EUR. ONLINE (Nov. 22, 2013), <http://www.neurope.eu/article/albania-progress-sufficient-candidate-status-says-ec> (noting that Albania finally received a positive recommendation for candidate status from the Commission after the orderly June parliamentary elections).

146. See *Enlargement Strategy 2013–2014*, *supra* note 3, at 20 (listing the key priorities that Albania must satisfy before accession negotiations begin); see also Arta Tozaj, *European Commission Recommends Status for Albania*, TOP CHANNEL, Oct. 16, 2013, <http://www.top-channel.tv/english/artikull.php?id=10170> (reporting that according to the Commission, for Albania to open accession talks, it must fulfill five remaining conditions).

principle, the Council did not grant Albania candidate status.¹⁴⁷ Many viewed this as the European Union turning a cold shoulder to Albania, ultimately undermining the credibility of the accession process.¹⁴⁸ Member States that voted against Albania's candidate status, on the other hand, argued that the postponement was justified by the need for a longer history of progress in meeting obligations, a record that was not required for Croatia.¹⁴⁹

Fellow Western Balkan country and EU member Croatia supported the step forward for Albania, criticizing the slow accession process.¹⁵⁰ Croatia, which itself had a smooth accession process despite having to satisfy obligations under its SAA, noted that the imposition of conditional obligations appeared to be more burdensome and significant for Albania than those conditions imposed on Croatia.¹⁵¹ Although Albania offered the

147. See Kate Holman, *Albania Deserves EU Candidate Status*, EUOBSERVER, Dec. 16, 2013, <http://euobserver.com/opinion/122466> (noting that despite Füle's warnings, Albania was not granted candidate status even though it satisfied its obligations); see also *Status Postponed to June*, TOP CHANNEL (Dec. 17, 2013), <http://www.top-channel.tv/english/artikull.php?id=10641> (reporting that the European Council postponed granting Albania candidate status).

148. See Holman, *supra* note 147 (noting Albania got the European Union cold shoulder again even though it deserved candidate status); see also *Status Postponed to June*, *supra* note 147 (reporting that Albania's candidate status was vetoed by Germany, France, Great Britain, Netherlands, and Denmark).

149. See *Serbia Expected to Get EU Membership Boost; Delay for Albania*, LONDON SOUTH EAST (Dec. 17, 2013), <http://www.lse.co.uk/AllNews.asp?code=hom3d2xj> (reporting that the Netherlands explained its position regarding Albania as based on the need for a longer track record of reform); see also *David Cameron Backs EU Enlargement, But Wants Tougher Immigration Rules*, HUFFINGTON POST (Dec. 20, 2013), available at http://www.huffingtonpost.co.uk/2013/12/20/european-union-david-cameron-immigration_n_4478432.html (noting that the United Kingdom favors postponing talks with Albania for six months to "enable the country to start initial reforms to make the country more compatible with its possible future union partners").

150. See *Serbia Expected to Get EU Membership Boost; Delay for Albania*, *supra* note 149 (reporting that Croatia supports Albania's progress and has called for Albania to be granted candidate status); see also Arta Tozaj, *Dilemma for Albania's Status*, TOP CHANNEL (Dec. 17, 2013), <http://www.top-channel.tv/english/artikull.php?id=10636> (stating that Croatia initiated the letter for candidate status recommendations for Albania).

151. See Peter Tase, *Eight EU Foreign Ministers Support Albania's Candidacy*, EURASIA REVIEW NEWS & ANALYSIS (Dec. 15, 2013), <http://www.eurasiareview.com/15122013-eight-eu-foreign-ministers-support-albanias-candidacy-oped/> (pointing out the conditions imposed by the Commission on Albania); see also *Serbia Expected to Get EU Membership Boost; Delay for Albania*, *supra* note 149 (stating that according to Croatia,

same type of promise and ability for reform to meet the Copenhagen criteria as Croatia, it was subject to a longer accession process because of the Commission's ability to condition progress on meeting country-specific obligations.¹⁵²

III. *THE MAGIC WAND: AN EVALUATION OF THE ACCESSION PROCESS*

Part III engages in an in-depth analysis of European Union's current accession mechanisms and the present and future effects those mechanisms have on candidate countries. Part III.A evaluates the Copenhagen criteria and the policy of conditionality as the two accession mechanisms employed in assessing a candidate country for accession to the European Union. Part III.B analyzes the benefits and drawbacks of the accession mechanisms as applied and the impact they have on the stability of a candidate country. Part III concludes that the current accession mechanisms of conditionality and the Copenhagen criteria are especially problematic when applied to the Western Balkan countries and must be reconsidered if the European Union's policy of enlargement is to effectively expand to the Western Balkan region.

A. An Evaluation of Current Accession Mechanisms: Conditionality and the Copenhagen Criteria

Legal commentators have highlighted two variables that affect the accession criteria and produce drawbacks to the European Union's regional approach to accession for Western Balkan states—the asymmetrical relationship between the European Union and candidate countries and the built-in uncertainty of the accession process.¹⁵³ This creates a system that

Albania has done everything necessary in accordance with the accession criteria to be granted candidate status).

152. See Tase, *supra* note 151 (highlighting all areas where Albania has made progress to meet the accession criteria and the additional conditions imposed by the Commission); see also *Serbia Expected to Get EU Membership Boost; Delay for Albania*, *supra* note 149 (noting that the conditions imposed on Albania are used by the European Union to justify the fact that there are things that remain to be done).

153. See Grabbe, *supra* note 51, at 303 (arguing that the uncertainty in the criteria and the asymmetry of power between the applicant country and the European Union gives the European Union greater influence through the additional criteria);

is ripe for exploitation, as the Commission is given wide latitude to impose country-specific obligations without regard to consistency in application of this process.¹⁵⁴ That said, any imbalance of power might be negligible, as evidence shows that candidate countries are not affected by this perception of the European Union power.¹⁵⁵ Additionally, commentators explain that the uncertainty of the accession process is created by the inconsistent application of the accession criteria and the imposition of conditional obligations under country-specific SAAs. This results in different considerations and requirements for different candidate countries.¹⁵⁶

B. *Power Differentials and Asymmetrical Relationships*

One notable criticism of the regional approach to the accession process for Western Balkan countries is the power imbalance between the European Union and candidate countries.¹⁵⁷ Scholars argue that there is an asymmetrical

Kochenov, *supra* note 22, at 23 (asserting that “the enlargement process suffered from the ambiguity of meaning and vagueness of the Copenhagen criteria”); *see also* Pogace, *supra* note 50, at 10 (acknowledging the argument that the Copenhagen criteria cannot serve as benchmarks during the integration process of candidate countries because they are vague and incomprehensible).

154. *See* Atanasova, *supra* note 51, at 6–7 (explaining how the asymmetric relationship between the European Union and the applicant countries is created); *see also* Grabbe, *supra* note 51, at 316 (arguing that the relationship between the European Union and the candidate countries is one of “obvious asymmetry of interdependence, and hence power”).

155. *See* Gergana Noutcheva, *Fake, Partial and Imposed Compliance: The Limits of the EU's Normative Power in the Western Balkans* 2 (Ctr. for Eur. Pol’y Stud., Working Paper No. 274, 2007) (arguing that the European Union’s policy in Western Balkans “lacks a strong normative justification, which affects the degree of compliance with EU’s demands” especially for sovereignty-related issues); Freyburg & Richter, *supra* note 75, at 2 (analyzing Croatia to show that national identity significantly affects compliance with EU conditions leading to inconsistent compliance with the accession criteria); *see also* Noutcheva, *supra* note 72 (proposing that sovereignty is a critical intervening variable which affects compliance with EU conditionality leading either partial, non-compliance or temporary compliance vulnerable to reversal).

156. *See* Kochenov, *supra* note 22, at 4 (providing Greece as an example of the inconsistent application of the Copenhagen criteria and conditionality where the Council disregarded the unfavorable economic assessment of Greece’s membership application); *supra* notes 155–57 and accompanying text (discussing the criticism of the Copenhagen criteria as vague and problematic because of its inconsistent application).

157. *See supra* notes 155–56 and accompanying text (setting forth the criticism that the Copenhagen criteria and conditionality lead to a power imbalance between the European Union and candidate countries).

relationship between the European Union and a candidate country that undermines the regional approach since the European Union creates the accession rules and controls conditionality without input from the candidate or oversight.¹⁵⁸ The fairy godmother casts the spell and the poor girl must conform to and be satisfied with the transformation she receives. The Commission enjoys an autocratic role and is the only body empowered to subjectively define, evaluate, and enforce the accession criteria.¹⁵⁹ Taking this power imbalance into account, it is unclear how much weight the candidate countries assign to the Commission's conditions and requirements, or how effective those requirements are in prompting reform. For example, while Croatia complied with the Commission's requirement to cooperate with the ICTY, Albania was required but did not feel pressured to withdraw from its bilateral immunity agreement on the ICC with the United States irrespective of the consequences it would have on its accession progress.¹⁶⁰ The Former Yugoslav Republic of Macedonia ("FYRM") provides another example. Despite being the first country to sign an SAA and gain candidate status in 2005, FYRM has yet to open accession negotiations because it continually rejects the conditional obligation to reach a mutually acceptable resolution to issues with Greece over its name.¹⁶¹

While the power imbalance may not force applicant countries into accepting conditions and obligations, the imbalance does significantly affect the progress of accession

158. See Atanasova, *supra* note 51, at 6–7 (explaining how the asymmetric relationship between the European Union and the applicant countries is created); see also Grabbe, *supra* note 51, at 316 (arguing that the relationship between the European Union and the candidate countries is one of "obvious asymmetry of interdependence, and hence power").

159. See *supra* notes 61–66 and accompanying text (describing part of the Commission's role in the accession process, especially its power to evaluate candidate countries based on criteria set out by the Commission in the progress report).

160. See *supra* notes 95–97, 106, 138–39 and accompanying text (discussing Croatia's eventual compliance with the ICTY and Albania's persistence in maintaining the bilateral agreement with the United States).

161. See *Enlargement Strategy and Main Challenges 2012–2013*, *supra* note 142, at 13 (providing a timeline of Macedonia's accession process and noting its failure to resolve the name issue with Greece); see also *Key Findings of the 2013 Progress Report on the Former Yugoslav Republic of Macedonia*, MEMO13/890 (Oct. 16, 2013) (presenting the key dates in Macedonia's accession process and emphasizing the need for a resolution regarding the name issue with Greece in order for accession negotiations to open).

negotiations.¹⁶² The Commission's reports on the Copenhagen criteria and the imposition of conditional obligations indicate that conditionality has teeth and can be used to abruptly end accession negotiations.¹⁶³ This was especially true in the case of Croatia when the European Union froze accession negotiations to force compliance with the ICTY.¹⁶⁴ Yet, the European Union has not taken such forceful measures to ensure compliance by Albania and Macedonia, which suggests an inconsistent application of the principle of conditionality with serious measures taken only for those countries that the European Union wants to accede quickly.¹⁶⁵

The greatest flaw of the accession process and the accession process in general, however, is the lack of deadlines for each condition imposed by the Commission. It is here that the power imbalance becomes more apparent, as the Commission has ample discretion to prolong the accession process whereas a candidate country can do little to affect its timeframe.¹⁶⁶ After all, the spell from the fairy godmother is broken at midnight. This is particularly apparent in the postponement of Albania's candidate status.¹⁶⁷ The message sent by the postponement in light of Albania's compliance with the key reforms was not "Albania did not earn candidate status" but "The European Union is not ready or willing to grant Albania candidate status." The Enlargement Commissioner saw the decision as a blow to Albania's efforts in pursuing the far-reaching reforms and to the credibility of the EU accession process itself.¹⁶⁸ Albania's case provides an example of the great leverage the European Union has in managing a candidate country's progress towards

162. *See supra* notes 101–03 and accompanying text.

163. *See supra* notes 101–03 and accompanying text.

164. *See supra* notes 101–03 and accompanying texts (describing the Commission's decision to put a stop to the accession process in order to compel Croatia to cooperate with the ICTY).

165. *See supra* notes 135–36, 160 and accompanying text (describing Albania's decision to maintain its bilateral treaty with the US and Macedonia's unresolved name issue with Greece despite the Committees conditionality).

166. *See supra* Part I.B (discussing the accession process for Western Balkan countries).

167. *See supra* notes 146–51 and accompanying text (discussing the postponement of Albania's candidate status).

168. *See supra* notes 146–51 and accompanying text (discussing the postponement of Albania's candidate status).

accession in the absence of mandatory timeframes for specific conditions.

Croatia provides another example of the European Union's ability to control the accession timeframe in cases where favoritism is coupled with strong political and administrative pressures. The Commission adjusted Croatia's Progress Reports to justify granting Romania membership before Croatia despite Croatia's greater progress in fulfilling the Copenhagen criteria.¹⁶⁹ In Croatia's case, the Commission also modified the criteria to include regional cooperation and cooperation with the ICTY despite the fact that only the original Copenhagen criteria is legally binding for EU membership.¹⁷⁰

C. Copenhagen Criteria or Conditionality: Which is Most Important?

The crux of the criticism of the Copenhagen criteria centers on its inherent vagueness.¹⁷¹ The Commission is left with the discretion to evaluate and apply the Copenhagen criteria and conditional obligations under the SAP, thus leading to inconsistent considerations for each candidate country.¹⁷² The resulting uncertainty stems from the overbroad criteria purposely built into the accession process.¹⁷³ In this fairytale of accession, who other than the fairy godmother would understand the spell?

169. See Viljar Veebel, *Relevance of Copenhagen Criteria in Actual Accession: Principles, Methods and Shortcomings of EU Pre-accession Evaluation*, 3 *STUD. TRANSITIONAL ST. & SOCIETIES* 3, 18–19 (2011) (comparing Croatia's performance on accession criteria to Romania's performance based on objective qualitative measures and the Commission's assessment and concluding that despite Croatia's better performance, the Commission adjusted the progress report to justify political preferences and necessities); see also Milada A. Vachudova & Aneta Spendzharova, *The EU's Cooperation and Verification Mechanism: Fighting Corruption in Bulgaria and Romania After EU Accession*, 2012 *EUR. POL'Y ANALYSIS* 1, 13 (2012) (noting that Croatia outperformed Bulgaria and Romania in a number of accession criteria).

170. See *supra* note 99 and accompanying text (discussing the additional regional cooperation and cooperation with the ICTY requirements for Croatia).

171. See *supra* note 20 and accompanying text (discussing the criticism of the Copenhagen criteria as vague).

172. See *supra* note 20 and accompanying text (discussing the criticism of the Copenhagen criteria as vague).

173. See *supra* notes 155–58 and accompanying text (noting that uncertainty and asymmetric relationship that develops as a result of the Copenhagen criteria's vagueness).

While criticism of the inconsistency is not without merit, reports indicate that the Commission has developed a more technical system of conditions with measurable criteria and assessment through years of application.¹⁷⁴ This, in turn, gives the Commission leeway in assessing and assigning conditions for Western Balkan countries where the political, economic, and judicial maturity and stability are uncertain.¹⁷⁵ The transparency and impartiality objectives of the process would be better served, however, if more quantifiable guidelines replaced the broad criteria currently in place.¹⁷⁶

The prolonged accession process in Western Balkan countries is the result of these additional, non-quantitative criteria that lack fixed deadlines and are subject to the Commission's subjective assessment.¹⁷⁷ As a consequence, it is the intentional decision to establish broad accession criteria that provides the Commission with control over the speed and cost of the accession process while progress-based accession takes the back seat.¹⁷⁸ Thus the question arises: what is the primary factor guiding the Commission's assessment of a candidate country's progress, compliance with conditionality or the Copenhagen criteria? Or, is it something else altogether?

The question stems in part from the fact that the system is largely a compromise between the interests of individual EU Member States.¹⁷⁹ While the European Union's desire to safeguard against any spillover of political, economic, or legal problems arising from a speedy accession is understandable,

174. See, e.g., *Albania 2007 Progress Report*, *supra* note 133; *Albania 2012 Progress Report*, *supra* note 25; *Croatia 2005 Progress Report*, *supra* note 114; *Croatia 2011 Progress Report*, *supra* note 28 (providing examples of the Commission's progress reports and the criteria and conditions contained therein at different time periods).

175. See, e.g., *Albania 2007 Progress Report*, *supra* note 133; *Albania 2012 Progress Report*, *supra* note 25; *Croatia 2005 Progress Report*, *supra* note 114; *Croatia 2011 Progress Report*, *supra* note 28 (providing examples of the Commission's progress reports and the criteria and conditions contained therein at different time periods).

176. See *supra* note 78 and accompanying text (noting that objectivity and impartiality are the main objectives of the Copenhagen criteria and conditionality).

177. See *supra* notes 170–75 and accompanying text.

178. See *supra* notes 168–69 and accompanying text.

179. See Veebel, *supra* note 169, at 9 (spelling out the different motivations and interests guiding EU Member States in deciding the accession criteria); see also Grabbe, *supra* note 51, at 15–16 (indicating that each EU Member State is guided by their own interests therefore a candidate country faces uncertainty about whom to satisfy).

how much power can a single EU Member State exert over the process in order to protect its own interests?¹⁸⁰

The uncertainty over what part of the accession criteria controls, coupled with the indication that the subjective conditions imposed on candidate countries can be manipulated by Member States with grievances against an applicant country, impedes the accession process and creates opportunity for exploitation. The fact that an EU Member can bring the whole process to a standstill, therefore, presents a problem that is difficult to sidestep.

D. Failure to Reform: Present and Future Effects of Current Accession Mechanisms

The mechanisms that frame the accession process, namely conditionality and the Copenhagen criteria, serve as a platform for EU Member States to discriminate against Western Balkan countries. This discrimination is realized through the imposition of additional and burdensome conditions and is made apparent by the disillusionment suffered by candidate countries as they attempt to avoid a drawn-out process without actually implementing the necessary reforms.

The European Union's regional approach to Western Balkan accession can be best characterized as one of integration through discrimination. The European Union's goodwill towards the Western Balkans is called into question as Western Balkan countries are forced to resolve their issues prior to gaining any prospective of membership. Paired with concern over enlargement fatigue,¹⁸¹ the process feeds into existing stereotypes and perpetuates a cycle whereby the Western Balkan countries cannot shed the label of Europe's "black hole."¹⁸² The European Union, therefore, appears to hold these countries at arm's length, dangling the prospect of membership while imposing a multitude of country-specific conditions that slow this process, sometimes to a complete halt.

180. See *supra* notes 108–11 and accompanying notes (discussing Slovenia's blockade of Croatia's accession negotiations).

181. See *supra* note 2 and accompanying text (discussing the fear that following Croatia's accession, the European Union is suffering from enlargement fatigue).

182. See *supra* note 73 and accompanying text (discussing the image that has developed of the Western Balkan countries as Europe's black hole).

Not surprisingly, research shows that as a candidate's country moves closer to accession, the popular support for EU membership dwindles. In Croatia, public support dropped to about sixty-six percent prior to EU membership, while in Albania, public support for EU accession remained high.¹⁸³ Yet, the recent postponement of Albania's candidate status calls this assertion into question as the Albanian government has soured on the process but is willing to go forward with the reforms.¹⁸⁴ In his national address on December 18, 2013, the Albanian Prime Minister clearly showed that the conditions imposed in the drawn-out accession process can create disillusionment in the applicant country.¹⁸⁵ He noted the resistance within the European Union towards further enlargement and cited the EU economic crisis, unemployment, and immigration as real factors that affected the rejection.¹⁸⁶ In this regard, Albania resembles the poor girl in the fairytale who realizes that the magic wears off after a short while and is faced with the reality of returning to a similar life when the spell breaks.

Once the supervised accession process trespasses on the Western Balkan countries' sovereignties, therefore, the European Union cannot make a half-willed effort to push for reform but must employ the power imbalance to effect change. The Copenhagen criteria alone create a clear promise of

183. See Jovic, *supra* note 7, at 201–02 (presenting percentages for the fluctuation in public opinion in favor of EU membership in Croatia culminating in the sixty-six percent in favor of it during the referendum); see also *Executive Summary*, in *THE WESTERN BALKANS AND THE EU: 'THE HOUR OF EUROPE'*, *supra* note 72, at 7, 10 (noting that the popular support for EU accession is strongest in Albania where it is least advanced and weakest in Croatia where it is most advanced).

184. See *Rama: Verdict Makes Us More Determined*, TOP CHANNEL (Dec. 18, 2013), <http://www.top-channel.tv/english/artikull.php?id=10653&ref=fp> (reporting on Prime Minister Edi Rama's response to EU's postponement of Albania's candidate status); see also *Statusi, Rama: Vendimi I BE, Rrit Vendosmerine Tone Per Reforma Te Thella*, BALKANWEB, http://www.balkanweb.com/bw_lajme2.php?IDNotizia=164018&IDCategoria=2685 [hereinafter *Statusi*] (noting the Prime Minister's reaction to the rejection of Albania's candidate status).

185. See *Rama: Verdict Makes Us More Determined*, *supra* note 184 (providing a summary of the Albanian Prime Minister's speech); see also *Statusi*, *supra* note 184 (noting Albania's response to the European Union's decision to delay granting Albania candidate status).

186. See *Rama: Verdict Makes Us More Determined*, *supra* note 184 (reporting Albania's response to EU's postponement of candidate status); see also *Statusi*, *supra* note 184 (discussing the Albanian Prime Minister's response to Albania being delayed candidate status).

accession because these elements are concrete, irrespective of whether ultimate membership is a distant prospect with no guarantees. The uncertainty inherent in the current accession process, however, creates a risk that the Western Balkan countries will lose their motivation, drive, and willingness to work towards membership. Despite the benefits that the accession process itself may bring, a drawn out process could lead to partial or faked compliance especially for sovereignty-related issues.¹⁸⁷ The result is one that the European Union is familiar with: the candidate country will not complete the required reforms and will continue to present problems once it becomes a Member State.¹⁸⁸

CONCLUSION

The drawbacks of the accession mechanisms employed by the European Union become even more apparent in their application to the Western Balkan countries. The asymmetrical relationship between the European Union and candidate countries and the uncertain weight assigned to conditionality and the Copenhagen criteria raise important questions about the effectiveness and future of the European Union accession process. Salvaging the European Union enlargement policy may require more than a re-evaluation of the accession process, it may require actual reform.

The focus must also shift to the candidate countries and their efforts to fulfill the Copenhagen criteria and the benchmarks set for EU membership. Once the European Union has infringed upon their sovereignty the push for reform must be more vigorous. The promise of membership must be clear and continuously reinforced and each benchmark should contain reasonable timeframes for compliance that take into

187. See *supra* note 160 and accompanying text (discussing partial or non-compliance with accession criteria and conditionality by candidate countries for sovereignty-related issues).

188. See Vachudova & Spendzharova, *supra* note 169, at 1 (explaining that post EU accession, corruption remains a substantial and unyielding problem for Bulgaria and Romania); see also Christos T. Panagopoulos, *Unemployment remains a major problem for Croatia*, INDEPENDENT BALKAN NEWS AGENCY (Nov. 19, 2013), <http://www.balkan.eu.com/unemployment-remains-major-problem-croatia/> (reporting a rise in unemployment rate in Croatia).

account the realities of each candidate country. It is time for the European Union to re-evaluate their accession process and uphold the same principles they demand of candidate countries: decentralization, accountability, and transparency.