

CROATIA'S ACCESSION NEGOTIATION TO THE EUROPEAN UNION

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Hırvatistan'ın Avrupa Birliği' ne Katılım Muzakereleri

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Anahtar Kelimeler (Türkçe):

- 1) ICTY
- 2) Avrupa Birliği
- 3) Kopenhag Kriterleri
- 4) Tudjman
- 5) Hırvatistan

Anahtar Kelimeler (İngilizce):

- 1) ICTY
- 2) European Union
- 3) Copenhagen Criteria
- 4) Tudjman
- 5) Croatia

Chronological Timeline of Events in Croatia.

- 1991- Croatia declaration of independence
- 1992- Croatia was involved in Bosnian-Herzegovina war from 92-95
- 1992- Franjo Tudjman elected president of Croatia
- 1995- Croatian-Serbs fled to Bosnian and Serbia they were expelled from Croatia. 150 people were killed during the process.
- 1996- Croatia joins Council of Europe
- 1997- EU- Croatia relationship was severed due to the authoritarian practices of Tudjman
- 1997- Tudjman re-elected for the second term
- 1998- Croatia control over eastern Slavonia
- 1999- Demise of Tudjman Franjo
- 2000- Tudjman party was defeated HDZ, change of political system from presidential to parliamentary system
- 2001- Croatia signs the stabilization and Association Agreement (SAA)
- 2001- War Crime charges-couple of generals were charged with war crimes (For the killings of Croatian Serbs
- 2001- Indictment of the former Yugoslav president Slobodan Milosevic for war crimes and crimes against Croatians that took place in the early 1990s.
- 2002- Croatians declined to hand over retired General Janko Bobetko of the ICTY
- 2003- Croatia Submits applications of membership to the European Union.
- 2003- The death of General Bobetko led to the end of the extradition to Hague

-
- 2003- Ivo Sanader became the president from the right-wing Croatian Democratic Union (HDZ)
- 2004- European Commission gave their opinion about Croatian accession negotiation to the EU.
- 2004- Croatian Serb leader Milan Babic sent to jail for 13 years by Hague.
- 2004- Croatia becomes a candidate State
- 2004- European Council fixed the date for the entry negotiations with Croatia. The negotiations talks was fixed for 2005
- 2005- The European Union delay the accession negotiation, this resulted from the failure to cooperate with the ICTY.
- 2005- General Ante Gotovina was arrested in span by the ICTY
- 2005- Shortly after the Luxembourg treaty, the screening process begun.
- 2006- European Commission gave reports on Croatia's progress towards EU membership
- 2007- The HDZ Croatian Democratic Union wins most of the seats in the parliamentary elections
- 2008- Minorities where included in the parliament forming a coalition with the HDZ
- 2008- Croatia was invited to join NATO; final status expected in 2009
- 2008- European Commission opinions states Croatia is likely to end the accession talk by 2009 and become a member state by 2011
- 2009- Slovenia vetoed the accession talks, resulting from the dispute of the Piran Bay. Same year the dispute was resolved and the blockade was removed.

2010- Ivo Josipović wins presidential elections

2010- Slovenia supports the referendum for international arbitration

2011- Croatia and Slovenia tendered their Piran Bay territorial dispute to the UN arbitration

2011- Completion of the accession negotiations by Croatia

2012- The national parliamentary vote, on whether to join the EU has a margin of two to one

2013- Croatia officially becomes the 28th member of the EU.

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Thank you Wendy. Thank you Mum. Love you.

ABSTRACT

This thesis describes the Accession negotiation process of Croatia to the European Union. By analyzing the main obstacles Croatia faced on its way into the European Union. This paper seeks to understand the obstacles and also explain why it took Croatia a long time to become a member of the European Union. By evaluating the internal dynamics and external factors. Similarly, it tries to understand whether the European Union was a driving force for domestic change in Croatia. This paper explores the challenges faced by Croatia by evaluating the Tudjman and post-Tudjman mode of governance; Piran Bay disputes; censorship of media; and International Criminal Tribunal of Yugoslavia (ICTY). It examines the cause-effect relationship of these factors on the accession process to the European Union.

Key Words: ICTY, European Union, Copenhagen Criteria, Tudjman, Croatia.

OZET

Bu tez, Hırvatistan'ın Avrupa Birliđi üyeliđi yolunda karşılaştığı temel zorlukları inceleyerek müzakere sürecini anlatır. Zorlukların anlaşılmasını ve Hırvatistan'ın Avrupa Birliđi üyesi olmasının neden bu kadar uzun sürdüğünü, iç dinamikleri ve dış etkenleri değerlendirerek anlatmayı amaçlar. Benzer biçimde Avrupa Birliđi'nin Hırvatistan'daki yerel 1) deđişimde itici güç olup olmadığını anlamaya çalışır. Bu çalışma, Tudjman ve Tudjman sonrası hükümet modellerini, Piran Bay anlaşmazlıklarını, medya 2) etkisini ve Yugoslavya Uluslararası Ceza Mahkemesi'ni (ICTY) değerlendirerek Hırvatistan'ın karşılaştığı zorlukları anlatır. Bu faktörlerin Avrupa Birliđi'ne üyelik sürecindeki 3) etkilerini inceler.

Anahtar Sözcükler: ICTY, Avrupa Birliđi, Kopenhag Kriterleri, Tudjman, Hırvatistan

ABBREVIATION

CARDS- Community Assistance for Reconstruction Development and Stabilization

CEECs-Central and Eastern European Countries

CFSP- Common Foreign and Security Policy

CIA- Central Intelligence Agency

CODEF- Central Office for Development Strategy and Coordination for EU Funds.

EEC- European Economic Community

EEZ- Exclusive Economic Zone

EU- European Union

FDI- Foreign Direct Investment

HDZ- Croatian Democratic Union

HRTV- Croatian Television

HSLs- Social Liberals

HSP- Croatian Party of Rights

ICJ- International Court of Justice

ICTY- International Criminal Tribunal for Former Yugoslavia

IPA- Instruments of Pre- Accession

ISPA- Instruments for Structural Policies for Accession

JNA- Yugoslav People's Army

MFA- Ministry of Foreign Affairs

NATO- North Atlantic Treaty Organization

NDH- Independent State of Croatia (1945)

OSCE- Organization for Security and Cooperation in Europe

OTP-Office of the Prosecutor

PHARE- Poland and Hungary Assistance for Construction their Economy

RTA- Resident Twinning Adviser

SAA- Stabilization and Association Agreement

SAP- Stabilization and Association Process

SAPARD- Special Accession Programme for Agriculture and Rural Development

SDP- Social Democrats Party

SDSS- Independent Democratic Serb Party

SKH- Croatian League of Communist

SME- Small and Medium Enterprise

TEU- Treaty of European Union

UK- United Kingdom

UN- United Nations

UNCLOS-United Nations Convention on Land and Seas

USA- united States of America

USKOK- Bureau for Combating Corruption and Organized Crime

VCLT- Vienna Convention on the law of Treaties

WFD- Water Framework Directives

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INTRODUCTION

The process of widening of the EU border is one of the most important EU's foreign policy. This policies have helped in different ways to consolidate the respect for human rights, minority protection, conflict resolution, democratic consolidation and stability in the Balkan region.

We can argue that the political and economic criteria for the acceding states to fulfill is one of the reason behind the success of enlargement. Although the conditionality varies depending on the acceding state. Because fulfilling the criteria might be costly for acceding state/candidate state and at time the conditionality can threaten the survival of the acceding state. In such an event the conditionality can be adjusted to accommodate the acceding state.

This thesis examines the Croatia's accession to the European Union, by looking at the impact of the EU on Croatia. Examine the way the EU influenced the domestic politics in Croatia and how that effect help with domestic changes. It explains why the accession process for Croatia was delayed and slowest compare to other member states. Even in the Balkan region the Croatia accession process took a longer period with respect to Slovenia accession process. The effect of the Piran Bay was examined, how this slowed down the accession negotiations and similarly how this was resolved by the EU institutions. This paper's intention is to examine the major obstacles Croatia faced before and during the accession process. It explores other factors that led to the stunted progress of the accession process. Bearing in mind that this factors are tantamount to the negotiation process.

CHAPTER 1

HISTORICAL BACKGROUND

The Croatian accession talks began on the 4th of October 2005. Although the Croatian accession to the EU has been long due however, Croatia was faced with internal problems and external dynamics. All of these contributed to the long delay in the accession negotiations with Croatia. Lack of recognition as a sovereign state up until Germany came to their aid; this led to the recognition of Croatia by 12 EU members. Although by 1992 Croatia was internationally recognized both by the United Nation and the European Economic Community.

During the 1990s Croatian political landscape was characterized by an authoritarian style of governance, led by the president Franjo Tudjman from 1990-1999 and his party (Croatian Democratic Community) HDZ. (Jovic 2006). Croatia became an independent state in 1991, however the post-Yugoslav wars of 1991-1995 were detrimental to Croatia. They were faced with a secessionist movement between the ethnic Serbians and the external attacks by Serbian and Montenegrin forces. This led to the breakaway region of Krajina. The intervention of Croatia to the conflict between the Bosnian Croats and Bosniaks in Bosnia and Herzegovina in 1993-1994 was unofficial. Although it led to the Dayton peace accord, that was co-signed by the Croatian president Tudjman. This finally put an end to the war in Bosnia and Herzegovina. (Jovic 2006).

Croatia was troubled with the internal affairs of the west Balkan region, while the east central European states began negotiating their way into the European Union in 1990s. On the contrary, Croatia was resolving problems that stemmed out, from the sudden collapse of the Yugoslav federation. Additionally, President Franjo Tudjman's politics towards the EU was hostile and

he was not receptive to the ideology behind the EU. On one hand Slovenia was very receptive of the EU, they moved from isolationism to a liberal form of nationalism which was more receptive of EU. On the other hand, Croatia under the auspices of President Tudjman was isolated from any form of organization which has semblance to the former Yugoslavia. These forms of supra-national organization are viewed with suspicion. (Jovic 2006)

Apparently, Tudjman criticized Europe for the nonchalant attitude towards Croatia; during the attack after the Yugoslav wars, and likewise not in support of Croatian self-determination. He came out victorious at the end of the Yugoslavia war, and this made him secure enough to reject any offer from the EU. The EU proposed a Regional approach policy which was rejected, in reaction to the Regional Approach Tudjman amended the constitution, adding that membership to any association is forbidden that could lead to a renewal of Yugoslavia or anything of similar nature within the Balkan states.

The relationship between Croatia and the European Union was restrained throughout the decade of the 1990s. Having no formal interaction until the death of Franjo Tudjman in December 1999. The death of Tudjman led to the collapse of his ideologies, likewise the fall of his party. It was a new dawn for the Croatians in ideological and political sphere. The willingness to embrace the EU began in the early 2000. This was shown in the radical change in the foreign policy of the country under the leadership of both governments from 2000-2005. They made accession to the EU their top priority and this was obvious in the foreign policy of the country.

The change in foreign policy was deemed problematic; for the Tudjmanist who believed in isolationism from any form of supra-national organization, and the post- Tudjmanist who embraced the concept of Europe. The post-Tudjmanist transformed the Croatian politics in the following ways; firstly, the shift from isolationist nationalism, which was prominent in the 1990s, to liberal form of nationalism- willing to incorporate themselves into the European Union. They started to perceive themselves as an integral part of the Union. Secondly, the

minorities within the Croatian population were given privileges and were represented at government level. This includes the ethnic Serbians. Thirdly, the foreign policy of Croatia government changed. This includes regional cooperation with other Balkan countries such as Montenegro, Serbia, and Bosnia and Herzegovina. All of these factors are indication of the changes in Croatia, and the willingness to take on the *acquis* of the EU. The reason behind the radical change stemmed from the willingness to join the EU and understanding the ramification of isolation in the global sphere. This can be sensed in the speech given by the Croatian Chief Negotiator, when he enumerates the benefits of the union to Croatia. He stated the accession means- high standard of living, a strong economy, increased political influence within the union, likewise will increase the level of security and more opportunities for Croatia in the European and global affairs.

For this reason membership of Croatia to the European Union should not be considered only in economic terms but also enhanced level of security. Through the membership of the EU, Croatia will finally consolidate its democracy and organized crime within the state will be perceived as impossible. Additionally, this will enhance the sovereignty and state power.

CHAPTER 2

GENERAL STRUCTURE OF THE ACCESSION PROCESS

Accession negotiations are the framework a candidate country of the EU are conditioned to follow. This includes the treaties, rule of law, and adjustment of the state mechanisms to EU standards. This negotiation is fully completed with the signing of the international treaty between the candidate state and the EU member states. This process is called the Accession Treaty.

The negotiation process between the candidate state and the European Union member state are under the supervision of the European Council presidency, and likewise the delegates from the candidate state. Mostly the delegates from the candidate country includes the ministers of different parastatals in the country- they will assume the position of Chief Negotiator and the negotiating team. (MFA Croatia 2010).

Negotiation process is carried out in a round conference table which includes representative from the European Commission, representatives from the EU member states and representatives of the candidate state. This is a form of intergovernmental conference which is held in Brussels twice a year, alongside the meetings of the European Council- which comprises of all the presidents of the member state. While the meetings of the deputies are held by arrangement.

Candidate countries are mandated to follow the *acquis communautaire* which is a body of legislations, rules, regulations, practice, norms and obligations of the European Union member states. The *acquis communautaire* comprises of primary and secondary legislations, legal sources and other acts. The *acquis* is divided into 35 chapters which the candidate country must fulfill accordingly.

It's important to note that the *acquis* cannot be flexible for the candidate state (they are set of rules), but the ways and means to fulfill the criteria can be adjusted to enable the implementation and transition it's free for the candidate state. For the candidate state to meet the accession conditions, the said-state must comply with the *acquis* and make reforms where it's necessary. (By aligning their administrative and institutional infrastructures with the EU criterion). These chapters are closed after the screening process by the European Commission and other agencies. (European Commission 2010).

The accession negotiations are based on the *acquis communautaire* of the European Union. Interestingly the negotiations involved does not mean the candidate country will negotiate with the EU member state but rather, it's a process of harmonization of policies with the European Union's standards. It's important for a candidate state to harmonize its policies with the EU. Likewise, the ability to implement the policies are imperative. However, in a situation where the candidate state believes it's going to take a longer time to accede with a particular chapter, the candidate state can request for a transitional period- this is a time frame given to the candidate state to harmonize its policy to a particular chapter within a given period of time after successful accession to the European Union. The limitation to transition period is time and scope. In other words, a stipulated amount of time is given for the candidate state to fulfill the criteria, likewise in scope, there are no derogations in free market competition. To avoid any influence on the internal market, resulting from the association with the candidate state. (European Commission 2010).

THE PROCESS OF NEGOTIATION

The European Council decided on the 3rd of October 2005 to open negotiations with the Republic of Croatia. This was carried out by opening of bilateral intergovernmental conference to discuss the accession process of Croatia. During the conference the general positions of both the European Union and Croatia was exchanged. (European Commission 2010).

Following the exchange of instrument was the screening process. The essence of the screening is to allow the European Union to figure out the difference between the national legislation of the candidate state and the *acquis communautaire* of the European Union.

This screening is done for all the 35 chapters of the *acquis* to ensure that the national legislation of the candidate state is aligned with requirements before the date of accession of the candidate state. The screening process will also give the candidate state the opportunity to inform the European Union whether they will require a transitional period in the implementation and harmonization of the *acquis communautaire*.

The time frame for the screening depends on the chapter and the number of the *acquis communautaire* involved in the particular chapter. The overall time frame for the screening process can last a year, while each chapter of the *acquis* normally last a week or more.

After successful completion of the screening process, then the negotiations begins on each chapter. However, the progress depends on the preparation of the candidate state. These negotiations will be carried out under the auspices of European member state and the European Council. When the negotiation commences, each chapter of the *acquis* will be negotiated one after the other. The negotiation of each chapter will allow the candidate country to adopt and implement the *acquis*, and likewise if the state will require a transition period; provided it's not in the area of free movement of capital or free market competition. After careful deliberation these negotiations will be conducted based on the stand points or negotiating positions of both

the European Union and the candidate state, showing their preparedness for each negotiation chapter.(European Commission 2010).

In addition, during the negotiation process, the European parliament and the National committee formed by the candidate state is regularly informed of the progress in regards to the negotiations. Each chapter of the acquis is temporarily closed when the candidate country has met the required benchmarks. Following this is the decision of the intergovernmental conference between the candidate state and the European Council, giving their final consent as to confirm that the criteria has been fulfilled. On the other hand, if the requirement was not met by the candidate state, the chapter can be re-opened, provided the accession treaty has not been finalized.

After the fulfillment of all the benchmarks set by the European Union and of course the temporary closure of all the chapters. The European Council will confirm the end of the negotiation process by drafting the result of the negotiation in the Draft Accession Treaty under the supervision of the European member state, European Union institutions, and of course the representatives of the candidate country. Following the draft Accession Treaty is the ratification of the document by the European institutions, European member states and candidate state. Although before the ratification of the Accession Treaty, the European Commission will have to give its Opinions, which is sometimes referred to as Readings, to confirm the draft of the Accession negotiation. Similarly the European Parliament needs to give its assent and there has to be a unanimous “yes vote” from the European council. For the candidate state to become an Accessing state. (European Commission 2010).

After signing of the Accession Treaty, the Accessing state have the right to be an observer in both the European Parliament and the European Council.

Finally, in order for the Accession Treaty to go into force, the national parliaments of both the EU member state and the Acceding state have to ratify the document, although in most Acceding states there is a referendum on whether to pull part of the sovereignty to the supranational organization or to decline. Thus, in the event of a yes vote from the citizens, the ratification is finally completed and the acceding state becomes a full Member state. (European Union 2010).

NEGOTIATION STRUCTURE OF CROATIA

The negotiation committee of Republic of Croatia to the European Union was established by the unanimous decisions of the government of Croatia on 7th April 2005 (Official Gazette No 49/05). (Republic of Croatia 2010). The government of Croatia assigned different competence of bodies to deal with different part of the Chapters for negotiations. This group of competence are assigned to sign the accession treaty of Croatia to European Union. The following are the list of bodies established: (Minister of Foreign and European Affairs 2015).

1. State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union.
2. Coordinating Committee for the Accession of Republic of Croatia to the European Union.
3. Negotiating Team for the Accession of the Republic of Croatia to the European Union.
4. Working Groups for the preparation of Negotiations on individual chapters of the *acquis communautaire*.
5. Office of the Chief Negotiator.
6. Secretariat of the Negotiating Team.

State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union – These delegates were responsible for the political dialogue and negotiations with the European Union. Especially they have the capacity to monitor all the chapters and make sure they were successfully closed. (Minister of Foreign and European Affairs 2015).

The state delegates to the European Union are responsible to give feedbacks to the Government of the Republic of Croatia and act in accordance with the negotiating guidelines of the Republic of Croatia, Again in accordance with the coordinating committee for the Accession of the Republic of Croatia.

Most importantly, the State Delegate is mandated to give situation report of the negotiations to the government of the Republic of Croatia after each intergovernmental conference- between Croatia and the EU member state. Lastly the State delegates might be required to give special report based on the request from the government. (Minister of Foreign and European Affairs 2015).

Coordinating Committee for the Accession of Republic of Croatia to the European Union- This body was organized to discuss with other department within the Republic of Croatia issues related to negotiations with the European Union. The function of the body is to review the draft proposals of the stand points of the intergovernmental conference before forwarded to the national committee for monitoring the Accession Negotiations of the Republic Croatia to the European Union. Similarly it also reviews the proposals of the stand points of the intergovernmental conference held at the ministerial level before presenting it to the Government of the Republic of Croatia. (Minister of Foreign and European Affairs 2015).

Negotiating Team for the Accession of the Republic of Croatia to the European Union-

This body is organized to discuss with the European Union member states on technical issues regarding all the 35 chapters of the *acquis communautaire*. They examine and take on the draft negotiating positions, after all these are done; they are finally submitted to the coordinating committee regarding the Accession of Croatia to the European Union. (Minister of Foreign and European Affairs 2015).

During the process of negotiation, these negotiating teams also give feedbacks to the state delegation and to the government of Croatia. The role of the Negotiating teams is to provide expert support and simplification of collections of negotiating chapters to the Chief Negotiator. They also work with other bodies of the EU to help with the preparation of the negotiating chapter under the auspices of the Chief Negotiator. They are responsible for drafting the negotiating positions and related reports.

Working Groups for the preparation of Negotiations on individual chapters of the *acquis communautaire*- This body is responsible for harmonization of the *acquis communautaire* in line with the legislation of the Republic of Croatia. This is done by evaluation and the assessment of the *acquis communautaire*; similarly they draw up draft proposals of the stand points of state bodies or other bodies and the EU coordinator regulating the chapter of the *acquis communautaire*. (Minister of Foreign and European Affairs 2015).

“The working groups have heads who administer their work in agreement with the member of the Negotiating team in charge of coordinating a specific negotiation chapter. (Minister of Foreign and European Union Affairs 2015)”

Office of the Chief Negotiator- The primary function is to provide expert, technical and administrative assistance to the Chief Negotiator. Due to the delicate nature of this body, the office are situated at the Republic of Croatia while carrying out the aims of Croatia to the European Institutions. The Head of office in this establishment gives directives on how to manage the affairs. (Minister of Foreign and European Affairs 2015).

Secretariat of the Negotiating Team- The primary function is to provide assistance to the Secretary of the Negotiation team, likewise to provide expert, technical and administrative assistance to the state delegation, the Negotiating Teams and working groups for preparing negotiations on the individual chapters. (Minister of Foreign and European Affairs 2015)

The secretariat is also responsible for arranging and take on challenges that ensues from negotiations-by evaluating the harmonization of the Croatia legislation with *acquis* and also making a progress reports of the negotiations. Overall the Secretariat are entrusted with other technical and administrative task during the course of the negotiations.

PRE-ACCESSION STRATEGY OF CROATIA

The Pre-accession negotiation started after the death of Tudjman, and major reforms have been carried out. The government changed to the Center-left, and also moved from Semi-presidential system to parliamentary system of governance. Also the 21 counties in Croatia were decentralized, with each county having a self-government. This was due to the big revision in the constitution. (Minister of Foreign and European Affairs 2015).

This decentralization was given a legal basis with the adoption of the Law on Local and Regional Self-Government in April 2001 (Zakosek 2004, 720). The decentralization of the

public affairs have help to reform Croatia in many ways, from health care, transportation, urban planning, education etc. All of these were transformed in the new decade. Most elections were still held between the parties and the party that emerges as the majority will decide the member of the parliament and who will be elected for the next election. Although as the democracy deepens in Croatia; 2009 was a turning point when there was a personal election at local and regional level. In other to align all this misfits in Croatia's politics to the EU standard the EU proffered the Pre-Accession Strategy. (Minister of Foreign and European Affairs 2015).

The European Partnerships and Accession Partnerships are the main ways the EU employ to assist countries towards achieving the membership candidacy. This means was commissioned on 1st of January 2007 by the European commission as new financial tool to promote modernization, reforms in the candidate country and aligning the country with the *acquis*. However, the relationship between the Croatia and European Union have changed over the time. This can be attributed to closer relationship with the EU and likewise the change in the EU funding. Within 1996-2000 Croatia had Obnova program for technical assistance, afterwards the Community Assistance for Reconstruction Development and stabilization followed (CARDS). (Minister of Foreign and European Affairs 2015). The primary aim of the CARDS was to help Croatia was to help increase support for democratic stabilization, help with the issue of immigration and borders, also increasing the capacity of the state institution; by ensuring environmental control and infrastructures are in place.

Some changes occurred after been awarded a candidate country in 2004. Croatia had access to PHARE, ISPA, SAPARD and CODEF. By 2007 the EU policies changed to Croatia the previous programs were replaced by Instruments of Pre-Accession (IPA), this program lasted from 2007-2013.

The IPA incorporates five components: (1) transition assistance and institution building; (2) cross-border cooperation; (3) regional development; (4) human resources development; and (5) rural development. The funds allocated to Croatia under the five IPA components amounted to €749.83 million in the period between 2007 and 2011, the largest amount of €257.35 million being earmarked for the regional development component. (Bache & Tomsic, 2010, p73).

This pre-accession funds will helped Croatia to align its institutions to EU standard. Although the commission emphasized that Croatia needs to harmonize its legislation and institution to match with the EU principle before accession into the Union. In other for this to be successful the domestic politics needed to be adjusted to avoid any corruption whatsoever. In 2006 the Croatia government established CODEF to manage the EU funds. This was a sign from the Croatian government proving their competence, towards effective organization of the EU funds. CODEF was a government establishment although they were independent of any institution within the country and only answerable to the Prime Minister's Office. The CODEF was the pioneer of every other institution on accession negotiations on regional policy and managed the structural instruments too. Croatia also embarked on different projects to ensure development in the competitive market economy within the frame work of a modern state. (Minister of Foreign and European Affairs 2015).

Consequently, in other to carry out this project effectively and organizing the structural funds. The Strategic Coherence Framework 2007-2013 was initiated in 2007 under the auspices of the CODEF. This will enable proper utilization of the EU structural funds through the IPA. The framework will be a multilevel governance, and changes should be from the unit level not just from the state level. The implementation of the Instrument of Pre-Accession (IPA) brought Croatia closer to the European Investment Bank, European Bank for Reconstruction and Development, World Bank and other financial institutions. (Minister of Foreign and European Affairs 2015).

Progress for Croatia have been a continuous process since 2004. In 2006 there was enhanced progress in line with the *acquis* and also in the implementation of its Stabilization and Association Agreement. However the primary challenges in 2007, rested on how to build on the progress and speed up the reforms in area such as economic reforms, judicial and public administration reform, and also the effective fight against corruption. Croatia needs to take caution not to drop the ball in the process of the implementation of the *acquis*. The neighborly relations, regional cooperation, minority right and refuge return should be monitored closely.

COMMISSION REPORTS ON CROATIA'S FULFILMENT OF THE ACQUIS

According to the commission, Croatia continues to fulfill the political criteria. The short term goals of the Accession partnership has been addressed and tangible progress was recorded in other areas. Such as, democracy and the rule of law, human rights and the protection of minorities, regional issues and international obligations, economic criteria and also the ability to take on the obligations of membership. (European Commission 2010).

DEMOCRACY AND THE RULE OF LAW

According to the commission, Croatia has been abiding by the rule of law and institutions are more democratic. (European Commission 2010). However, with the exception of judiciary and public administration still fighting against corruption. This areas are indispensable, if Croatia wants to fully implement the **acquis** and the government will have to fully incorporate the terms of the *acquis*. In other to make necessary judiciary reforms, a key Accession partnership priority was put in place, likewise legislative and organizational changes were made to improve the proper functioning of the judiciary. Comparatively speaking, the case in the court are still logjam but has been reduced. The reforms are still in the earliest stages, more needs to be done

within the judiciary system, like making sure cases brought to the court are attended to with short proceedings, improving the case management, rationalize the network between the court and more importantly the enforcement of judgments. The judicial officials need to be trained and still discipline in the judicial system to avoid impartiality. A new anti-corruption program need to be adopted likewise the Office for the Prevention of Corruption and Organized Crime (USKOK) has to strengthen their policies. One of the key priority of the Accession Partnership is to re-address uninvestigated corruption case and measures have been taken by this agency to re-investigate those issues. The commission advised that the USKOK and other bodies to increase their efficiency towards curbing the corruption in the system. (European Commission 2010).

Additionally, the government made progress towards a public administration reform by drafting a revised General Administrative Procedure Act. The present legal administrative system unmanageable and needs simplification. In other words revision made was long due. The previous legislation was not concrete, leading to inefficiency, unable to predict the legal consequence of the legislation, thereby increases the corruption rate. The new civil service law entered into force in 2006 with improved legislation. In the light of this the civil service still suffers from political influence and the dearth of qualified personnel.

HUMAN RIGHTS AND THE PROTECTION OF MINORITIES

There is significant progress in this area although a slow one. The government created a legal framework to assist the minorities but the implementation of this legislation needs to gain momentum. The penal code was amended in June 2006 to eradicate prison sentences for libel and to incorporate more definitions of what can be referred to as hate crime; pertaining to minority issue. (European Commission 2010). The government have being supportive of such

action under the Decade of Roma Inclusion, and also showed the willingness to embrace the minorities into the system. The European Commission still stressed the need for tolerance and reconciliation within the state and to ensure the war criminals responsible for unethical crimes were prosecuted. Minorities still found it difficult to get employed due to the delay in the implementation of Constitutional Law on National Minority. An inclusive strategy is not yet available to curb all forms of discrimination. (European Commission 2010).

REGIONAL ISSUES AND INTERNATIONAL OBLIGATIONS

Since the International Criminal Tribunal for the former Yugoslavia (ICTY) confirmed in 2004 the full cooperation of the Croatia government as it was a key requirement for the Accession Partnership and likewise in line with the Dayton and Erdut agreements. The prosecution of the War Criminals continued in Croatia with improvement, however the Serb defendants still needs to be improved and also the continuity of the witness protection should be managed accordingly. The government needs to facilitate the return of the refugees back to Croatia which was one of the key Accession Partnership priority and also create a condition for them where they can flourish economically and socially. It was noted that the former tenancy right holders and implementation of housing care programs were not fully implemented, similarly there was no progress with the pension rights, and however, the issues related to reconstruction and repossession have not been dealt with. (European Commission 2010).

Croatia made a good progress regarding the cooperation with other Balkan countries. The commission suggests the relationship to be maintained. However the bilateral issues are unsolved with Croatia neighbors, particularly with Slovenia border demarcation. This issues is one of the key Accession Partnership priority and government needs to tackle this effectively to further increase the cooperation within the region. (European Commission 2010).

ECONOMIC CRITERIA

The commission considered Croatia to be a functioning market economy. Having the tendency to cope with competitive pressure and market forces within the Union provided there's continuous reform to remove any deficiencies in the state. The Croatian government have collectively maintained the micro and macroeconomics of the state. By keeping inflation low, exchange rate stable and a slight increase in the gross growth of the country. There has been an increase in Foreign Direct Investment (FDI), private investment and unemployment have reduced drastically. (European Commission 2010). Establishing a business becomes easy along with the registration process. There has been a tremendous growth both in the banking sector and financial sector. Road infrastructure and telecommunication sector has improved and steps have been taken to rejuvenate the railway system. Overall the economy is getting integrated with that of the EU.

However, Structural reforms have been slowed down, like privatization plan was hindered due to lack of efficient public administration. There's an increase in the current account spending of the government which may result to balance of payment deficit, the accrued external debt may lead to macroeconomics instability. Overall state intervention in the economy is paramount in other to keep up with the **acquis**.

ABILITY TO TAKE ON THE OBLIGATIONS OF MEMBERSHIP

Progress has been evident in most areas depending on the chapter, however, there is still much to do. The short-term priorities under the Accession partnership still haven't been fulfilled in all totality. There's still much to done in aligning and increasing the administrative capacity to

the EU standard. There has been little progress in the free movement of goods, likewise on the free movement of workers the progress is limited. Furthermore the social security systems needs to be improved. Croatia has made reasonable effort to align with some *acquis*, and reasonable progress was made in the movement of capital. However, care should be taken to avoid money laundering and effective procedure should be in place for the purchase of real estate by EU nationals. (European Commission 2010).

Progress has been limited in the areas of public procurement and competition policy, although the company law has made tremendous progress. The commission employs the Croatian government to strengthen the institutional setup to further align their policies with the EU. Still some major aspect of the SAA remains to be fulfilled. Limited progress has been made in areas like; financial services, information society and media, agricultural policy, fisheries, transport policy, taxation, social policy and employment, customs and judiciary and fundamental rights. Additionally, more needs to be done in these areas, both in administrative and enforcement of laws. (European Commission 2010).

The Instrument for Pre-Accession Assistance (IPA) was introduced to assist the candidate state and the potential candidate countries to strengthen their democratic institutions, the rule of law, reform the public administration and to initiate a functioning market economies. This will be do-able for these countries by helping them with institutional building and cross border cooperation. The IPA will help the potential or candidate countries to build their institutions, Small and Medium Enterprises (SME) development, and increase the capability for good governance. While paying attention to the rule of law and judicial reforms. TAIEX shares the experience of the EU member state public official with the candidate or potential countries on how to govern and share the EU's knowledge on how to govern the public sector. This is carried out with the support of SIGMA and TAIEX which provides medium-term support for governance. (European Commission 2010).

The negotiations and the progress of Croatia has a positive effect on the Western Balkan countries, encouraging them to fulfill the necessary criteria to become a member of the Union; negotiations with Croatia has also help to bolster bilateral relationship and foster reconciliation. All these also works in the interest of the EU, helping with conflict resolution and less security concerns within or outside their borders.

CHAPTER 3

COPENHAGEN CRITERIA

Since the inception of the European Community/European Union the Criteria for enlargement as changed over the time, due to the need to preserve the main values, objectives and functioning of the Union. Likewise to ensure the enlargement of the EU does not reduce the intensity of the Union. In other words to ensure the widening of European Union is followed by the deepening of the values. This criterion and conditionality have evolved over the years depending on the acceding states, although the tenets are the same for candidate state, but the implementation differs. More importantly the essence of this criteria is to monitor the union progress in terms of growth, dissemination of the EU core values and also the ability of the candidate or potential state to take on the Copenhagen criteria. (Brennan 2006).

The European Council made the declaration of Copenhagen on 21 June 1993- this became the popular Copenhagen criteria. (Brennan 2006). In 1997, the commission modified this criteria in the Agenda 2000 document- This document made reference to the Central and Eastern Europe membership to the European Union creating the guidelines for accession for the candidate state. A candidate state must have a stabilized institution that guarantees democracy, the rule of law, human rights and minority rights; additionally, a functioning market economy and the ability to cope with pressures within the Union, as well as the ability to take on the obligations of membership and to absorb new members without losing the basic tenets of the organization. (European Commission 2011).

Although when the Copenhagen criteria was adopted there was no foresight of incorporating the Balkans into the EU. The Copenhagen criteria and the pre-accession strategy was employed during the CEECs enlargement. Apparently, the pre-accession strategy was transpose to the

Stabilization and Association Process (SAP) during the Balkan negotiations to the EU. (Kokalović 2012).

It's important to note that the application of Copenhagen criteria to candidate state varies from state to state. Similarly the pre-accession conditions varies between candidate states. In December 1994 with the Essen European Council summit, an additional criterion was included to the criteria- this was the good neighborliness between member states and candidate states, and vice versa. Likewise in 1995 with the Madrid European Council summit an addition protocol was added to the criteria which includes the ability for the candidate state to have the administrative capacity to apply the *acquis*. In the same way the Treaty of Lisbon stressed the importance of good neighborliness.

In regards to the Copenhagen criteria which became famous by the Copenhagen summit in 1993- although this was a turning point for the candidate state in terms of requirements and conditionality, this was not the first time the European Union will have laid down criteria for new member states, although it was formally adopted by the Copenhagen European council summit. (Kokalović 2012). Obviously we can see the criteria implemented in the Union's policy- in the expectation of a future member state to the Union. By explaining how the negotiations should be carried out in such an event; by stating the pre-accession conditionality for aspiring member states during and after the negotiations. All of these are indications of the Copenhagen criteria in force; nevertheless it was not formally stated as it was in Copenhagen. The Copenhagen criterion was implemented in the preparation of the fourth enlargement which includes Austria, Sweden and Finland. After, the 1994 Essen European Council added some vital conditions to the Copenhagen criteria along with the 1995 Madrid European Council which demands the candidate state should have necessary administrative and judiciary capacity for the full incorporation of the *acquis*. (European Commission 2011).

For the first four enlargement of the European Union, the area of the administrative and judicial capacity was not a focal point for the Accession treaties. Although it was observed during the first four enlargement of the European Union, likewise the criteria of the good neighborly relations and the government capacity to carry out the function of the organization were observed. The issue of administrative and judicial capacity, agri-food and environment, became imperative for the candidate state to implement during the negotiations and this criteria changed with every new application for membership. This can be seen in the commission's report and opinions on the applicant state. (European Commission 2005).

For any country aspiring to be a member of the European Union has to fulfill the Copenhagen criteria. Besides that, the pre-accession process is also an important factor for any country considering being a member of the Union, even though the pre-accession process was conditioned on the CEECs countries, now it became an important factor to be considered for every negotiation. (Brennan 2006). The Copenhagen criteria resulted from the deepening and widening of the EU values. This criterion is also a determinant factor for the eligibility of membership for acceding countries- in this respect the Copenhagen criteria also confirmed in details the previous enlargement conditions. It's important to note that the Copenhagen criterion is not all-inclusive but rather growing with every new enlargement. In other words, they can be referred to as supplement or a yard-stick that will indicate the aspiring country's progress. This also includes the obligations to be met during the process of accession.

HOW THE COPENHAGEN CRITERIA WORKS

As we have seen the Copenhagen criteria has been evident in the dealings of the union with the acceding state before 1993 declaration. This was put together before the fourth enlargement of the EU in order to increase the cohesion and vitality of the Union. Furthermore, this helped to ensure the proper representation of the people by deepening of the EU's values and likewise

the widening of the EU. The Copenhagen criteria can also be described as the pre-conditionality for the conclusion of the accession negotiations rather than the criteria for opening accession negotiations with a candidate country. (Ilgün & Murad 2013).

Consequently, it's important to analyze the reason behind the Copenhagen criteria. It resulted from the referendums held by the Dutch and French regarding the constitutional treaty. (Ilgün & Murad 2013). The rationale behind the referendum is to deliberate on the fear of enlargement which might result in loss of national identity. However, the referendum is in support of deepening of the European values in terms of European integration. The Copenhagen Criteria emphasize the need for the acceding country to have stable institutions, ensure democracy, the rule of law must be followed; respect for human rights and the protection of minorities. Likewise, it must have a functioning market economy that is capable of withstanding pressure from the membership; have the ability to carry on the obligations of the Union in both political, economic and monetary union, and also the adoption of the EU regulation and norms (*acquis communautaire*).

This framework is designed for the CEECs countries to join the European Union as soon as they fulfill the obligations of membership. (Political and economic conditions). The role of the Copenhagen criteria is to ensure the acceding country meet the requirement for membership without affecting the functioning of the European Union. The Copenhagen Criteria will help to put the new member and existing member on the same platform by aligning the economic and political systems together and help with the adoption and implementation of the *acquis*. (Ilgün & Murad 2013).

Following the application of the Central and Eastern Europe countries, the commission was asked to give its Opinion on the CEECs and also state the implication of the Enlargement. This led the Commission to issue the famous *Agenda 2000* –Dealing with the stronger and wider union. The outcome shows that enlargement is possible however with additional expenses and this will

be incurred by the Union. The opinions given by the commission indicated that negotiations should begin with 5 of the CEECs which includes- Czech Republic, Poland, Hungary, Estonia, and Slovenia, plus Cyprus. While the negotiations of Lithuania, Romania, Latvia, Bulgaria and Slovakia should be delayed until they fulfill the economic criteria, with the exception of Slovakia; with political turbulence. The European Council followed the opinions of the commission and started negotiations with the first group of states which was later referred to as the first wave states. With the Helsinki summit in 1999 the second wave started negotiations early 2000.

This is carried out with the support of the pre-accession programs like PHARE, SAPARD, and ISPA. This supporting system was used during the early 2000s to support the Central and Eastern Europe Countries. The PHARE program helps with the infrastructure building of the candidate country, also invests in areas where the SAPARD and ISPA does not function. ISPA assists with infrastructures in the EU technical areas such as the environment and transportation projects. Lastly, the SAPARD assists with improved agriculture and rural development. (European Commission).

Consequently, the Twinning also plays a great role by providing support for institution building. Twinning helps with implementation and enforcement of the EU legislation (acquis communautaire). It helps to foster the relationship between the EU member states and the candidate or potential state to the European Union. Additionally, provides a framework for the candidate country to emulate which will enable the speedy incorporation of the candidate state to the European Union. The Twinning project is carried out by a representative from the EU and a representative from the benefitting candidate state, under the coordination of the Resident Twinning Adviser (RTA). (European Union 2011). The RTA formally coordinates and endorses the project on behalf of the member state to the benefitting state. An example of the

Twinning project can be seen in the support given to Croatia by the EU to improve the water quality in Croatia, increased public awareness about water issues and improve management of water. The program helped with information exchange with Croatia by providing workshops and meetings. This helps to enlighten the Croatians on the strategies to deal with water related issues, and making sure the standard is in accordance with the Water Framework Directives (WFD). (European Union 2011).

Many programs have been put in place to assist the candidate state in the accession process and foster the relationship between the member state and the candidate state. Despite the fact that the criteria to be met by the candidate are not laid down, and also varies from state to state, the commission helps to monitor the progress by giving opinions and progress reports to other bodies of the EU. The progress is also monitored by the council and regular reports also help to identify the problems during the accession process of any candidate state. (European Commission).

In spite of all these, there's no clear cut means to determine what makes a "functioning economy" or "stable institution". This idea can be regarded as vague which makes it difficult to have a standard to judge the candidate state prior to membership. The elements of the Copenhagen criteria varies from state to state due to the lack of proper definitions of the elements in the criteria. We can argue this gives rise to some weak enlargement and incorporation of weak states into the union. On one hand, the aim of the European Union is to incorporate the states who can carry on with the functions of the EU into the organization. On the other hand, this is difficult to determine, when the criteria varies and are interpreted differently for different states. (Ilgün & Murad 2013).

CASE STUDY: EVALUATION OF THE COPENHAGEN CRITERIA USING CROATIA

The relation between EU and Croatia was set out by the European Council in 1997 with political and economic condition laid down to create bilateral relations with Croatia. (Ilgün & Murad 2013). In 1999 the European Union advanced the relationship by introducing a Stabilization and Association Process (SAP) for the south east European countries including Croatia. The demise of Tudjman during this year led to immense changes in the political system of Croatia. In 2000, parliamentary and presidential elections in Croatia led to a change in government, this furthered the relationship with the European Union. The same year the Stabilization and Association Agreement (SAA) was implemented and finalized on October 2001. This agreement deepens the relationship between the parties and helps Croatia to align its institutional framework to fit the EU's criteria. Furthermore, the main aim of the Stabilization and Association Agreement is to point out which areas are lacking in the institutional system of Croatia, i.e. constitutional law. (Ilgün & Murad 2013). The rectification of these areas will improve their relations with the Union and increase the chances of integration. Following, the commission creates a strategy to incorporate Croatia; this includes steps to follow from 2002-2006 and providing a pathway for EU assistance. This assistance was rendered by the Community Assistance to Reconstruction. CARDS is one of the mediums the EU used to assist the south east European countries- both financial and technical assistance where provided with CARDS. In February 2003 the Croatians applied for full EU membership. Subsequently in 2004 the commission issued out Opinion on Croatia. This confers Croatia a candidate status at Brussels European Council summit in June 2014.

OPINION OF THE EUROPEAN COMMISSION ON CROATIA ACCESSION PROCESS

According to Article 49 of the European Union Treaty, with the consent of the council, the commission is allowed to give Opinion on Croatia's accession procedure. Accordingly the Commission analyzed the prospect of Croatia fulfilling the criteria over the short and long term. Similarly, evaluated Croatia's application with its ability to fulfill the Copenhagen criteria and other conditions i.e. Stabilization Agreement and Process. (European Commission 2010)

Drawing from the commission's Opinion, the political criteria concludes that after the full cooperation of Croatia with ICTY, which was confirmed by Chief Prosecutor Carla Del Ponte, the democracy in Croatia has been functional with stable institutions to buttress the rule of law. The 2000 and 2003 parliamentary elections were free and fair with no restrictions or infringements on fundamental human rights. Nonetheless, Croatia needs to improve on the rights of the minorities and speed up the effort to return the Serbs, Bosnians and Herzegovinians that were displaced during the wars. Once again, the commission stressed the importance of full cooperation with the ICTY and ensure further steps are taken to entrench the indictment of Ante Gotovina. (European Commission 2010).

The commission's Opinion on the economic criteria goes in this direction- Croatia was regarded as functioning market economy. It will continue to maintain its function in the Union and keep up with the competitive pressures and market forces in the Union. This will continue for the medium term, provided the government continues to implement the reforms to remove the barriers or deficiencies in this areas. Furthermore, the commission highlighted that the Croatian economy has been relatively stable with low inflation, infrastructure improvement, investment in educating the labor market- overall the macroeconomics is stable. Although the judiciary and

administrative structures need to continue to make reforms to ensure the land registry system is functional, likewise the privatization process has been relatively slow. (European Commission).

Consequently the commission evaluated the ability of Croatia to take on the obligations of membership, the opinion given goes in this direction- Judging from various chapters of the *acquis*, the commission concludes that Croatia has made tremendous progress in aligning its legislation with *acquis*, specifically in the areas of internal market and trade. On the other hand, the administrative capacities and legislative enforcement requires further attention and improvement. The commission employs the Croatians to continue in that path to evade any obstacle in the medium-term application of the *acquis* in the areas of: Economic and Monetary Union, industrial policy, small and medium sized enterprises, science and research, education and training, external relations, common foreign and security policy (CFSP) financial and budgetary provisions, science and research, and education and training. Additional efforts is needed in these areas: free movement of capital, company law, fisheries, customs union, consumer and health protection, transportation, energy and financial control. Above all, Croatia needs to ensure the alignment and sustainable efforts in the areas of: free movement of goods, free movement of persons, free movement of services, competition, agriculture, social policy, employment, telecommunications and information technologies, justice and home affairs and regional policy. (European Commission 2010).

In conclusion, the Commission includes a draft European Partnership Treaty along with the Opinion. This partnership highlights the steps towards a functioning relationship between Croatia and the EU. This will guide Croatia towards fulfilling all the criteria needed from short to medium term. This will further inform the Croatian government on where further reforms are required vis-à-vis the available resources. In response to the draft European partnership, Croatia will have to respond with a detailed plan on how to implement the European partnership priorities. (European Commission 2010).

THE COMMISSION FINAL OPINION BEFORE THE TREATY OF ACCESSION

Prior to the finalization of the Treaty of Accession with Croatia, the commission is required to give its Opinion. This is in accordance with Article 49 of the TEU. Subsequently, the European parliament will give its consent, then the European council will make the final decision on whether to accept Croatia into the EU. This will lead to the ratification process by each member state. This period is time consuming, although a timeframe is created to allow the speedy process. (Ilgün & Murad 2013).

After which the political and economic dialogue is open between Croatia and the European Union. The political dialogue was held in Brussels at the ministerial level while the economic dialogue involved Croatia and the commission in a bilateral meeting. This was held in April and May of 2011 respectively. (Ilgün & Murad 2013). The essence of the meeting is to elucidate further on the challenges faced by Croatia while trying to adopt the Copenhagen political and economic criteria, and highlight the progress made towards fulfillment of the Accession Partnership priorities.

The accession negotiations was formally completed in June 2011. The commission's progress report goes in this direction: Croatia continues to improve towards the total fulfillment of the political criteria. Tremendous progress has been recorded in all aspects, including the respect for the rule of law. Respect for democracy is soaring high, likewise the proper function of both the parliament and the government. Although in the area of public administration more is needed to be done. The Croatian Judiciary system has made tremendous progress giving room for new legislations, judiciary independence, and improved judiciary infrastructures. Progress

has been made in the proper handling of war crimes and the protection of witnesses. Strategies were put together by the ministry of justice to exempt the ethnic Serbians from punishment when the perpetrators were the Croatian Armed Forces. (European Commission 2010)ç

Continuous fight against corruption was noted during the accession negotiations with Croatia. The outcome of the fight has been positive. Legislations and relevant authorities have been improved in that direction to fight against corruption. The respect for human rights has been observed in Croatia, similarly the right and protection of minorities were promoted. The freedom of speech (for media) were promoted and enacted into the Croatian law. (Republic of Croatia 2010)

The economic criteria according to the commission, states that Croatia is a functioning market economy and will cope with pressures from within the European Union. Provided reforms are implemented to reduce the risk of economy failure. Macroeconomic policy are in place to avoid recession or to deal with such a scenario. In spite of all these, the structural reforms are slow which can be seen in the slow process of privatization. Areas like transfer payment and the investment atmosphere need to be improved also. (Republic of Croatia 2010)

In conclusion, the commission claims the progress has been astronomical over the years. Croatia should be able to take on the obligation of membership in most areas of the *acquis*. Progress has been recorded in many areas of the *acquis* and alignment of the legislation with EU. Although in some areas there is need for improvement on the administrative capacity in order to apply the *acquis*. Overall, the implementation of the Stabilization and Association Agreement was a success. (European Commission 2010).

CHAPTER 4

CENSORSHIP UNDER TUDJMAN

Democracy was a new concept to Croatia during the 1990s until the demise of President Tudjman, there was no respect for the rule of law in the country. Although we can argue that democracy is relatively new to Croatia in the early 2000s, the turning point was the loss of the elections by Tudjman's party. The relationship between people and press changed likewise the politics were perceived differently. The Tudjman's regime was not too different from the Tito's. They both had similar method of governance. Tudjman applied Tito's strategy in a different form. (Malovic & Selnow: 2001). Although, Milosevic wanted to be an icon of Yugoslavia; in other words taking after Tito. Croatia didn't want a "Serb" so they preferred Tudjman.

Unknowingly to the masses- the media during the 1990s (Tudjman's era) can be considered as free in terms of dissemination of news through the papers and magazines. The radio and Television were shown all over the country. As Malovic and Senlow (2001) point out, the freedom of press was popular that the former communist embraced such an idea. (Malovic & Selnow 2001) "Openness of media and people were able to interact within the system"

On the contrary that wasn't the case, what was presented to the people was the façade of what was going on. All the mechanisms were state controlled, and owned by the state party. The Tudjman party had a firsthand knowledge of everything in the media. They influenced all the machinery of the media. The most prevalent new paper called "Vecernji list" was under the command of the dominant party (HDZ), in other words the perspectives of Tudjman party (HDZ) were propagated via the new papers and other means. (Malovic & Selnow 2001). While suppressing the views of the opposition or revival party. The newspaper propagated the

government's version of Croatia's politics while withholding or suppressing the other points of view. (Malovic & Selnow 2001).

Furthermore the television was far worse than the paper media. The constitution of Croatia actually forbids independent broadcasters, therefore licensed only one network HRTV (Croatian Television). However, the HRTV was the government owned apparatus to give their own version of the story. The HRTV was under the control of the HDZ. The organizational staff of the HRTV had to adhere to the instruction given to them; that nothing should be televised unless it bolsters the government perspectives. Most importantly it has to be in line with the party's reputation. (Malovic & Selnow 2001: p4)

According to the Survey more than 90 percent of the Croats relied on HRTV to know the political situation in the country. Obviously, the people heard just one side of the story, this enhanced the confidence of the HDZ knowing they were in control of the situation around the country. Likewise different mechanisms were put in place to ensure there was no sabotage to this means. This means is created to bolster the view of the government. This makes it extremely difficult for people to know the reality about the government. The media paraphilia worked in the interest of the ruling party. They created a façade of free press but on the contrary the media was used as an instrument for their selfish motives and propaganda.

Newspapers were controlled by other means, which makes it difficult for an independent newspaper to flourish. The two major means namely; Distribution Control and Legal Restraints. (Malovic & Selnow 2001, p5)

DISTRIBUTION CONTROL

All the distribution channel were state controlled, from the printing press to the street corners were monitored. A centralized distributor was created to ensure everything goes as planned.

This central distributorship goes by the name Tisak. (Malovic & Selnow 2001, p.5). Tisak operates a pipeline for newspapers and magazines. In the event of closure of such medium (pipeline), this will render the publisher useless and unable to get their product to the target consumers. The risks involve cannot be underemphasized because the only distributor was Tisak, as there was no substitute distributor. Tisak was owned by the charter member of the leading party. The primary function of the company is to scrutinize the papers before getting to the public. In case an editor decides to sell out or diverge from the norms of the party. The writings will be hidden from the public view. (Malovic & Selnow 2001, p.5).

In circumstances like that, the revenue or proceeds for the newspaper will be lost for that day and double fine will be issued to such a company. As a result the company tries to avoid such a scenario by complying with the terms and conditions, to avoid being driven out of business. Similarly, as a way to deter independent reporters, Tisak sometimes may refuse to release the revenues for the sales of newspapers sold. This is because they are responsible for collecting the money at the point of sales. Furthermore, if the reporter decides to sue the company (Tisak). The justice system is corrupt and will always be in favor of the party. This is done by slowing down the process of Justice, by adjourn the case over and over. (Malovic & Selnow 2001, p.6). It goes without saying, an episode like that will fold up the paper company, resulting from lack of funds to carry out the business.

A popular case was the “Feral Tribune” whose revenue was held amounting to half a million dollars. This case was exceptional because of the international recognition. The Feral Tribune is able to gain momentum and the government was careful with their dealings with the paper company. To avoid the people from knowing the truth, Tisak had to make a part-payment but still owes the Feral Tribune. (Malovic & Selnow 2001)

On the other hand, if revenue of this papers were not held. Tisak will require from them a huge distribution fee. Using this method to dissuade them from publishing. The fee required from

this paper company will be 20% more than the total revenue generated by the paper, and more importantly this amount was to be paid up front.

All these tactics were a form of control mechanism by, the government, the ruling party to stay in power. Ultimately, the public were unaware of such dubious methods practiced by the government. The Tadjman government was successful at curbing freedom of political expression.

THE LEGAL RESTRAINTS

According to the legal penal code. Article 71 and 191; this penal code were enacted for any journalist who defies the image of the president or other officials of the republic. This penal code allows reporters to be sued and jailed for spreading information that are considered detrimental to the image of Tadjman's government. (Malovic & Selnow 2001, p.6).

This puts the government in a favorable position to control the journalists. This article was enacted in 1996 and came into force in 1998, after the abolishment of the previous law in 1991. (Malovic & Selnow 2001). Furthermore, this law made it difficult for the reporter to predict what will offend the government? And who can be offended resulting from their write ups? All of these factors made it difficult to get an undiluted story of the political events in the country. It goes without saying that the media was under the influence of the Tadjmanist group.

Only a hand few of people had access to the facts, laws and information, this impeded the progress of the journalist. Only a hand few of people knew about the lawsuits between Tisak and Feral Tribune; the refusal to pay the revenue to the Tribune Companies. Only a hand few of people knew about the censorship in the system, although this was invisible to most people. This situation made it difficult for the people to know what were actually missing or how it feels to live in a society with freedom of press.

The writers and the editors had to engage in self-censorship to avoid another lawsuit. (Malovic & Selnow 2001). This was carried out by curbing their interest in finding out facts, write-ups were vague and vain with little or no truth. Basically that was the state of media during the Tudjman era in 1990s and the way information were disseminated during the HDZ government. The people were left in the dark with no opportunity to protest against the system. There was no freedom of press, arbitrary arrest of writers were habitual during this period. The owner of “Nacional” newspaper was killed, in other to ensure all the apparatuses of media were under control. Conclusively, all these were not obvious to the people so they couldn’t ask for help.

POST TUDJMAN MEDIA CHANGE

By 1999 the president’s health deteriorated and it was becoming difficult for him to control his party. The HDZ was also deeply divided when the ICYT requested the extradition of War criminals. Even though the party was deeply divided with different opinions, the printing press was still controlled by the state, and it became difficult for the layman to understand the rifts within the HDZ party. However, during this time the Nacional paper was able to shed light on the issue; giving the public the impression that the president couldn’t control his councils within his party. In the heat of this event, Tudjman also surprised the international community by supporting the division of Kosovo, which was similar for Milosevic of Serbia.

During this time the Nacional newspaper was able to give the public hindsight of the state of politics of the HDZ government. Showing how they eavesdrop, spy, bug on civilians, and likewise how the secret services function within the country. (Malovic & Selnow 2001).

The Croatians started to experience a bit of freedom within the press; this resulted from the failing health condition of President Tudjman. It was becoming extremely difficult for the party to cover the health situation of the president from the media. Drawing from Malovic & Selnow

(2001), the Croatian government tried to conceal his health condition, it was too late to conceal because the media already had fragments of information regarding his ill health. This motivated and increased the drive independent journalists to know more about the situation. The media seized the opportunity to make real investigations during his protracted sickness. Many independent reporters and publishers were interested in finding out the real information regarding the state of health of Tudjman and the state of politics. It was largely believed that Tudjman and Susak (Assistant of Tudjman) were killed by the western powers; using a chemical compound that will eventually killed them within a time frame.

Media was never the same in Croatia, the investigation carried out during this period was Western Standard. The government version of the story was replaced with the independent reporters' true story. The public enjoyed unrestrained, undiluted, reports from the independent report; rather than the government version of the story.

After a while the perspective of the media drifted away from the regular phase. The common question asked was: what is the outcome of the president's illness? Questions like that were replaced with: What will happen after the demise of Tudjman? Where will he be buried? Who will build the grave? Ultimately, what will be the reaction of the media and the country? The political atmosphere was becoming sensitive. Journalists were faced with a lot of work. They had to analyze and elucidate the current situation to the public. (Malovic & Selnow 2001).

This was however a crucial point for Croatians. In span of fifty years the Croats had only two president, Tito during the former Yugoslavia and Tudjman after the independent Croatia. They have come to see the position of the president as a father, a protector and also a guide. In other words the death of Tudjman was something significant in the lives of the Croats. (Malovic & Selnow 2001). This is different to other countries in the world, where the passing of the president will be transcendental with no consequence for an individual.

After forty days of hospitalization in 1999. Tudjman died at around 11pm, however the news was aired the following day 11th of December 1999 for political reasons. (Malovic & Selnow 2001). All the television station were free to broadcast the event. The media did a good job, also issued out special editions, showing details of Tudjman's life and his roles in the making of Croatia. The media narrated the real story featuring the good, bad and ugly of Tudjman's governance.

HOW CROATIANS VIEWED EUROPE DURING THE 1990s (Tudjman's era)

As Jovic (2006) point out, Tudjman was famous for securing the independence of Croatia, however, the ideologies in the second half of the decade led Croatia into isolation. Croatia existence was de jure, although the capacity to function or co-exist with other state in de facto sense was lost. The domestic politics was challenged by the Internal Criminal Tribunal for former Yugoslavia (ICTY). The ICTY indicted several member of the Tudjman cartel and even investigated Tudjman during the last days of his life. (Jovic 2006, p 88). The Croatia foreign policy had to be adjusted to prohibit the extradition of Croatian nationals. (The official Gazette, Article 141). Even this deteriorated the relationship between the EU and Croatia in the late 1990s. Similarly, the idea of Regional Approach Policy was frowned at by the Croatians. Again, Tudjman emphasized that forming any alliances with the Western Balkan will dilute Croatian Nationalism and may inevitable led to another Yugoslavia.

During this time the Central Eastern European states had begun accession talks with the European Union. While Croatia was stuck in the dogma put forward by Tudjman in the constitution. This was buttressed by article (141) which states:

It is prohibited to initiate any process of association of the Republic of Croatia with other states, if such an association would or could lead to restoration of Yugoslav state community or any new Balkan state union in any form. (The Official Gazette, No 41/1, 2001)

In the early phase of the drive toward independence Croatia was considered European country; however during the mid-1990s Tudjman isolated Croatia from EU. (Jovic 2006, p 89). Stating that Europe was not supportive of the disintegration of Yugoslavia and resentful towards Croatia resulting from the successful withdrawal from the Yugoslav federation. Claiming that EU wanted to keep the status quo for their selfish interest likewise other great power. Also during this period arms embargo was lifted on the Croats by the Security Council which consisted of the great powers. This left them in dire calamity of war; leaving them with bare hands, however, Croatia survived the war. (Jovic 2006, p 88)

According to Tudjman, Croatia was victorious over the Europeans; and it was only with the help of United States the Dayton peace accord was formulated and triumphed. Tudjman believe the proposal made by the Europeans to form a Western Balkan alliance was to keep the former Yugoslav states on similar platform as before. Probably with the exception of Slovenia. This in turn increased Tudjman's hostility towards the leading countries and Europe. Likewise the minority in Croatia were treated scornfully by expelling them and confiscating their property .i.e. the Serbs in the region of Krajina.

During this period one will argue that Tudjman rhetoric was similar to that of President Tito of the Former Yugoslavia Federation. Tudjman claims that the artificial creation of Europe was doomed to fail? Just like the counterpart Yugoslavia did, He argues that ethnic identity will always supersede and the idea of creating a homogeneous society was utopic- emphasizing that cultural differences cannot be neglected. (Jovic 2006, p 90) All these are contributory factor to the reason why a federal Europe cannot be envisaged as it was the case of the federal Yugoslavia.

Many of the Balkan states held the belief that Europe didn't play any role to stop the war. As a result, most countries in the region clamor for political and social reform- it was the same for the Serbs. The Tudjman rhetoric against Europe was popular in Croatia. We can argue that Tudjman perceived Croatia has part of Europe in the sense of their "values" however against the Serbs; he held the belief that Serbians have always been part of the Ottoman. This narratives made Tudjman famous amongst the Croatians, likewise the 1995 victories of the Croatian Army against the secession of the Krajina region.

The aftermath of the war was a victory for the Croatians. Haven't said that, if Croatia survived the war with the Yugoslavia army who at the time were considered to be the best in Europe: According to Tudjman, Croatia will definitely survive any circumstance unilaterally in the future. (Jovic 2006, p 90). This notion was similar to Josip Broz Tito the ruler of the former Yugoslavia Federation, who struck balance between east and the west during the cold war. Similarly with Tudjman- balance of power was an instrument he made use of during the 1990s. On the 1st of July Tudjman was interviewed and his message was perceived as Titoist saying:

"We do not want to join any type of Balkan integration process and we refuse to be anyone's puppets" (President Franjo Tudjman 1999).

Tudjman wanted to create a homogenous society with little or no minority in Croatia. The foreign policy of Tudjman during his tenure can be described as a closed society- not in relation with any external country. (Jovic 2006). He held the belief that Croatia can be self- sufficient, which ultimately distanced Croatia from Europe. During this period the Central Eastern European Countries (CEECs) were making progress having accession talks with the EU while consolidating their democracy.

HOW CROTIANS VIEWED EUROPE DURING THE 2000s (Post-Tudjmanist)

Broadly speaking, since Croatia became an independent country, there has been two great epoch in Croatian history. The first epoch extended from 1991-1999 which is commonly referred to as Tudjman's era, while the second epoch was the 2000- 2013, also this can be referred to as Post-Tudjman's era. During the post- Tudjmanist era, Croatians were preoccupied on how to start accession talks with the European Union. However, that won't be easily achieved due to the internal problems and how they were perceived by other countries. One of the problems faced by Croatia was the issue of the ICTY. It occurred that Croatia was not willing to cooperate with the ICTY in judiciary matters and this paved way for the war criminals to go unpunished. (Jovic 2006)

The ICTY was established under the auspices of the United Nation on May 1993. The main function was to investigate the perpetrators involved in crime against humanity in the former Yugoslavia. However, this cannot be done without the cooperation and support of the state to help arrest the perpetrators. Other states were willing to cooperate with the ICTY however, Croatia wasn't willing to cooperate during that period. This led Croatia to enact a law that prohibited the extradition of citizens to another court of law. (Jovic 2006). This left a large vacuum in the interaction of the EU with Croatia, on whether the government was ready to start accession talks, knowing there was no respect for the rule of law. Similarly the dispute between Slovenia and Croatia regarding the border issues. Contributed to these thoughts, likewise internal problems of politics, organized crime and disregard for the rule of law in Croatia. We can argue that Croatia was faced with a lot of problems which resulted from the collapse of the former Yugoslavia federation.

During the Tudjman era there was no cooperation whatsoever with the ICTY, this lasted up until 1999 when the ICTY lost patience and requested the UN to impose sanctions on Croatia

for not complying with the Tribunal. The sanction was not removed until the extradition of the first accused perpetrator. One of the perpetrators was the General Ante Gotovina who was accused of commanding the armies in 1995 to kill 150 Serbs and also displaced over 150,000 Serbs from Croatia. (Yasin 2005). It was difficult to have the Croatians surrender him due to his loyalties in the secret services and government. More so, Croatians still owe allegiances to him; because he was one of the strong hands during the fight for independence. (Yasin 2005)

Notwithstanding, during the 2000s supports for Tudjman ideology were diminishing. The autocratic form of governance was no longer appealing in the eyes of the Croats. Take for instance, Jovic (2006) argues that during the 1996 local elections in Zagreb, Tudjman dismissed some polls and replaced the mayor in that region with a temporary one. There was embargo on the media; no freedom of the media. The political landscape of Croatia cannot be compared to any central Eastern European Countries, which at that time were applying for membership status. But rather can be compared to Serbia. It goes without saying Serbia was in a bad position both politically and economically.

According to Jovic (2006), some of the indications showing the reduction in Tudjman's ideology can be seen in the first election that took place after demise of Tudjman, the party lost the elections to the anti-Tudjmanist forces. Changing the political system of the country. Croatia was led by the Social-Democrats (SDP) and Social-Liberals (HSLs). The parliament was controlled by the leading parties by forming a coalition government. The Tudjman's party HDZ won only 22 percent of the votes. (Jovic 2006, p 93). The Croatia's representative in Presidency of the Yugoslav Federation in the 1990s emerged as the winner of the 2000 elections. Stjepan Mesic became the incumbent prime minister early 2000; the coalition in parliament had a foresight for better Croatia and EU relations. The narrative during this epoch was different from their predecessors. The new government realized that in order for Croatia to thrive, she must become part of the European Club. Anything short of that will be detrimental to the Future

of Croatians both in cultural, economic, security and political aspect. The new government realized it was important to cooperate with the European Union to avoid another episode of the Serbs: The Serbians paid the price for isolation while holding unrealistic idea of Serbia's greatness. (Jovic 2006, p 93).

The narrative during this time was how to start accession talks with the European Union. Croatia began to aligning its foreign policy towards the EU ignoring any competition with Serbia, regarding who will dominate the Bosnia and Herzegovina region. (Jovic 2006). Croatians support for European institution started to sway higher, they started to play a major role towards the neighboring countries, more importantly supports were given to Macedonia and Albania, while supporting the democratic changes in Serbia.

The former notion of Croatia been self-sufficient and regional power during the Tudjman regime was replaced with the willingness to share its sovereignty with the European Union, she was no longer prepare to compete with any country rather than cooperate in technical areas and propagate the European values to the south-eastern neighbors. (Jovic 2006, p 93).The notion that Croatia will be a buffer zone between west and east was out rightly replaced with pro-European policies.

It was a new phase in the history of the Croatians, the intentions and values was clearly stated. Progress was made in that direction to face out all the vestiges of the authoritarian regime of President Tudjman. Croatia realized the setback the Tudjmanist policy had on the country, they knew in other to survive they need to integrate themselves with the global economic and stop basking in the Tudjman's narrative of Croatia- being a regional power. All these changes were accepted with open hands by the EU and NATO. (Jovic 2006)

In response to all these developments, Croatia became a member of the Partnership for peace initiative on 25th of May 2000. That was a milestone for Croatia. According to the secretary

General of NATO, George Robertson, said that the progress made by Croatia should be an example to the Serbians; a country will always have room to rewrite its history, also gave credence to Croatia's progress. (Jovic 2006)

The EU's foreign policy towards the Balkan region changed; Croatia carried out some major reforms and the EU believe Serbia should be able to do the same; although the Europeans knew this can only be achieved if the Milosevic regime was toppled. (Jovic 2006) Internal and external pressure led to the removal of Milosevic in October 2000. During this time the idea of western Balkans emerged fully. This time the Croatian government was in full support of a regional cooperation within the Balkan region. Despite the progress made in Croatia there were still few opposition to such organization. This led to an important summit in Zagreb with the EU heads of state and of course with five other head of government from the West Balkan on November 2000. (Jovic 2006, p 93). The outcome of the summit was not favorable, as the Tudjmanist vestiges in the country opposed to such a Union. The oppositions found their voice through the media and using some segments of the bureaucracies. This retarded the process of the organization likewise the implementation.

As stated by Jovic (2006), another major issue was the lack of cooperation with the ICTY, which also created some setbacks in the negotiations with the EU. This created a collision between Tudjmanist and anti-Tudjmanist. (Jovic 2006). There was a dispute regarding the cooperation with the ICTY and this brought about the resignation of the first Racan cabinet and the second Racan government was elected with coalition of four parties. Croatia at first refused to cooperate with the International Crime Tribunal for the former Yugoslavia (ICTY), regarding the indictment of two former generals who were accused of war against humanity. However, both General Ante Gotovina and Janko Bobeko were indicted 2001 and 2002 respectively. (Jovic 2006, p 96). After the indictments, both the Tudjmanist forces and the post-Tudjmanist arrived at a common ground and unified.

We should note that before the indictment both generals played a great role during the 1990s and also towards the independent Croatia. General Bobeko was the chief of staff of the Croatia Army and Gotovina was the Commander of the Spilt Military District. However before the indictment of Bobeko he was a retired General while Gotovina along with 11 other generals were dismissed by President Mesic after the 2000 elections. (Jovic 2006). In addition Gotovina had gone into hiding to avoid the extradition likewise there was public support for him amongst the pro-Tudjmanist public. Failure to hand over Gotovina during the said time, made the EU and the ICTY doubt Croatia was indeed ready for changes. Consequently, both Generals were promised by Racan and HSS leader Zlako Tomcic that they will not be extradited from Croatia. (Jovic 2006, p 96). The Croatian government made efforts to reverse the indictment but the ICTY rejected the appeal in 2002. (Jovic 2006). The situation in Croatia was dire; there was almost a state of emergency reducing the role of the president to nearly ceremonial role during this period. There was lack of control of Tudjman's supporters who were armed and determined to protect Bobeko from extradition.

The unwillingness to cooperate with the international body, led to USA and EU to question the Croatian politics. (Jovic 2006). In response to the crisis in Croatia, the USA suspended the financial assistance to Croatia, which was allocated to bring about the judicial reform in the state. Similarly the UK refused to ratify the Stabilization and Association Agreement due to the refusal of Croatia government to act in accordance with ICTY..... However, not long after all these developments Bobetko died in his home in Zagreb in 2003. The Bobetko case has proved to be an impediment to Croatia's accession to EU and NATO. Thus, postponed the accession of Croatia to NATO. The Stabilization and Association Agreement that Croatia signed on 29th October 2001 was delayed up until 1st February 2005 before entering into force. (Jovic 2006). After the episode of 2001 the US made it known to the Croats that their membership to NATO depends on their cooperation to the ICTY regarding the whereabouts of the Gotovina; he must

be brought to justice. The first five years of the post-Tudjmanist was a mixture of success and failure. Both Racan and Mesic government tried to change the narratives of the country but the Tudjmanist forces were still active. (Jovic 2006, p 103). This lingered for four years of Racan government. Both the EU and NATO membership was on hold.

Notwithstanding during this time, the Racan government applied for full membership of the EU on 21st February 2003. The questionnaires were returned back to the commission in June 2003. However, the SAA was still held resulting from lack of cooperation with the ICTY. The UK and the Netherlands refused to ratify the document.

After the 2003 election, the new Prime Minister Ivo sander was swift and affirmed his commitment to the ICTY. He was determined to make changes and for him the priority of his government was to fulfill all the EU criteria for membership. He reaffirmed that Croatia was democratic, reformed and also a center-right party. Furthermore, he refused to make coalition with the far-right Croatian party of Rights (HSP) on the contrary he collated with the HSLs and more importantly the minorities (ethnic) also had a seat in the Croatian parliament which includes the Independent Democratic Serb Party (SDSS). This was a new epoch and a turning point from the Tudjmanist policies in Croatia. Minorities were treated as equals without discrimination.

This was a bold step towards the realization of the membership more than the Racan government that was skeptical about the interpretations of the Tudjmanist- who could not address the issue of minority. “Racan government tries to avoid misinterpretation of such action which might be tagged as the return of Yugoslavia”. (Jovic 2006). Additionally, this period experienced competition among the Croatian party system (SDP) and the SDSS for the votes of ethnic Serbs. The success of this period transformed Croatia from the authoritarian regime and nationalistic perceptions of themselves to a more liberal and democratic regime. (Jovic 2006).

CHAPTER 5

PIRAN BAY DISPUTE BETWEEN SLOVENIA AND CROATIA.

From time immemorial land and territorial waters has always been a major dispute between different fractions or groups. The treaty of Westphalia allowed nation-states the sovereignty over their jurisdiction, avoiding the interference of another country into the domestic affairs of a sovereign state. Nonetheless, border dispute have been prominent since the definition of nation-states. The delimitation of borders has led to long-term dispute between neighbors and some cases ended up in war. In other words delimitation of border is an important aspect of sovereignty. The dispute is mostly resolved bilaterally or taken to the international court of justice (ICJ) for arbitration. More so the guidelines for resolving dispute of such nature is by looking at the United Nations charter. In the case of the maritime dispute, the United Nations Convention on the Laws of the Sea (UNCLOS) is looked upon.

The dispute between Slovenia and Croatia started with the border of the Dragonja River, while the relationship between this former Yugoslav countries got tensed after both Croatia and Slovenia proceeded with their plans of unilaterally declaring their independence in June 1991. This border dispute was vigorously contested between the two sovereign states, similarly the case of the four villages- where all the residents were almost predominantly Slovene. However the most disputed case was the maritime border of the Piran Bay. This bay is in the northernmost part of the Adriatic Sea.

Some of the reality of this bay includes, Slovenia's landmass falls on the southern part of the Adriatic Sea, thus, covering only a small fraction of the Adriatic Sea. Its coastline is approximately 47km long. Looking from history after the World War 1 with the Osimo Agreement the Piran bay; that was considered as a free territory by the international community was divided into two with Zone A belonging to the Italy and Zone B given to Yugoslavia.

Memorandum of Understanding in 1954 preceded the Osimo Agreement of 1975. (Demir 2009). Initially the Free territory of Trieste was an independent and sovereign region under the auspices of UK & US as Zone A and the Yugoslavian as Zone B. (Demir 2009, p 149). It was also a region of international free port. With the ratification of the Memorandum of Understanding the region was given to Italy and Yugoslavia and this came into effect in 1977. (Demir 2009)

After 1991 with the dissolution of Yugoslavia, The Opinions of Badinter Commission gave 15 decisions and the third was to deal with the border dispute between Croatia and Slovenia. (Demir 2009, p 149). Bearing in mind that after the dissolution, the borders will change and only compromise between parties can bring about solution to such dispute otherwise the pre-existing border division will continue to be valid. (Demir 2009). It's important to note that the former Yugoslav federation did not set their borders; be it land or sea between the member states. Consequently it's difficult to resolve the border dispute that ensued after the collapse of Yugoslav federation, unless we refer to the historical entitlement of such disputed land, if there is any?

In order to solve this predicament regarding the rightful ownership of Piran Bay, we need to evaluate or ask some questions. First, we need to define the limits of the coastal border in the Bay, also define the territorial sea in the Bay, and finally confirm the status of Slovenian territorial sea vis-à-vis the access to the high seas. (Demir 2009). More importantly if this can be put into historical context to better understand the Piran bay with respect to the delimitation between Italy and Former Yugoslavia. Without looking at the historical context, it will be difficult to comprehend the interest of both Croatia and Slovenia. (Demir 2009). Bearing in mind, there is no *Pacta Sunt Servanda* between both parties.

THE REALITY OF THE BAY

The Piran Bay is located at the northernmost part of the Adriatic Sea, this region is bordered by three countries namely, Croatia, Slovenia and Italy making it the Trieste Bay. The Trieste Bay is secure between the Peninsula of Savugrija and the Peninsula of Piran. It's also known as the cape Madona. (Pinan 2008). The Italian coast is located on the north-west side, the coast does not fall into the Piran Bay border. Likewise the Slovenia coast shares a little fraction of this Bay and the majority of the Piran Bay fall under the Croatian sovereign jurisdiction. (Pinan 2008, p 333).

In other to solve this conundrum we need to look back to history before both states declared their independence in June 1991. Obviously, we can argue that the creation of a new state after the collapse of former Yugoslavia will lead to formation of new borders between the Republics most importantly between Croatia and Slovenia. During the Yugoslavia republics, the borders were under the state administration in other to ensure their status quo and this was confirmed by the Badinter Commission. (Demir 2009). Under the former state administration prior the Yugoslavia was the settlers who defined the borders of the Croatia-Slovenia territory in the land registry books, however the books are relatively old or misplaced this makes it difficult for references regarding the recent dispute of this territory. More so there were cases where the information in these books were contradictory or overlapping. (Pinan 2008)

The Piran Bay dispute is different from other land borders dispute. In the sense that, the sea borders between the former republics of Yugoslavia were never determined, due to the Republic control over the "said territory". The only time there was an agreement within the Trieste Bay was the Osimo Agreement which delineated the boundaries of this area; half of this region was given to Italy while the remaining half was given to former Yugoslavia republics. (Demir 2009).

However, if the Piran Bay was drawn by the principle of equidistance, the line will be drawn from the middle of the Bay. Such a delimitation will render Slovenian territorial waters relatively small; this can be compared to a box while Croatia will continue to have direct maritime border with Italy. (Demir 2009).

THE LEGAL AND POLITICAL CLAIMS OF SLOVENIA

The Slovenian Ministry of Foreign Affairs published a non-paper white book stating their claims and arguments pertaining the Piran Bay. The writings published by the MFA was organized into four parts. (Matej & Cernic 2007. p 5).

Firstly, the most prominent argument from Slovenia was the claim that Slovenia has sovereignty over the entire Piran Bay, as a result the solution to the maritime border should be resolved on the platform of equity, bearing in mind the circumstances of the Slovene. The dispute begun with the declaration of independence by the two states in June 1991. Slovenia expects Croatian authorities to respect the border situation after the independence.

The legal and political claims of the Slovenia can be found in the 1993 memorandum on the Piran Bay. (Matej & Cernic 2007). This was adopted by the Slovenian parliament in 1993, also the *Drnovsek-Racan* agreement 2001. According to Matej and Cernic (2007), this agreement was also referred to as the *Treaty on the Common State border*. This will be explained in details later in this chapter. Slovenia negotiations calls for a solution that will be based on the second paragraph of the United Nations Convention and the Law of the Sea (UNCLOS). On the other hand the *Drnovsek-Racan* agreement was calling for the demarcation of the Bay of Piran and Dragonja River Valley. (Matej & Cernic 2007). This agreement was ratified by the Slovenia parliament, but however, impeded by the Croatian parliament, this nullified the agreement. Both parties had to settle for the *Agreement on the Trans-Border Commerce and Cooperation*

between Croatia and Slovenia to promote peace and stability within the region, most importantly the population living in the vicinity. (Matej & Cernic 2007). This was a form of pact between both parties to avoid the deterioration of relationship between the inhabitants of the Piran Bay.

The claims by the Slovenia government was that the status-quo of the region was unilaterally changed by the Croatians. The Slovenia drafted two legal documents to support their claims to the Piran Bay. Firstly, the document stated that the Slovenia has been in total control of the Bay since the Osimo Agreement in 1975, similarly during the former Yugoslavia federation, Slovenia maintained the control of the Bay from the Control point. (Matej & Cernic 2007). Showing the evidence of their control in the Pula Agreement and Instructions of the Police Directorate of Slovenia. (Matej & Cernic 2007). This agreement shows the existences of police control on the Bay by the Slovenian government. However, the essence of this agreement is to show Slovenia had an economic control of the Bay prior to independence of both states. Correspondingly, it's only right for Slovenia to keep the Piran Bay, this was indeed the argument of the Slovenian. Similarly, Slovenia argues that the maritime border needs to be resolved along with the undefined borders between Slovenia and Croatia i.e. the borders along the lower *Dragonoja River*. In addition to the claims, Slovenia also questioned the Croatian claims over *Savudrija Peninsula*, by making reference to the historical Slovenia settlers in the area. (Matej & Cernic 2007).

Secondly, Slovenia refutes the equidistance approach that it cannot be applied in the case of the Piran Bay. They claimed this is a special circumstances and it should be treated as such, by using the special circumstances rule to resolve the dispute between both parties. Slovenia argues that in other to solve this disputed Bay, both parties needs make an agreement based on the drafts of *Drnovsek-Racan agreement* otherwise the 2001 agreement should be applied to solve the dispute. (Matej & Cernic 2007). Slovenia claim that Croatia did not follow the Vienna

Convention on the Law of Treaties (VCLT), stating that Croatian signing of the *Drnovsek-Racan Agreement* was a blinding agreement between the two parties (both prime ministers) agreed upon the text and were willing to approve the text. However, Croatia, defied the agreement thereby refusing the treaty to go into force. (Matej & Cernic 2007).

Under the VCLT Article 18, a state should remove any impediments that will hinder progress of a treaty when both parties have exchanged the instruments or ratified the treaty. However, similarly, if a state does not want to be a part of the treaty, he should make the intentions known by not accepting or exchanging any instrument with the parties involved. Technically Croatia violated this acts.

Slovenia submitted facts to buttress its stands that the equidistance approach will not be applied or be a viable option in the prevailing circumstances. By sighting an example between the Federal Republic of Germany and Republic of Denmark; and the Republic of Germany and the Netherlands. (Matej & Cernic 2007). The international Court of Justices ruling was in favor of the customary laws in the delimitation of the North Sea Continental Shelf. In other words one cannot automatically use the equidistance principle other factors must be considered, such as the circumstances of the delineating territory. (Matej & Cernic 2007).

Under the article 15 of the United Nations Convention on the Law of the Sea (UNCLOS) states that the median line does not apply in situation where other factors are in play, which can be historical title or other special circumstances to be used to define the territorial waters of the two states. (Matej & Cernic 2007). This is the strongest reference point Slovenia reiterated. Slovenia claims that historic title and special circumstances do exist when it comes to the maritime border dispute of Piran Bay.

Furthermore, Slovenia claims that Croatia consent at the very beginning that negotiations should not follow the equidistance principle, at the same time the *Drnovsek-Racan Agreement*

stated that 80% of the Piran Bay should go to the Slovenia while 20% should go to Croatia. Matej and Cernic (2007) point out from the conundrum of the Piran Bay that the border should begin at the middle of the mouth of Dragonja River approximately 270 meters from Savudrija Peninsula; so from that point a straight line will be drawn until the point intercept at 1200 meters from the Croatian coastal line and at about 3600 meters from the Slovenian coastline. (Matej & Cernic 2007).

This agreement is also an indication that Croatia was particular about the equidistance principle during the process of delineation of the nautical area in the Piran Bay. Both parties could not carry on with the *Drnovsek-Racan Agreement* because the Croatians opposed and rejected the document. (Matej & Cernic 2007). The intent of the agreement was to help Croatia territorial waters connect to the high seas for international voyage. It should be mentioned that the Croatian Prime minister at that time ratified the agreement but the opposition came from the Croatian Parliament. The VCLT *pacta sunt servanda* was defeated in this case which is incorporated in the VCLT Article 26 states thus, every *treaty in force is binding upon the parties to it and must be performed by them in good faith*. The importance of this phrase was confirmed by the ICJ in a case *Gabcikovo-Nagymaros case* in 1997. (Matej & Cernic 2007).

Slovenians reiterated that Croatia state that any treaty should be interpreted in good faith and the content of the treaty should be carried out in good faith. It argues that the objective of the *Drnovsek-Racan Agreement* was totally disregarded by the Croatians National Assembly. Croatians extended their borders for fishing to the middle of the Piran Bay on December 2005, instigating a protest from the Slovenian Foreign Ministry; the Slovenian government reaction in January 2006 was to enclosing the whole Bay as well as the seas in the region under its protective ecological Zone in the Adriatic. (Matej & Cernic 2007). This reaction resulted from the action taken by the Croatian government to extend its fishing zone to the middle of the Bay. Drawing from The decree passed by the Slovenian government divided the waters into three

zones: first zone encompasses the whole internal waters covering the Piran Bay; second zone encompasses the territorial waters adjacent to the Italian and Croatian borders; the third encompasses the Slovenian ecological zone at the open seas. (Matej & Cernic 2007, p 8). Slovenia used some of the provisions in the *Drnovsek-Racan Agreement* as the limit for the second zone in delineation. This decree was published by the Slovenian Foreign ministry as a temporary solution to the Piran Bay until both countries comes to an agreement regarding the Piran Bay fishing zone from the previous bilateral pact between them or a new border deal is created.

On top of that Slovenia stated that the border at the sea should be divided in line with the second paragraph of Article 15 (UNCLOS); first by paying attention to the historic title and the other special circumstances. (Matej & Cernic 2007). Drawing from history, Slovenia claims the Piran Bay belonged to Piran municipality as far back as 1893 and this municipality owned both sides of the Bay, likewise the Savudrija Peninsula under the Croatia sphere of influence. After World War II, the communist rulers of Croatia and Slovenia somehow managed to arrive at an agreement to give Savudrija Peninsula to Croatia, in spite of that in the 1950s the Peninsula was still shown in Slovenia geography books, with the borders shifting to the South of the Dragonja River. (Matej & Cernic 2007). In addition to that historical documents from the Catholic Church claimed that from the eleventh century until 1954 the parishes on the Savudrija Peninsula belong to the bishopric of Koper which is presently in Slovenia. (Matej & Cernic 2007, p 9). Drawing from history all this evidence points to that fact that Piran Bay was an historical bay and it was under the Slovenia sphere of influence.

Furthermore Slovenia argues, its mandatory for the territorial waters to reach the high seas, emphasizing the need for a special outlet or corridor to connect to the international waters which should be 3600 meters wide and 46 square kilometers. (Matej & Cernic 2007, p 9). This special channel will create a passage for Slovenia between the former Yugoslav border and Italy.

(Matej & Cernic 2007). This arrangement will not affect the Croatian-Italian border. Over the years all the negotiations between both parties have acknowledged that the division of the former Bay should be done within framework of equity and compromise. (Matej & Cernic 2007). Stating that if Croatia will like to continue to share its border with Italy while keeping this status quo, therefore Slovenia should be allowed the right to access the international waters. This was also confirmed by the *Drnovsek-Racan Agreement* that the Channel created will allow Slovenia to access the high seas while Croatia will continue to keep its maritime border with Italy. (Matej & Cernic 2007, p 9).

Additionally, the population of Slovenians on the other side of the Bay suggests that historical settlement of the Slovenians on the entire Piran Bay. Most of the population lives along the coastline of the Bay within 1.5 kilometers of the Bay which is 46 km in length. (Matej & Cernic 2007). They carried out different activities, ranging from fishery to Commerce. More importantly, it was an area for tourist attraction having the necessary infrastructures in place. All of these factors supports the Slovenian claims on the entire Piran Bay. The EU notifies Croatia to cancel the declaration of an exclusive economic zone of the Bay; this statement we can argue was in favor of Slovenia and Italy.

Conclusively, Slovenia debunks the ideas held by the Croatians and some academicians that the dispute should be solved in accordance with the Article 2 of United Nations Convention on the Laws of Sea (UNCLOS). (Matej & Cernic 2007). The Croatians held the belief that Article 2 of the UNCLOS is an *ius cogens* nature with no derogations allowed. The Slovenia argument against this claim was- if we consider the situation at Piran Bay as *ius cogens*, thus will undermine the whole idea of *ius cogens* norms. Because the *ius cogens* nature is something strict and prohibited under the international law. Take for instance, slavery, genocide, force labor etc. In other words the UNCLOS Article 2 is a norm of the international law regarding

this norm as *ius cogens* will defile the real function or meaning of the term. (Matej & Cernic 2007).

THE LEGAL AND POLITICAL CLAIMS OF CROATIA

The Croatian National Assembly put forward its position regarding the delimitation of the Piran Bay and the lower borders of the Dragonja River. (Matej & Cernic 2007). Stating that the Croatian government and negotiators should follow the Article 15 of the United Nations Convention on the Law of the Sea (UNCLOS) and also calling for the division of the Bay in accordance with the equidistance principle, in other words the Bay will be divided into two equal halves. However, Croatian government states until the dispute is solved in that manner, both parties should adhere to the *Agreement on Trans-border Commerce and Cooperation* between the states; this will allow peaceful transaction and peace between the inhabitants of this region. (Matej & Cernic 2007).

The Croatian claims on the Piran Bay have been presented in two documents, which was a response to the Slovenia non-paper White Book. This was referred to by Croatians as the Blue Book. (Matej & Cernic 2007). Thus, Croatians argues the claim of Slovenian sovereignty over the entire Bay; this claim cannot be justified looking at history, further the claim is against the international law. Croatians insists on delimitation of the Bay by using the equidistance principle. Under this principle half of the bay goes to Croatia while the remaining half goes to Slovenia. Another fact was the Slovenia claims to the international waters in form of special channel on the bay cannot be justified; similarly this is contrary to the tents of the international law. (Matej & Cernic 2007). Furthermore Croatians claim the *Agreement on Trans-Border Commerce and Cooperation* is a legal document blinding between both parties to regulate the transaction on the Bay, likewise protect the fishermen in the region.

Again the Croatians believe the agreement of the Piran Bay have been reached, this was done by basing most of their claims on Article 15 of the UNCLOS. However, there is various interpretation of the Article 15 paragraph 1 and 2. (Matej & Cernic 2007). It argues that the border should be drawn from the median unless there are historical connections to the Bay. This agreement confirmed the territorial border between Croatia and Slovenia; this includes the Dragonja Border Valley. The Dragonja Valley has been solved by the municipalities by referring to the land-registry between Croatia and Slovenia. (Matej & Cernic 2007, p 12). On the side of the Valley lies four villages which has been a debate over who is the rightful owner of these villages. Both parties claim sovereignty over these villages, despite the fact it has been difficult to trace the land registry books of the state municipalities to figure out who indeed is the rightful owner. According to this agreement this villages should go to Croatia because most of the Piran Bay will go to Slovenia based on the Prime ministers pact which was not finally ratified at the Croatians parliament. (Matej & Cernic 2007). However, the villages were preoccupied by the Slovenians so such a decision will be a sacrifice from the Slovenians point of view. This agreement was in good faith between both parties so as to achieve a common ground.

However the aftermath of the relinquish villages to Croatia was met with an obstacle at the Croatian parliament, even though both Prime ministers signed the *Drnovsek-Racan Agreement*. (Matej & Cernic 2007). They could not move on with the agreement because it was not legally binding as a result of the Croatian parliament failing to ratify the agreement. Consequently, Slovenia was determined to ensure the agreement was adopted, however the Croatian government totally renounce the agreement regarding the boundaries of the Piran Bay but went on to claim the four villages ceded to them.

The Agreement was not binding between the countries. In an attempt to reach a common ground with Slovenia, Croatia further insist on the delimitation of the Bay; by making reference

to Article 15 of the UNCLOS. As stated earlier, there are different interpretation of Article 15 of the UNCLOS. (Matej & Cernic 2007). Some will argue that, the first paragraph of this article is a conventional principle which may be applied provided it's not in conflict with the second paragraph of the article which says historic title or special situation may render the first paragraph of the article void. Furthermore, whose circumstance falls in the second paragraph of the Article must proof the existence of such historical title or special circumstance under which the Land or sea has been allocated to the heir.

An example from the arbitration tribunal was the *English Channel Arbitration* case where the judge or tribunal court will have to decide whether the case indeed was a special circumstance based on the judge's discretion. (Matej & Cernic 2007). Thus, drawing from the previous explanation of Article 15; with different interpretation of the first and second paragraphs. It's obvious that the Croatians defined the delineation of the Piran Bay according to the first paragraph of Article 15. Many scholars in Croatia also give credence to the demarcation of the Bay. However, by employing the equidistance approach.

They emphasized that the Bay has never been under unilateral control of either party- this statement was disputed by the Croatians. Furthermore, it explains both state had co-existed peaceful; by respecting each other's territorial right on the Piran Bay. Both state utilized each sides of the territorial waters not according to the 12 nautical miles of international law rather base on their needs. This refuted the notion of the Slovenians; showing they had historical connection with the Bay, likewise the Bay has been under the supervision of the Slovenian police authority. All these political affiliation and legal connection to the Bay was incorrect and false for Croatia.

Croatia made reference to history precisely the time of the former Yugoslavia Republic; describing some events that occurred that time, which shows the Yugoslav government was of the opinion that the Bay was divided into equal halves by both states. (Matej & Cernic 2007).

Although another weakness in the Slovenian claim was the fact that most of Yugoslavia territorial waters was under the auspices of the federal government before both states declared their independence in 1991. Another supporting argument from the Croats was the notion that Istria fishermen made use of the Bay for economic purposes and this is also an evidence to prove the Croats has been carrying out activities on the Bay with equal claims on the Bay as the Slovenians. Another argument can be the notion, although might not be valid... Is the idea that the Croatians believed they were good sailors and they can protect the Bay, so it is only natural for them to control the entire Bay. Similarly, at some point this was presented as a supporting fact to control the Bay.

All these facts from the Croatia indicates that there's no concrete evidence to proof that Slovenia was the sole sovereign authority on the Piran Bay after the self-declared independence of the state or during the Yugoslavia republics. In other words it's incorrect for Slovenia to declare the Bay as exclusive for Slovenian use. It's important to note that during the Yugoslavia republics, powers were delegated to the Center, in other words the Yugoslav government held the preponderance of power to control the whole Adriatic Sea; up until the Memorandum of Understanding which led to the division of this region into two parts; between Italy and the former Yugoslavia. In a nut shell the Piran Bay was under the authority of both states. (Matej & Cernic 2007).

The crux of the Croatian argument centered on the Article 2 of the UNCLOS, which is supported by international law that a state have 12 nautical miles of territorial water from the land territory. Looking from this framework it's undisputable that Croatia is entitled to such privilege under the law. Furthermore, it's impossible for Slovenia to claim any historical title to the Bay or totally sovereign over the Bay. Similarly it's impossible to Slovenia to delimit the Bay in a fashion contrary to the tents of international law, i.e. nothing in the UNCLOS states

it's mandatory for Croatia to accommodate the Slovenians special channel to reach the international waters or high waters. (Matej & Cernic 2007).

This time around the Croatians argues that the Article 2 of United Nations Convention on land and Seas (UNCLOS) is an *ius cogens* norms which permits not derogation by law. (Matej & Cernic 2007). So drawing from all this Article 2, this shows that allowing Slovenia a special corridor or channel will be going against the norms of the international Law. Additionally ceding some of the territorial waters of Croatia to Slovenia; simply to have the dispute settled in that manner will be going contrary to the ethics of international law, i.e. the *ius cogens* norms of Article 2 will be rendered void. Such a claim by the Croatians actually render most of the claims by the Slovenian government void, some pertaining to the special corridor to allow them reach the international waters. Furthermore, Croatia expressed its intent by stating that the country is not oblige to honor the request of Slovenia whatsoever and went on to say such a request cannot be granted with respect to Piran Bay. (Matej & Cernic 2007).

Addressing the issues from another perspective, the Croatia government argument goes in another direction; for some reason if their request for a special corridor was honored, it was argued that the territorial water won't reach the high seas in span of 12 nautical miles and exceeding this limit will mean Slovenia encroaching on the international water set by the UNCLOS. (Matej & Cernic 2007). On the contrary the Croatians will permits the innocent movement of Slovenia ships on the Croatia territorial waters. (Matej & Cernic 2007).

Croatia finalized this claims on the Bay by stating its stand on the issues. Slovenia is not in any position to extend his boundaries based on Slovenia's White Book published to express their claims. (Matej & Cernic 2007). (Matej & Cernic 2007). A part of the Coastline belongs to Croatia and there are no special privileges permitted to Slovenians regarding the Piran Bay. Croatia emphasized the need to solve the dispute by equidistance approach or according to the 12 nautical miles of the UNCLOS. However they will prefer the dispute to be solve with the

equidistance approach because that will be more appropriate for both parties. Otherwise if this cannot be solved by mutual agreement or consent, Croatia request the dispute to be solved by an independent tribunal within the framework of the international law. (Matej & Cernic 2007).

JUSTAPOSING THE CLAIMS OF BOTH PARTIES UNDER THE INTERNATIONAL LAW

According to the International Court of Justice, the issues of the Piran Bay should be respected and should be resolved in line with UNCLOS. This includes respecting the principle of equity and any special circumstances in the delimitation of the Bay. However, the ICJ states in defining the boundaries of the Bay, the idea of equity is not mandatory in defining the borders, although this concept can be kept in mind during the process. When it comes to defining the boundaries of the Bay it must be equitable; in other words fair and impartial, this is different from delimiting in equity. Similarly the ICJ states the equidistance method of delimitation is not the only means to solve a border dispute, however, in the case of Continental Shelf between Libyan Arab, Jamahiriya Malta the equidistance method proffered solution to the disputed region. (Matej & Cernic 2007).

Croatian government calls for a the border settlement according to the Article 2 of the UNCLOS or with the equidistance principle, on the contrary the Slovenia government requests the border should be delimited according to the equity principle. Although equity does not necessarily mean equality, although during the process of defining the boundaries some factors might be considered based on the terrace of the delimited area. Some of the factors the ICJ considers are; if there's any historical connection to the Bay or special circumstances involved. Additionally, the ICJ claims the organization is not in any position to define the boundaries by making

references to the geography of the Bay although this may be considered. I.e. the ICJ used the case of the North Sea Continental Shelf cases as an example. In principle, the International Court of Justice claims the equidistance method of delineation is not mandatory to determine the borders in the case of the Piran Bay. (Matej & Cernic 2007). Furthermore, the Piran Bay lacks the de facto status which is the reason behind the dispute, it should be noted that the Bay is not disputed because of its enclosed nature between the two states. The dispute stems out from the need to totally control the Bay between Slovenia and Croatia. Slovenia stresses the need for a special corridor to reach out to the high waters while Croatia argues against such a compromise; stating there's no law to justify such a claim. (Matej & Cernic 2007).

Assuming the Bay is an enclosed and historic, thus the delimitation should be carried out by putting all these into consideration. In such an event there will be a joint sovereignty over certain part of the waters, which will be controlled by both states. Similarly there will be right to innocent passage on the waters since there's co-ownership on certain part of the Bay. During the delimitation of the Bay it's important to come up with equitable result to resolve the dispute due to different factors stated by the disputed parties. (Matej & Cernic 2007).

On one hand, Slovenia calls for a compromise and liberal approach towards the delimitation of the border; on the other hand Croatia opposes the Slovenia claims on the total control of the Piran Bay and calls for an equidistance approach to solve the disputes. Consequently Slovenia claims it has always been the sovereign authority in the Piran Bay, on the contrary Croatia argues that the Bay has not been delimited, claiming that the Bay was formerly under the authority of the Former Yugoslavia. Croatia argues that there's no proof to back up this claims. The international Court of justice will require an evidence from both parties to prove the entire control of the Bay by Slovenia, this is required in order to proffer a lasting solution to the dispute.

Above all, Croatia dwells on the UNCLOS Article 2 in the delimitation of the Bay- this article explains how to demarcate the territorial waters of a coastal state- the territory of a state extends 12 nautical miles from the land territory. Croatia argues this article is an *ius cogens* with no derogations permitted. In fact the Article 2 of the UNCLOS is an important concept reflecting the fundamental norms in the international community and reflecting how the international legal system works. (Matej & Cernic 2007). Additionally we should bear in mind that the Croats *ius cogens* norm is an international customary law different from the international treaty law; although this customary law still holds the peremptory status. An example of such customary norm can be seen in the South West Africa Case; while Ethiopia and Liberia emphasizing that South Africa cannot deviate from the general norms accepted by the international community unanimously. They went on to explain that apartheid and genocide is an *ius cogens* with no derogation. Comparing the two situation, one will agree that one situation is in grave danger than the other, so if we go by the definition of *ius cogens* by Croats; we can argue that the significant of the concept has been used vaguely used. This may also make it difficult to assume the Piran Bay to be a historical bay and likewise difficult to resolve the dispute accordingly. Nevertheless if the Piran Bay is an historical bay, there's nothing stopping Slovenia from delineating the Bay and exerting its sovereignty over this region, above all this does not conflict with the international customary law and its principles.

Apparently, the pact between Slovenia and Croatia in 2001 states the Croats were willing to forfeit the equidistance principle of delineation, similarly the agreement includes the Croatian territorial water has the high waters but this was not ratified and this indicates the failure of the Article 26 of the Vienna Convention on the Law of the Treaties, stating all agreement should adhere to the principle of *pacta sunt servanda*. In other words all treaties should be done in good faith in line with the object and purpose of such event. Clearly all these principle were breached by the Croatian parliament when they refused to ratify the treaty which was agreed

upon by the two prime ministers. (Matej & Cernic 2007). Obviously was a breach of international law, portraying Croatia government as undependable partner within the international setting. (Matej & Cernic 2007).

In Conclusion Croatia refused to grant Slovenia a special passage through the Croatian waters, only if the Bay is drawn can then Slovenia have the chance of reaching the high through the Croatia territorial waters. Even though Croatia has the right to most part of the high waters, and efforts for the Slovenians to reach out to the high waters will be a compromise on Croatia's part and this fact is in line with the international customary and international treaty law. We should bear in mind that it's allowed for the Slovenia to commute through the Croatian territorial waters by law, although this privilege should be limited to prevent any intimidation or encroachment on Croatians privacy. (Matej & Cernic 2007).

THE PRIME MINISTERS TREATY (RACAN-DRNOVSEK AGREEMENT)

This *Racan-Drnovsek* Agreement held in 2001 to find a common solution to the Bay dispute between Slovenia and Croatia. (Matej & Cernic 2007). Both prime minister signed and agreed that eighty percent of the Bay should be given to Slovenia; this will help them reach the high waters. To reciprocate for this gesture, Slovenia decided to return the four villages which were disputed by both parties to Croatia. Additional this agreement also included that both parties will have a police stationary at the Bay to avoid any problems that may ensue for the fishermen in this region. (Matej & Cernic 2007). The agreement was not adopted because of the opposition in the Croatians parliament, nullifying the pact and didn't come into effect.

After this incident, in 2003 Croatia went on to declare the Bay as Exclusive Economic Zone (EEZ) meaning the Piran Bay is exclusively for Croatia's use. (Matej & Cernic 2007). This

declaration led to protest from Italy and Slovenia, adding that Bay is an enclosed water and both states shares border with the Bay. They claim Croatia should not have full control of the Bay, because this action will affect Slovenia and Croatia. When Croatia applied for membership February 2003, the EU also mentioned that Croatia should not declare the Bay as exclusive. After pressure from both the EU and other neighbors in the regions, Croatia discontinues the declaration by changing the name from Exclusive Economic Zone to Ecological and Fisheries Protection Zone. This was done in order to avoid further talks about the Bay, thus Croatia will love to enjoy some right on Bay. This rights is supported by the constitution of UNCLOS Article 55-75. (Matej & Cernic 2007, p 14). In 2006 this declaration was implemented, although Slovenia, Italy and the rest of the EU members were exception to this: giving them the right to innocent passage on the waters. In spite of all these arrange this did not proffer a lasting solution to the dispute. Furthermore the rift between these parties escalated and no solution was found.

Furthermore, the declaration by the Piran Bay as Exclusive Economic Zone by the Croatians was not perceived as against the law by the international community and similarly the request of the Slovenia to reach the high waters was respected. (Matej & Cernic 2007). Both parties are operating within the bounds of the UNCLOS. In reality the Slovenia population far outstrips the population of the Croats in the region but according to the customary law and treaty law, Croatia has the right to 12 nautical miles from the base of land territory. The escalated problems made it difficult for Croatia to open accession talks in 2005. Obviously that was an avenue for Slovenia to resolve the issues by holding the referendum or vetoing the negotiations with Croatia. Recalling from the 2010 when Croatia ought to open 10 new chapters and closed the previous 5 chapters, it was recorded that only 1 chapter was open and 3 was successful closed due to the Slovenians vetoes. Although Slovenia was heavily criticized for these vetoes by the EU, stressing that Slovenia should not use the border dispute as a means to block Croatia's progress with accession negotiations. Additionally the European Commissioner for

Enlargement Olli Rehn argues that the disputes must not affect the accession negotiations and such an issue must be solved bilaterally outside the context of the EU. It goes without saying Slovenia has an upper hand but this must not be used for selfish purpose as everything should be carried out in good faith. (Matej & Cernic 2007).

The rationale behind Slovenia vetoes was some of the documents presented by Croatia were false regarding the Piran Bay. The document gave the impression that the Bay was under the custody of the Croats. More so what the Slovenians depicted from such documents was the Bay had been resolved, although in reality the situation was the same. Croatia rejected the allegations regarding the documents but continue to blame Slovenia for the vetoes. Some ideas were offered to both parties to help solve the disputed Bay. Firstly, Slovenia should be willing to use a special corridor provided by the Croatia to reach the international waters, and this corridor will pass through the middle of the Bay. Secondly, Croatia will be allowed to declare the Bay as Exclusive Economic Zone with the expectation of Italy and Slovenia to this declaration. Lastly, the dispute should be solved by the international arbitration court. All these ideas seems out of place for Slovenia aside the idea of international arbitration. Despite that, Slovenia would be prefer a solution within the Racan-Drnovsek Framework, although this idea is out of context for the Croatians. (Matej & Cernic 2007, p 15). This problem is fast becoming political and all that's required is a compromise from each party involved although this seems difficult. Over the years there was no solution to the disputed area until the European Commissioner for Enlargement Olli Rehn approached the issues from a different angle with the help of Marti Ahtisaari a former President of Finland. An ad hoc arbitration panel was set up to deliberate and provide solution to the Piran Bay dispute between the parties.

THE FINALLY SOLUTION TO THE DISPUTE

The dispute official came to an end on 4th November 2009 in Stockholm with the ratification of an arbitration agreement by both prime minister. (Matej & Cernic 2007, p 16). This was witnessed by the Prime Minister of Sweden, Frederick Reinfield who participated in the ratification of the agreement. With the signing of this agreement the accession negotiations was open again with the EU member states.

The European Commission helped to resolve the dispute between the parties, the main arbitrators was the Enlargement Commissioner Olli Rehn who diplomatically dealt with the differences between a member state and a candidate country, (Slovenia and Croatia) Rehn had meetings with the foreign ministers of both states. At times trilaterally and other times bilaterally in order to resolve the dispute and to understand the intentions of both states.

Additionally, with the help of the Former Finnish president Ahtissari, they were able to share various ideas with the disputed parties and also provided various framework for the states to follow which will allow them solve the dispute. (Matej & Cernic 2007).

The Commissioner understood the difference between the parties and made a proposal to the disputed parties. He suggested an international arbitration in order to reach a bilateral agreement between the parties. Both parties were willing to explore this options. The proposed solution can be perceived as favorable for Croatia somewhat; separation of the Croatia's accession negotiations from the disputed Bay; finding a solution to the Bay dispute through the international courts and also unblocking the EU talks with Croatia. The Foreign minister of Croatian Goran jadronkovic was comfortable with this plan but the Slovenian Foreign minister

Samuel Zbogar had reservations about the proposal and refused to state his intent. (Matej & Cernic 2007).

However, Commissioner Rehn drafted proposal to them, this led to further deliberation and legal scrutiny for them. The negotiations came to an end on 16th of June 2009 but the unexpected resignation of the Croatian Prime Minister led to further dialogue. Thus, again they resumed negotiations with the help of Swedish presidency and the EU commissioner. An agreement was finally reached between the two Prime ministers during the meeting in Zagreb on 26th October 2009 and the documents was finally ratified on 4th November 2009.

The commission facilitated the agreement between both parties and this was carried with the consent of both Slovenia and Croatia to the terms of the proposals. Another important factor, the commission had an influence in picking the arbitrators, because the disputed parties had to pick from the list of arbitrators, which was under the influence of European Commissions president and the Commissioner for Enlargement. Some of the other factors that catalyzed the settlement of the dispute was the idea of openness and friendship between members of the EU which is the preamble and foundation of the EU relations with each other. (Matej & Cernic 2007).

More so, good neighborly relations has been referenced in the legally binding text of Article 3 and 4 of the Stabilization and Association Agreement between Croatia and the European Union of 2001.(Hoffmeister:2012:p103-104).

CHAPTER 6

INTERNATIONAL CRIMINAL TRIBUNE FOR FORMER YUGOSLAVIA

After the collapse of the former Yugoslavia this led to the creation of Croatia State in 1991, this movement was an arduous one, however this will not be possible without the help of Franco Tudjman. This was carried out by using the Croatian Democratic Union (HDZ) against the League of Communist of Croatia (SKH) who at that time was the ruling communist party. The helm of affairs changed in 1990 with the ratification of the “Christmas Constitution” which led Tudjman to power in December 1990. (Josipovic 2006, p 145)

Even though the victory of HDZ over the SKH can be described as a “pyrrhic victory” the HDZ held the sit in the parliament which was in line with the Croatian electoral law. The Croatian electoral law interpreted the victory of HDZ as in line with the Croatian electoral law. This was further analyzed that the winner will have total control of the whole parliament. Thus, HDZ as the total seats in the parliament.

Before the self-declaration of independence by the Croatians in 1991, the regime was somewhat authoritarian, in other words, the office of the president controls the other arms of government from legislative to judiciary branch: under the strong influence of Tudjman government. The role of the Parliament was somewhat ceremonial because the decisions were made by the president advisory councils. (Josipovic 2006, p 147)

On one hand the control mechanism by the Tudjman party was able to repress the support for the ICTY, while on the other hand gain support for the amendment of the constitution, which forbids the extradition of Croatians to any international arbitration. Similarly the expulsion of Croatian Serbs in 1995 is also an impediment to justice, because the Croatian-Serbs suffered

from war-crime inflicted to their tribe. (Josipovic 2006, p 145). In addition they can no longer be involved in the domestic protest for justice against the war criminals. On the contrary the Croats who suffered from the war crimes in the hand of the Serbian forces where brought to justice.

THE NATURE OF THE CROATIA STATE SOUGHTING FOR INDEPENDENCE

Following the declaration of independence of Croatia in 1991 under the auspices of Tudjman. Croatia struggled to gain recognition as a sovereign state by working with various international institutions. Similarly by ratification of the Human Right bill under the United Nation Charter. The international recognition of Croatia; directly led to the international acceptance of the HDZ as the governing party of the sovereign Croatia. For Croatia the international recognition is tantamount to the state sovereignty, and these also foster domestic public support.

In 1992 Croatia was accepted to the UN after the HDZ emerged as the winner in the parliamentary and presidential elections. Tudjman authoritarian style of government made it impossible for Croatia to formally apply for membership of the EU or NATO. He was popular for trying to make Croatia a sovereign state with the de-legitimization of the Yugoslav regime was paramount to the HDZ. This was carried out by labelling the JNA as the Yugoslavia military forces greater than the Serbian aggressors. The sensitization of the public on the war crimes committed by Josip Tito in 1925 was also to dissuade the public on the Pan-Yugoslavia movement. Likewise remembering the public about the NDH armed forces who were decimated in 1945 was also a means to delegitimize the Yugoslavia state as the Tudjman party seeks to demonize the federation. (Josipovic 2006).

The ICTY was initiated in the 1990s as a result of the war crimes committed against the Croatian and other minority within the Croatia state; and also the propagation of illegitimacy of other

party. The investigation of Croatian military operation and the Tudjman Regime question both the elites of the state authority and the legitimacy of the Croatian State.

THE DOMESTIC POLITICS OF TUDJMAN REGIME

Tudjman regime in the 1990s controlled all the arms of government without clear cut separation of power. Essentially, the presidential control over the judiciary made it difficult for the interference of the ICTY to investigate the war criminals. It was a difficult task for the ICTY to arrest and extradite the suspects due to the political atmosphere in Croatia. The Office of the President control the judiciary making it difficult for the Judges to act unilaterally, the outcome of any cases brought to court reflected the interest of the president. In addition the legal document compelling the Croats to comply with the ITCY was also subdued by then Tudjman Partisan groups in various institutions within the government. (Josipovic 2006).

The ICTY faced many challenges during this time, although initially the Croatian constitution respected the international law by incorporation of the laws into the domestic law of the state.

Drawing from article 134;

“International agreements concluded and ratified in accordance with the constitution should be part of the internal legal order of the Republic of Croatia”

Even though this law was under the constitution of Croatia, there was no full cooperation of the government with the ICTY. Although there are signs of cooperation with ICTY than with the former Yugoslavia. Still they were not willing for any suspects or accused to be transferred to Hague (International Court of Justice) for indictments but rather set up a local ad hoc committee within to deal with such situation.

From 1996-1999, Tudjman government delivered 17 Bosnian-Croats to the ICTY, however this was not a full compliance with the law. The arrest carried out by the Tudjman government was

based on political affiliation, any member of the ruling party (HDZ) was not extradited to the international court and those without political affliction were released for the ICTY. (Josipovic 2006, p 151). The Tudjman government was not willing to provide any support to the ICTY regarding the investigation of other suspects, most especially the Croatian military forces and other political members. The ad hoc committee set up by Zagreb was not effective allowing the war criminals to resist the arrest from the ICTY for a longer time than it should normally take to arrest them.

“For example, while Tihomir Blaskic and Vinko Martinovic were voluntarily surrendered to the Hague, In the case of Mladen Natelimir and Janko Bobetko arrest and surrender order were initially denied upon the Croatian State’s determination that the defendants were too ill to stand trial” (Lamont:2010: p35).

According to the OSCE in 1991, Most of the victims of the war crime were the Croatia-Serbs. The perpetrators of the crimes amounted to 1700 and only 800 were convicted or brought to justice. Ironically majority of the convicted criminals were predominately Croatian-Serbs (keeping the Croats out of justice). This is an indication of the ethno-centric nature of the regime and perhaps also evinced how minorities were treated during the Tudjman regime.

In fact Croatia did not challenge the authority of the ICTY directly but rather by proxy; using the non-compliance with the individual indictments and investigations as a platform to go against the norms of the ICTY.

HOW CROATIA DEALT WITH THE WAR CRIME

Before the ICTY intervention into the Croatia Judiciary system and the prosecution of the crime committed against humanity. Croatia had dealt with war crimes by referring to the internal law of the state, only under extreme circumstance the ICTY is used. However, this have to be in accordance with the Rule 11- This clause gives the president the right to appoint 3 permanent judges to determine whether a trial or indictment can be referred to another court outside the jurisdiction of the Croatia; Such a crime maybe committed in the territory or maybe the jurisdiction is willing to try the case. Under the condition that a fair trial will be given to the accused without any possibility of death penalty. (Josipovic 2006).

Consequently any action by the ICTY in the Croatian territory has to be in line with the domestic law of Republic of Croatia. In addition, according to Croatians, it's considered unprofessional to take cases to Hague, because international courts actually refer cases to the Croatian Judiciary System which is shows the level of their mitigation and democratic system in the country.

Furthermore, Croatia has tried a large number of war cases, although this cases belong to other sectarian groups. This shows the unfair justice system and also the tempers of justice which can be seen when the Croatian armed force have immunity over the rule of law. Once again as stated in the previous chapter; that justice was brought to the Serbs in Croatia, and sparing out the ethnic Croats. Some of this difference can be attributed to their religions. The convictions of the Croat-Serbs was unappropriated, filled with partiality in the proceedings while proceedings were in favor of the Croatians. (Josipovic 2006)

All these injustice in the judiciary system does not mean there are no professionals to tackle the problems or try all the cases. It evinces the corrupt political system that favors the elites. Thereby impossible to bring the perpetrators to justice and thus making it difficult to impose sanctions on the war criminals. (Josipovic 2006) Some of the reasons for lack of compliance

with the rule of law can be attributed to the political landscape of the country. The influence of media on the citizens (which was a medium used to brainwash the masses); interaction between religious communities in the country, social group influence etc.

The embedded corruption in the system made Croatia a point of interest for the international community by monitoring the system of governance of Croatia. This was carried out by a project referred to as “Dealing with the Past- Monitoring of War Crime Trials” this organization was organized by a reputable non-government organization to protect human rights, this project was espoused by the center for peace, Non-violence and Human Right in Osijek in cooperation with the Altruist Centre for protection of Human Rights and Civic Freedom. (Josipovic 2006, p 154).

The main purpose is to improve judicial practice and help the domestic court in their pursuit of credibility. This was done by calling for justice for victims; fair trials of the criminals and by also working with Croatia to increase the standards of morality and legality. Likewise the ethics which will enable them pursue the accession to the European Union.

Overall, the non-government organization helps with the further development of the domestic judiciary system of Croatia to enable them work with the ICTY. By creating a legal and institutional framework to protect the witnesses and also creating a network within the region to increase cooperation, which will lead to prosecution of the war criminals. (Josipovic 2006)

This organization acknowledge the prejudice in the judiciary system, how trials of accuse were held in absentia, improper indictments, lack of protection for witness, inappropriate treatment of victims and plaintiff. Similarly the infrastructure of the courts were dilapidated. All these limitations were acknowledged by the OSCE. (Josipovic 2006, p 155).

Statistics has shown that from 1991-2005, 4774 person were accused of war crimes, 1,675 were brought to justice, and 778 were convicted while 245 were acquitted. Most of the crimes were

committed against the Serbs by the Croats. The majority of the conviction against the Serbs were done in absentia. There are still 1400 to 1500 person awaiting trial, including the indictment of 400 to 500 persons and investigation are still in process for 850 to 900 person who are believed engaged in the atrocities against humanity. (Josipovic 2006, p 162-163). Similarly during the communist regime, Judges were not totally independent which can be seen in the 90s (Tudjman period). To be a judge you had to work in the “criminal department” and then you can move on to “civil judge” to have a better career. There was no change in this process during the Tudjman regime; the court proceedings were longer and results are greatly influenced politically.

In 2005, the state Attorney of the Republic of Croatia called for the review of the war crimes that took place in 1993. This led to the suspension of 800 proceedings which has been on trial since the early 1990s. (Josipovic 2006) In conclusion during the post-Tudjmanist era extra efforts have been made to deal with the war-crime trials. On one hand the difficulties experienced in dealing with the war criminal, was the fact the events occurred a long time ago, some people have passed on, some people are hoary couldn't recall the episodes of the events, while the others are afraid to come forward to testify. On the other hand some efforts can be seen in the Croatia government efforts towards the improve education of the policemen, Judges, Juries and Attorneys. Likewise improving the state of media in the Republic of Croatia.

Overall, certain progress were experienced regarding the prosecution of the war criminals but still the Croatian Judiciary system needs to make necessary adjustment in the proceedings; Stop the prosecution of criminals in absentia, stop the discrimination of crimes on ethnic basis; stop the inappropriate treatment of witnesses; reduce the time frame for proceedings without delay provided all evidence are in place, curtail the public pressure, inferiority of indictments must be looked into and ensure the coherent of judicial practice. (Josipovic 2006)

POST-TUDJMAN CONCESSION WITH THE ICTY

The HDZ was defeated by a coalition of six parties led by Ivica Račan's Social Democratic Party (SDP). (Lamont 2010). This election gave people the impression that Croatia was finally breaking out of the authoritarian regime of Tudjman; this can be seen in the fall of his party in the early 2000. Shortly after the defeat of Tudjman party, the Račan government sends signals to the European Union showing signs that the newly democratic Croatia was willing to cooperate with the ICTY, by assisting the ICTY investigate and apprehend the alleged war criminals within the Croatian territory. Following the defeat of HDZ, the newly elected Račan government made some constitutional reforms- aiming to reduce the power of the president. (Lamont 2010).

The transfer of power from presidential authoritarianism to the parliamentary democracy is also an indication that the ad hoc committee set up by Tudjman Regime will no longer influence or impede the progress of the ICTY. In other words the decision will be decided by the parliamentary unanimity, this will inevitably improve the relationship with the ICTY ... resulting from the democratic atmosphere of the Račan-government. (Lamont 2010, p 34).

On the contrary during Tudjman regime cooperation was limited with the ICTY, due to the lack of proper separation of power. The ICTY was unable to indict the Croatian force during the Tudjman Regime, However, a lot has changed since the transition from presidential form of government to Parliamentary system.

The cooperation with the ICTY started with the handing over of the former Croatian Army General Mirko Norac for crime against humanity. (Lamont 2010).The process wasn't an easy one initially the General went into hiding later the Račan-government guaranteed him his trial will be under the supervision of the domestic Judiciary system, in other words he won't be

facing the trial in Hague. Then Norac came out of hiding and the trial begun under the Croatian authority.

After Norac indictment, then came Rahim Ademi and Ante Gotovina indictment. (Lamont 2010). Although for Gotovina the situation was different because the crime he was allegedly committed was carried out during the operation storm in 1995 and this operation carried out ended the war in Croatia. However, within the parliament there was dispute regarding the release of Gotovina. The Croatian Social Liberal Party (HSL) which is the party of the coalition government in the parliament- requested the non-compliance of the parliament with the ICTY. (Lamont 2010). The HSL party leader claimed that the indictment of Rahim and Gotovina was like indicting the whole Croatia State; this idea created a rift between the HSL and HDZ. On the contrary the HDZ was willing to fully cooperate with the ICTY but the HSL disapproved the extradition of both Gotovina and Rahim to Hague. Racan continue to pledge his support to the ICTY, and this led the HSL to step out of the coalition. (Lamont 2010).

Furthermore, there was a demonstrating in favor of Gotovina this was organized throughout the country. This demonstration across the country shows the resentment of the masses against the Racan government cooperation with the ICTY. Similarly the veteran organization protested against the indictment of Croatian armed forces; insisting that no veteran should appear before the domestic or international court.

After all this protest, Racan government tries to avoid any one on one encounter with any organized group in the country that's against the ICTY extradition and likewise avoiding the ICTY. At the long run Gotovina was arrested on the 9th of July 2001.

The continuous request for Janko Bobetko by the ICTY was a breaking point for Racan, who tries to confront the authority of the ICTY regarding the arrest of the former head of Croatian armed force. (Lamont 2010, p 39). Racan claims the arrest of Bobetko should be deemed illegal

and thus, in line with the domestic court constitution of Croatia. The ICTY took this dialogue to be a lack of compliance from the Racan government. The office of the prosecutor warns Croatia not to deviate from the required norms, emphasizing that states are not in any position to negotiate with the tribunal, that if every state negotiated its position with the ICTY, then the efficiency of the ICTY will be in question. Thus, all these responses to the Racan position regarding the Bobetko case was nullified (the appeal for Bobetko indictment). (Lamont 2010, p 39).

“Croatia’s role in complying with an arrest request or order is the purely ministerial one of executing the warrants and carrying out such arrest and detentions as ordered by the tribunal. A state which is ordered to arrest or detain an individual pursuant to Article 29(d) has no standing to challenge the merits of the order (Decision on Challenge by Croatia 2002)”

Following the failure of Racan to renegotiate or influence the Bobetko indictment, led them to appeal on health ground stating the health of Bobetko is failing and a trial will further deteriorate his health. Despite all these alibis on behalf of bobetko, the office of the prosecutor (OTP) rejected this excuse, stating that the only authority in position to determine that will be the ICTY, not the state in question. The office of the prosecutor added that Bobetko should be surrendered to the International Criminal Tribunal for Former Yugoslavia (ICTY) and the health will be examine by the doctors in Hague. The verdict by the ICTY didn’t go down well with the Croatians so they ignored the ICTY legal framework regarding the indictment. (Lamont 2010, p 39).

The president of the ICTY, Antonio Cassese reported Croatia’s non-compliance to the United State Security Council. The report was filed in October 2002 by Cassese; with consent of the UNSC, they agreed with the Tribunal that Bobetko health should be examined in Croatia by the Hague doctor. The doctor from Hague confirmed the deterioration in Bobetko’s health, so they agreed Bobetko will not be transferred until he fully recuperates. Shortly after the decision,

Bobetko died and the case ended. However the demise of Bobetko led to the end of the rift between the tribunal and Croatian state. Furthermore, the case of Bobetko was a victory for Racan government to have successful disputed the indictment of Bobetko with the ICTY. (Lamont 2010, p 40).

FROM TUDJMAN TO RACAN TO SANADER

After the 2003 elections and the HDZ party returned to government, the stormy relation of Racan government was replaced with a new relationship. The HDZ rhetoric was how to fully cooperate with the ICTY, According to the party leader Ivo Sanader, cooperation with the ICTY will make their ambition of being an EU and NATO member reality. Similarly this will enable Croatia speed up its accession into European and Regional institutions. (Lamont 2010).

Based on this notion, Sanader with other heads of the government reach out to ICTY chief prosecutor Carla Del Ponte to deliberate on Croatia's cooperation and ways to further improve the relationship with the ICTY. (Lamont 2010). Likewise stating his strategies on how to Capture General Ante Gotovina.

Furthermore, Sanader government precipitated the capture and release of two other generals: Ivan Cermak and Malden Markac to the ICTY in 2004. Quite shortly Gotovina was captured in Spain December 2005. (Lamont 2010).

HOW THE EU AND OTHER INTERNATIONAL BODIES INDUCED CROATIA INTO COMPLIANCE

It should be noted that during the 1990s, the US was more effective in coercing Croatia to comply with ICTY arrest. Apparently an argument was put forward that there's no correlation between the distance of the EU accession and compliance. (Lamont 2010).

“Absent domestic pressure to either investigate war crimes committed by Croatian forces or comply with ICTY orders, the extent to which the ICTY would be able to compel cooperation reflected by the level of pressure which the US and EU member state were prepared to apply upon Croatia” (Lamont 2008a:p129-142, Lamont 2010:p47).

In other words, the ICTY was not prepared to compromise regarding the indictment of the war criminals in Croatia. Even though the process was slow, but surely justice was delivered to everyone who partook in the crime against humanity.

In addition this won't have been possible without the role of the US and EU to ensure the compliance of the Croatian government with the ICTY. This was carried out in four ways; some of these ways were to compel Croatia to fully cooperate with the ICTY. (Lamont 2010).

Firstly, during the early stage 1996-2000, Croatia enacted and ratify in the state constitution law to cooperate with the ICTY, this was successful because of the bilateral agreement with US to provide military and financial assistance to help transfer of the criminals- to be indicted by the Tribunal. Lamont (2010) describes this as material incentives to enable Croatia comply with the ICTY.

Secondly, started from 2000-2005, when the European council froze the EU accession process of the Croatia to the EU; this resulted from the information the Chief Prosecutor Carla Del Ponte gave regarding the lack of cooperation of Croatia with the ICTY. Especially the Croatian elite protested against the ICTY indictment of Bobetko and the government was compelled to make decisions against the ethnics of the ICTY- By refusing to transfer the indictee to Hague. (Lamont 2010).

Thirdly occurred in 2005 when the Croatia EU accession negotiations was suspended from March until December 2005. It was during this time the arrest of Gotovina was made; this operation was carried out as a criteria to proceed with the negotiations. After the arrest of Gotovina, the chief persecutor gave recommendations that Croatia government has fully complied with the ICTY. (Lamont 2010).

Fourthly, occurred in 2008 when Croatia refused to comply with the ICTY, regarding with the request of the OTP calling for the document of the operation storm that took place in 1995. (Lamont 2010). Overall, all these shows the Croatia state reaction to the international pressure, likewise how the international bodies were able to induce Croatia to comply with the norms of the ICTY. However in the case of high domestic cost of compliance the local prefers to abstain from cooperation.

In the case of compliance by the Croatian state the international community also complied with their needs; similarly when the cooperation dwindles the cooperation form the international community dwindles too. Most importantly the zeal of Croatians to join the EU led credence to their actions and finding of the War criminals. (Lamont 2010).

EUROPEAN UNION INFLUENCE ON THE CROATIA'S COMPLIANCE WITH THE ICTY

Some will argue that the EU accession and Pre-accession depends on the ability to fulfill the Copenhagen Criteria which is in line with the Article 29, in other words the process cannot be precipitated unless the state fulfils the Criteria. Take for instance Croatia became a candidate state before Macedonia even though Croatia had issues with the ICTY regarding the release of General Ante Gotovina to the Tribunal. (Lamont 2010).

In other words the EU does not have enough policies that will enforce the accession states i.e. Croatia to fully comply with the ICTY, although the accession negotiations was frozen in march

2005 to December 2005 this was not sufficient enough because some EU member states like Austria and Hungary tried to go against such action saying that there was no correlation between the Croatia's accession negotiation and cooperation with the ICTY. Although they were unsuccessful with their dialogue in that context. (Lamont 2010).

On the contrary when it comes to Serbia accession negotiation, a number of southern and central European member states opposed the linkage of Serbia's accession process with the cooperation with the ICTY. While the Serbia succeeded with detaching this two factors. It was difficult for Croatia to carry on without complying with the terms of ICTY. In other words we can argue that; there was a double standard regarding the negotiations of Croatia and Serbia.

On the whole, the ICTY office of the prosecutor. Chief prosecutor Carla Del Ponte claimed that the EU was very effective at using soft power to coerce Croatia to comply with the ICTY, in the event of non-compliant state relationship will be strained with the EU by suspending the accession negotiations. (Lamont 2010, p 53). In 2007 the chief prosecutor Del Ponte said;

“Without the Strong support of the EU and its member states, the implementation of my mandate would be an impossible mission. Permit me to remind you that since I took office in 1999, we have brought 91 individuals into the custody of the Tribunal. Much of the great success could not have been achieved without the strong principled and consistent support of the European Union... The European Union's policy of the pre-accession and accession conditionality has thus far proven to be the sole successful tool in the recent past of stimulating states to fully cooperate with the Tribunal and obtaining the rest of fugitives (Del Ponte 2007b)”

Similarly some will argue that Croatia's compliance resulted from the inclusion in the constitution to fully comply with the ICTY, that text in the constitution continued to ensure the cooperation of the Croatia with the ICTY from the authoritarian regime to the democratic era. Obviously Croatia resisted the arrest of some generals; this was carried out in different ways as stated earlier in the previous pages. Especially when all these means were exhausted Zagreb

was forced to comply or blamed all these apprehension of the criminals on logistics. (Lamont 2010).

Clearly we can see the cooperation of Zagreb during the 1990s, resulted from the incentives of material benefit promised by the US in return for full cooperation with the Tribunal. Similarly Serbia also demanded incentives, if cooperation where to be attained. With the look of things; this undermines the principle of human right because both states perceived this situation as a business venture- where there have to be gains to cooperate with the Tribunal. (Lamont 2010).

TENSIONS BETWEEN US AND EU REGARDING THE CROATIA'S COMPLIANCE

During the 1990s, the EU tried to influence the Croatia's compliance with the ICTY by initiating a negotiation for cooperation agreement in 1994, however the "operation storms" was still very much active and this led to the discontinuation of the agreement proposed by the EU. (Lamont 2010). Likewise the discontinuation of the agreement also left Croatia at odds regarding the EU accession process until January 2000. Equally Croatia was left out from the EU's PHARE program, although Croatia still has an agreement with the EU. This trade agreement does not affect the Croatia's lack of cooperation with the ICTY. Accordingly the compliance in 1996 and 1997 was the major reason why United States gave economic assistance to Croatia. (Lamont 2010).

It's important to mention that from the onset the EU was skeptical regarding how to deal with the Croatian government. This skepticism rose to the peak June 1994, when the US formally supported the Tribunal by delegating 22 specialist to the ICTY to provide them with the adequate knowledge on how to carry out proper investigation and indictment. All of these gestures by the United States put the EU member states on a spot. They expressed their

annoyance to this gesture- the underlining factor of their annoyance was the impression they had gotten from the Former Chief Prosecutor that claimed the tribunal was infiltrated by the Central Intelligence Agency (CIA). (Lamont 2010).

CONCLUSION

This thesis aimed to figure out the main obstacles to Croatia's accession negotiations. Why it took Croatia such a long time to start negotiations? Why fulfilling the Copenhagen criteria were deemed problematic at first? Consequently, it shows how the EU acted as a soft power to enforce Croatia to comply with the ICTY. Firstly, it explores the dispute of the Piran Bay which involves Slovenia and Croatia. How this historical bay affected the relationship between Slovenia and Croatia? Bearing in mind Slovenia vetoed the accession negotiations process in order to have the Bay settled. In the end; after decades of unresolved dispute between the two parties, the settlement can be described as in favor of Slovenia. Notwithstanding, there is somewhat of resentment from Croatia but they agreed to the settlement. In recent times, even though both states are member of the European Union; we can see both parties still hold grudges. Take for instance the road network that connects "Ptut" to "Macelj" was not tarred by Slovenia. We can argue this is a dearth of relationship and lack of good will. Another strain on Slovenia-Croatia relations, that also impacted the accession process, is the issue of the "Ljubljanska Banke" that dates back to the old Yugoslavia Empire. A large number of company invested in this bank and Croats. However, after the split of the republics, the name of the bank was changed and Slovenia refused to give Croats back their entitlements; they had a large amount of shares in the bank. Slovenia used Croatia's accession negotiations as a

leverage- stating the situation needed to be handle behind closed doors otherwise Slovenia continue to veto the process of negotiations with the EU. Croatia had to agree to the terms; to enable them proceed with negotiations.

Secondly this paper compared the time period of Tudjman narratives to the post- Tudjman narratives and elucidated the political changes over the decades. Drawing from the changes it was clear that during the Tudjman regime the support for the European Union was low; this arises from the fear of any regional organization that takes the semblance of the Former Yugoslavia. Similarly it was difficult for the European Union to incorporate Croatia into the Union due to the lack of functional democracy, embargo on media, dearth of minority rights, arbitrary arrest of press members, ineffective public administration and most of all lack of infrastructures. All of these contributed to the delay in Croatia and European Union's relationship, while the other Central and Eastern European Countries have started negotiations with the European Union, Croatia was engrossed with the problems of internal dynamics and lack of external relationship with the rest of the world. It's obvious that the transition from single party system to multi-party system in early 2000, after the demise of Tudjman, was a turning point for Croatia. Evincing the willingness for changes and readiness to embrace the EU. We can argue that the delay in negotiations with European Union can be attributed to the domino effect of the former Yugoslavia. Bearing in mind Croatia fought for independence from the Yugoslavia Republics.

One of the major differences between Slovenia and Croatia engagement with the EU after the self-declaration of independence by both states was; Slovenia was very receptive of the EU- they moved from isolationism to a liberal form of nationalism. Thus, they were able to embrace the tenets of the EU. On the contrary Croatia's foreign policy during the 1990s was isolation from the rest of the world. While we can argue this resulted from the trauma faced with the former Yugoslavia. Another important factor that delayed the negotiations at different point in

time was the lack of cooperation with the international Criminal Tribunal for former Yugoslavia. This agency was set up to investigate the crime against humanity that was committed in the Croatian territory by the Croatian Forces; this had a negative impact on the accession negotiations. The European Union severed the relationship with Croatia, when they refuse to allow extradition of offenders to international court. However, the EU was able to induce the Croatian government by acting as soft powers to enable them comply with the ICTY. Different sanctions were levied upon Croatia until they complied with the ICTY fully. Similarly we can see the weakness in the judiciary system of Croatia resulting from internal weakness and lack of proper strategy to deal with the cases; this can also be attributed to the newly emerging Croatian state; faced with numerous problems. Apparently, the Croatian government was successful at resolving the war issues; knowing more than half the population was against the indictment of the generals.

Understanding the Croatia accession negotiation process will further give insight into the negotiation process of other western Balkan countries, which are currently candidate country or might assume the position of candidacy in years ahead. A better understanding of the Croatia case will also give insight into the changing European Union in terms of the *acquis*. At the time of writing, Croatia was the last state that acceded to the European Union; Turkey being a candidate state should look up to Croatia in certain areas; on how Croatia fulfilled the *acquis*; likewise speedy opening and closing of the chapters. In summation, after the settlement of the tensed situations with the EU, the reports by the commission was positive regarding the ability of Croatia to take on the obligations of membership and fulfillment of the Copenhagen criteria; this shows a clear-cut progress in the implementation of the EU policies.

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