Does Size Matter?
A case study of the Piran Bay conflict

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1 Introduction

This thesis rests in the contemporary field of research on the European Union (EU) and Small States. The topic being tackled is whether a small European member state gain increased leverage when solving a conflict by being a member state, when negotiating with a candidate country seeking accession to the union. Here the dispute selected for this case study is the issue of border division in the Piran Bay between Slovenia and Croatia. Slovenia used this conflict during the accession negotiations of the candidate country Croatia to veto negotiations on *acquis* chapters and thus put a halt on the accession process.

The EU is a big force in shaping how the lives of Europeans form, and this influence has only been increasing over the last decades. These influences are mostly in the economic fields, but arguably, some nations who have a conflict-filled history with their neighbors, have also been forced to reassess their relationship when joining the same union. This forces them to live and work together in the same environment and thus conflict resolution has been necessary before the second part of the conflict duos could join. This is because when negotiating treaty changes within the EU, the system operates on the basis of unanimity, one country one vote, or to put it in the context of this report; one country one veto.

This is a very simple structure on the surface. New member states require a new treaty and treaties must have a unanimous yea to pass. However, it is interesting to get a bit closer to these interactions, to see how the power is actually wielded. Do the small states have the same authority in the negotiations as the larger states? When looking strictly at the institutional setup it would appear so, each state has a veto and there is nothing in the institutional setup other states can do to bypass a vetoing state. Therefore, this should be a powerful tool for member states to settle conflicts with candidate countries. This is at the heart of this report; whether or not small member states get increased leverage during accession negotiations. This has been an especially prevalent issue in the last decade, which has seen a rapid expansion on the part of the EU, with even more countries looming on the horizon as potential members. This makes it interesting to investigate if the small member states are benefiting from the exchanges in the union on the political level, with increased power in their interactions.

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1.1 Abstract

This thesis is a case study into the Piran Bay dispute between Slovenia and Croatia. The conflict dates to the breakup of Yugoslavia in 1991, where the administrative regions of the state became independent nations. The maritime borders of Yugoslavia was delimitated with other states, but not internally. This meant that these borders needed to be drawn between Slovenia and Croatia, and this meant the partition of the Piran Bay became important. Depending on the division, this could allow or deny the Slovenians open access to the high seas.

The border had yet to be resolved in 2004, when Slovenia joined the European Union, but when Croatia officially began accession negotiations in 2005 Slovenia brought the issue into the framework of the accession negotiations. In 2008 Slovenia vetoed the opening of negotiations on new *acquis* chapters, effectively blocking further negotiations and forcing the other EU members and the institutions to get interested in this otherwise purely bilateral conflict. The Presidency of the Council and the Commission both tried negotiation, to no avail. However, after about half a year the pressure had sufficiently mounted on both parties to accept a binding border arbitration agreement to would lift the dispute out of the accession negotiations and form a special tribunal to make a binding judicial ruling on the matter after Croatia acceded to the Union.

At first glance, it would appear that Slovenia would gain immense leverage by both threatening to veto and then vetoing. It was a central goal of huge importance for Croatia to accede to the Union and Slovenia could potentially indefinitely block this goal. However, upon further investigation this proves to be a double-edged sword for Slovenia. The other member states has no interest in supporting a block by Slovenia and their main concern is getting Croatia into the Union. The EU Commission has a clear formal role during negotiations; recommend that accession negotiations proceed when the technical requirements are met according to the Copenhagen criteria. However, they also represent the Union and to be seen as backing a member state against a candidate country would represent a very clear abuse of the asymmetrical power into a potentially volatile situation with strong nationalistic sentiment. This lack of support meant a quire poor result for Slovenia, begging the question if the veto was worth it?

1.2 Problem formulation

Did Slovenia, utilizing their veto power, get leverage over Croatia with whom they have a conflict over the Piran Bay, during the accession negotiations, and what role did the Commission play in this question?

In essence this is a look at a small EU state blocking (vetoing) the accession of a candidate country with which they have a non-accession related bilateral conflict, by enquiring into two aspects: whether a small state, by blocking, gains leverage and what role the Commission plays in that regard.

This will consist of two tasks:

1. Whether a utilization of the de facto right to veto gives the small state leverage in its ability to influence a candidate states position in the existing bilateral conflict between the two, or if the veto's effect is rather under the influence of larger states, a number of other EU states in joint efforts and the EU itself.
2. The Commission's role in the emergence/absence of leverage and what determines this role.

What is interesting regarding the first task is to assess whether institutional rights or size, resources and capabilities are significant conditions in determining any potential leverage after a given veto. This will be answered primarily by performing a congruence test on the Piran Bay conflict where Slovenia vetoed Croatia during the accession negotiations of the latter.

In terms of the second task, the central theme is, based on the first task, to look into:

1. What the Commission plays in the emergence/absence of leverage, also based on the results of the congruence test.
2. What enhances or curtails the influence of the Commission, in case the Commission seeks the same outcome as found in the congruence test or if it seeks a divergent outcome to the conflict.

There are five main actors in the problem formulation: the member-state Slovenia, the then candidate country Croatia, the EU, the larger European powers and the Commission. Slovenia is seeking increased leverage to resolve their conflict over the Piran Bay by utilizing their veto

and the Croatia is potentially cowed by the use of the member-states veto in the accession negotiations. The EU is the institutional backdrop enabling the use of the veto in the first place and the larger member-states are potentially aiding or hindering the member-states by using their influence. The Commission is the executive body helping facilitate the negotiations. The term leverage is used to describe how close to the member-states preferred position the outcome of a conflict is. The two opposites is the preferred position and the worst possible solution. When entering into negotiations to solve the conflict the member-state obviously wish to see the result being their preferred position and the candidate country wish to see their preferred position as the outcome. In the negotiation, it is then interesting to see if the outcome is closer to the member-states preferred position than would otherwise be expected if the conflict were solved outside the institutional setup of the EU, within which one would expect the use by the member-state of their veto power would increase their leverage to get a better negotiation result.

There are few examples of conflicts involving small-states and candidate countries where the veto has been used, so this limits the choice of cases. Other possibilities of recent vetoes used by member-states during accession negotiations with countries with which they have conflicts are Greece vetoing Macedonia and Cyprus vetoing Turkey. Neither of these conflicts have been resolved and possible accession looks to be some time in the future, making Slovenia a better option for study. The Cyprus case also involve more significant interests from the major European powers, making it harder to discern the actual leverage possibly gained by Cyprus in their conflict with Turkey.

The analysis will be done with the congruence method to provide a structured and guided way of analyzing the case, to ensure a fair and equal treatment of the issues that arise. This will not provide an exhaustive explanation of the reasons for the case outcome, but rather give clear indications of what direction the answers are. This approach is well suited to the problem formulation, the available data and the resources that can be used to analyze the case.

There is a multitude of potentially relevant theories to use on the case, but obviously small-state theory, veto and power theory must be used. Furthermore, it has been decided that liberal intergovernmentalism provides both a useful backdrop for the analysis and as a tool for the case analysis. It sets up the two relevant phases for the analysis; namely national preference

and substantial bargaining within which the analysis is taking place, and it is based in realism making it a good choice to test the case in terms of leverage gained by Slovenia.

After analyzing the conflict and assessing what sort of levering Slovenia gets by their veto, these findings will then be used in an analysis of the Commission. This analysis will be done using process-tracing to determine what role the Commission played in the negotiations.

These elements will be used to provide an answer to the problem formulation, to assess how much leverage member-states have over candidate countries and the role of the Commission. Does being a member of the EU provide them with a result closer to the preferred position than would otherwise be expected or are the greater powers doing what they want to do, no matter what the small countries want, as realism would indicate as the most likely outcome?

2 Case selection

This chapter will introduce the Piran Bay case for inquiry, the context, background, and finally present the reader with the elaborations on why the Slovenian veto in EU negotiations with Croatia has been chosen.

The utility of the case is, naturally, on a very basic level, contingent upon the fact that the EU member state blocked accession negotiations between the EU and the candidate state. Concerning the more active and deliberate pat of choosing this particular case for the study it should be noted that the selection is rather limited, as object looked for relied explicitly on contexts where already ongoing conflicts became the motive for blocking progress in EU accession negotiations on behalf of a small EU member states.

Here will follow the descriptive introduction to the Piran Bay case and its historical backdrop.

2.1 The Piran Bay dispute

Slovenia joined the European Union with the big predominantly eastern expansion agreement in 2004 (European Union, 2013). Croatia joined later in 2013, after a ten-year negotiation process (European Commission, 2013). One of the key issues that needed to be solved before Croatia could accede to the Union was the border dispute with Slovenia over the Piran Bay.

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2.1.1 Background

The Piran Bay is the northernmost part of the Adriatic Sea, bordered by Slovenia, Croatia and Italy. (Avbelj & Letnar Cernic, 2007, p. 2)
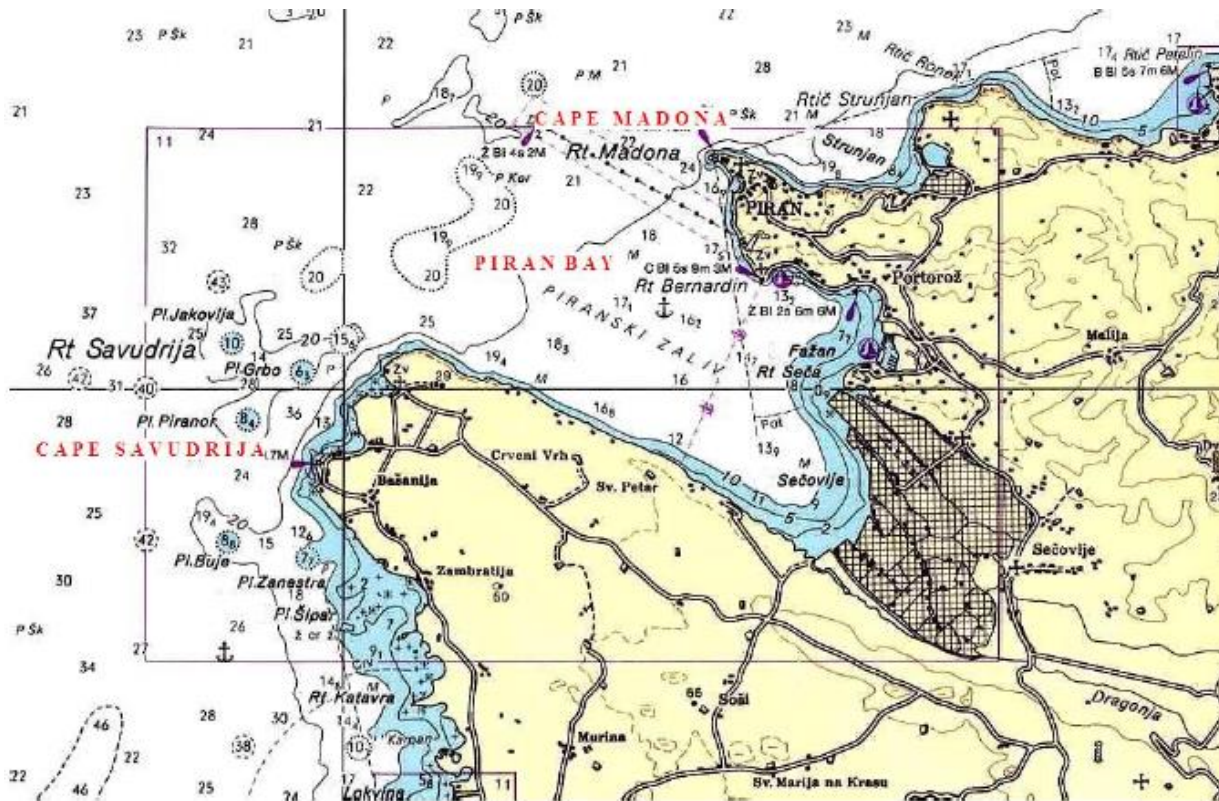
Picture 1: The Piran Bay with the the Croatian Savudrija Peninsula to the southwest and the Slovenian Peninsula of the Town of Piran to the north. (Avbelj & Letnar Cernic, 2007, p. 3)

The northeast part of the bay is Slovenian, running to the Dragonja River and the Savudrija Peninsula, which in turn is under Croatian sovereign jurisdiction. (Avbelj & Letnar Cernic, 2007, p. 2) The border has been drawn up in accordance with the administrative borders that were in effect in Yugoslavia, based on the *uti possidetis iuris* principle, stating that newly founded states shall have the same borders as the dependent areas they were created from had before they became part of a sovereign state. The borders were also confirmed by the Badinter Arbitration Commission, which was set down by the EEC to provide legal advice during the dissolution of Yugoslavia (Avbelj & Letnar Cernic, 2007, p. 3). Generally, the borders between Slovenia and Croatia have been established without big problems, except a few contentious areas, where the Piran Bay is the most prominent.

The conflict dates to 1991, where Yugoslavia broke apart into several independent nations, where both Slovenia and Croatia agreed to accept the existing borders. The problem with the Piran Bay is primarily focused around the maritime borders.

Picture 2: The proposed agreement from the 2001 Drnovšek-Račan agreement, which was ratified in Slovenia but failed to pass in Croatia (Avbelj & Letnar Cernic, 2007, p. 11)*.*

The above picture is useful for illustrating a key issue of the conflict. During the Yugoslav era, there was no internal maritime borders between the administrative divisions, because the state functioned as a whole. When the administrative divisions became independent states, the only maritime border Slovenia and Croatia had was with Italy, so their internal maritime borders needed to be established. This made Croatia solidify their position in the area after 1991. They set up border checkpoints at Plovanija, south of the Dragonja River, on what Slovenia regards as their territory. Croatia has also granted exploration rights to a Croatian energy company to explore parts of the Piran Bay that Slovenia considers parts of its territorial waters. The reason the land borders becomes particularly significant in this case is that they affect the drawing of the maritime borders. Slovenia claim the Dragonja settlements, which are south of the Dragonja river and controlling them can help Slovenia draw a maritime border that will give them direct

access to the high seas. However, even though documents from the Yugoslav era in both Slovenia and Croatia usually refer to these areas as Slovenian, Croatia still has made advances to make them de facto Croatian (Oxford Analytica, 2013).

Croatia has also unitarily tried to establish an ecological and fishing zone in the northern Adriatic to protect the fisheries there. However, Italy and Slovenia opposed the zone. This issue also was linked to the Croatian accession talks and Croatia agreed not to implement the zone until Croatia had finalized its fishing agreement with the EU (Trauner, 2011, pp. 79-80).

The most prominent bilateral attempt at reaching a deal was the Drnovšek-Racan agreement (Picture 2) from 2001. This would have granted Slovenia most of Piran Bay and given them a special corridor through Croatian waters to the high seas (Avbelj & Letnar Cernic, 2007, pp. 10-12).

> "*According to the so-called Drnovšek-Racan agreement, named after the Slovenian and Croatian prime ministers, around 80% of the Piran Bay would belong to Slovenia and the rest to Croatia. Following this Agreement… the border in the Piran Bay would start in the middle of the mouth of the Dragonja River some 270 meters from the Peninsula of Savudrija, which is part of Croatia. From there the border would be drawn in a straight line until the point located at some 1200 meters from Croatian coast and 3600 from Slovenian coastline. From this point the border would be drawn according to the meridian principle until it would reach the border with Italy… Slovenian Territorial sea… would be connected to the high seas via special corridor in a form of a chimney, which would be 3,600 meters wide and would measure around 46 square kilometers. Within the corridor there would be a legal regime of the high seas, and the states have stipulated that neither of them would be allowed to proclaim an exclusive economic zone. Between the Osimo border with Italy and the corridor would remain a triangle of Croatian territorial waters, which would enable Croatia to maintain a border with Italy*" (Avbelj & Letnar Cernic, 2007, pp. 11-12).

This has also entailed questions of drawing the border on land in the valley of the Dragonja River, settling it on the Dragonja River, though this was also a contentious matter as "*[b]oth Croatia and Slovenia claimed sovereignty over… [four] villages [by the river] due to the overlapping land-registry books of the local municipalities*" (Avbelj & Letnar Cernic, 2007, p. 11).

The above agreement places these villages under Croatian authority in order to keep the border at the Dragonja River. "*[S]ince these villages are predominantly populated by the people of Slovenian origin, this move of the Slovenian government was seen as a compromise, and as an element of a good will for an exchange for a greater part of the Piran Bay*" (Avbelj & Letnar Cernic, 2007, p. 11).

The last bilateral attempt to solve the agreement was in 2007 with the Bled agreement, which would leave unsolvable parts of bilateral talks to the International Court of Justice to solve. However, Slovenian politicians rejected the deal (Dalje, 2013).

Slovenia forced the EU to consider the border dispute when Slovenia, in December 2008, regarding accession negotiations on Croatian EU membership, "*blocked the opening of negotiations for ten new acquis chapters due to the open border dispute over the Piran Bay*" (Trauner, 2011, p. 80). The concrete reason used for the veto was that some "*documents submitted by Croatia in the course of the negotiations [according to Slovenia] prejudged the outcome of a resolution of the border dispute*" (The Economist Intelligence Unit, 2009, p. 6).

The Border Arbitration Agreement was signed on 4 November 2009, bringing the dispute out of the accession negotiations context "*and defined that the bilateral negotiations should continue under EU supervision*" (Trauner, 2011, p. 81). However, the block continued for some time due to "*reservations*" (Vogel, Slovenia finds new ways to block Croatia's EU bid, 2009) from Slovenia about some chapters. The blockade was finally lifted in May 2011 after the Border Arbitration Agreement was finally completely ratified after a complex process including a referendum in Slovenia (International Boundaries Research Unit, 2011).

The agreement stipulated that as soon as Croatia acceded to the Union a special Union would be set up under UN authority. The court will consist of five members, three chosen by common accord and one by each party. The court will decide the course of the land and maritime border of the countries, including the question of Slovenia's access to the high seas and no documents made by the countries after the fall of Yugoslavia will be relevant in the case (Slovenian government; Croatian government, 2009).

2.1.2 The Slovenian argument

Both sides in the conflict have used different claims to justify sovereignty over the bay. Slovenia have referred to its jurisdiction and administrative control of the bay since 1975 and so tried to claim the entire bay as Slovenian territorial waters. Slovenia argued against delimitation of the border "*by the principle of equidistance*"[1] (Avbelj & Letnar Cernic, 2007, p. 4), under reference to the requirement of contextual application of the principle of Article 15 of the *United Nations Convention on the Law of the Sea*[2] (Avbelj & Letnar Cernic, 2007, pp. 5-7). Croatia initially did not hold the equidistance approach as important; as evidenced by the attempted Drnovšek-Racan Agreement detailed above.

The Slovenian position is also being influenced by the historical and cultural affiliation with the Savudrija Peninsula[3] itself. This has made Slovenia question "*the Croatian jurisdiction over the Savudrija Peninsula… in light of the historical presence of Slovenes around that area, as well as in light of other historical circumstances*" (Avbelj & Letnar Cernic, 2007, p. 6), emphasising both an earlier, more southerly position of the border on land compared to its present line on the Dragonja River[4], and the "*geographical, economical, cultural, and political circumstances… that support Slovenia's historical connection to the Bay*" (Avbelj & Letnar Cernic, 2007, p. 8). Indeed, "*the density of population on the Slovenian side of the Piran Bay suggests that the claim for Slovenian control over the whole Piran Bay is justified*" (Avbelj & Letnar Cernic, 2007, p. 8).

A key Slovenian concern is the accessibility to international waters to which they submit having "*a right to maintain direct access*" (Avbelj & Letnar Cernic, 2007, p. 8), preferring the inclusion of a corridor to the high seas in the parting of the Piran Bay. This delimitation would be carried out in such a way to preserve a maritime border between Croatia and Italy. To some degree Avbelj and Letnar Cernic imply that the question of a Slovenian corridor to international waters

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[1] By drawing the borderline in accordance with equidistance, the bay would be divided down through the middle of it with equal distance to the opposing peninsula shorelines.
[2] *United Nations Convention on the Law of the Sea* "Article 15 states that the "[median line] provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit territorial seas of the two States in a way which is at variance therewith"" (Avbelj & Letnar Cernic, 2007, p. 7).
[3] The Savudrija Peninsula forms the Croatian coast of the Piran Bay.
[4] Mouth of the river roughly in the middle of the Piran Bay.

concerns a confirmation of "*Slovenian national and territorial sovereignty at the sea*" (Avbelj &
Letnar Cernic, 2007, p. 8).

2.1.3 The Croatian argument

The two countries positions are sometimes the direct opposite. Just as the discussion on
equidistance leaves the Slovenians with the abovementioned argument, the Croatian argument
is that the country prefers demarcation in accordance with the aforementioned Article 15 and
thus finding Slovenian claims to the whole of the bay in contrast to international law; which
Croatia states is also the case on the question of the, according to Slovenia, right to access to
international waters (Avbelj & Letnar Cernic, 2007, pp. 9-10). Croatia furthermore demands a
maritime border between Italy and its own waters and rejects Slovenian concerns for "*any
significant or even utterly radical deterioration of the position of the local population on both
sides of the Piran Bay*" (Avbelj & Letnar Cernic, 2007, p. 10) as an argument for delimitating the
bay in Slovenia's favour.

While Slovenia insists on the implementation of the Drnovšek-Racan agreement, Croatia, even
though complying with its implications as far as the border on the Dragonja River is concerned,
adopts the equidistance solution as a central position on the dispute (Avbelj & Letnar Cernic,
2007, p. 12). Article 15, on which Croatia's stance is founded, is itself disputed however; also as
its second paragraph, which, as explained above, lays ground to Slovenian rejections of the
application of equidistance, is, by some, held "*as a mere exception to the general rule*" (Avbelj &
Letnar Cernic, 2007, p. 12) placing the burden of proof on the part invoking the paragraph, and,
by others, seen "*as a single rule… [an] interpretation [which] was offered by the Arbitration
Tribunal in the English Channel case, wherein it was stressed that the question of existence of
special circumstances is a question of law that the court or arbitral tribunal has to address proprio
motu (on its own motion)*" (Avbelj & Letnar Cernic, 2007, p. 13). It should be quite clear that
Croatia's stance is based on the first interpretation of the rule, stating that sole control of the
bay and definition of its border, de facto, has never been held or carried out. Croatia further
refutes Slovenian historically founded arguments and even presents some in favour of Croatia,
both of which are based on judicial and administrative responsibilities and execution during
the Federal Republic of Yugoslavia (Avbelj & Letnar Cernic, 2007, p. 13). Indeed Avbelj and
Letnar Cernic writes that "*[d]uring the former Yugoslavian regime, the sovereignty over the*

entire Adriatic Sea - and thus including the Piran Bay - has been exercised by the federal government and the sovereignty of the republics was not delimited. It can be concluded on this basis that the sovereignty in the Piran Bay was therefore exercised jointly and simultaneously by Croatia and Slovenia" (Avbelj & Letnar Cernic, 2007, p. 13).

Croatia's central argument, however, is based on aforementioned Article 2, which means that the main parameter in delimitating the bay would be determined by land territory, and thus not on historical reasons as claimed by Slovenia. Also Croatia holds that they cannot be obligated with giving Slovenia direct access to international waters (Avbelj & Letnar Cernic, 2007, pp. 13-14). To underpin these legal arguments they referred to Article 3 of the *United Nations Convention on the Law of the Sea, pointing to the fact that if direct access, via a corridor, was given to Slovenia, "Slovenian territorial waters would then stretch more than 12 miles... [; a]n extension of over 14 miles, from the first point at the Slovenian coastline, would be contrary to... Article 3 defining the limits of the territorial sea*" (Avbelj & Letnar Cernic, 2007, p. 14).

2.2 Choice of case

The Piran Bay case was chosen because it is useful in both deliberating on the concrete issues faced by Slovenia trying to resolve the conflict in a fruitful way, but it is also a relatively clean case where few other states have a big stake in the outcome. This makes it useful when trying to draw a bigger picture of small-state leverage going beyond this individual case.

As mentioned the selection of small states that have vetoed accession negotiations with a candidate state with which they had a conflict is very limited. There are however some other incidents meeting the requirements. These include, for instance:

In negotiations on Turkish accession, Cyprus have vetoed the negotiations (İktisadi Kalkınma Vakfı, 2014). As far as Croatia is concerned negotiations has, among small states, also been halted by the Netherlands, Denmark, Belgium and Finland (Vogel, Dutch lift veto on Croatia accession talks, 2010). Cyprus has vetoed Turkey and Greece and Bulgaria have vetoed negotiations on Macedonian accession. However, these vetoes have not all been because of a directly bilateral dispute, where one state could use it as leverage to resolve it.

Furthermore, the contexts within which these blockages have been upheld are of some significance when choosing cases. The case of Cypriot blockage has to be seen in in the complex

issue of Turkish accession, which has been a saga of its own, posing a controversial question in various EU member countries. The context thus would have been too overwhelming to deal with in single thesis, because it would require comprehensive process-tracing to differentiate any eventual leverage from the general somewhat ambivalent public and political approach across the EU towards Turkish membership, and thus the potential effects of an already wavering will to firmly put Turkish accession on the agenda.[5]

Regarding the incident relating to Croatia, the blockage was also upheld by the UK and by several states; even though the Netherlands, in the end, stood alone, the position had already enjoyed considerable support (Vogel, Dutch lift veto on Croatia accession talks, 2010), rendering a study of this particular case a rather weak enquiry into the effects on leverage by a small state veto.

In relation to the Bulgarian veto, the nature of conflict, as aforementioned, is shared with Greece, but with a far shorter history in terms of actually vetoing. However, investigating the case when Bulgaria vetoes simultaneously with Greece, means the results of the study would likely be a less enlightening exercise compared to that of enquiring into to the Slovenian veto. Additionally, the case of hindering Macedonian negotiations had already, on various occasions and stages (the UN, NATO and the EU) been contextualised and, so to speak, put in a narrative frame of support and opposition.

All this, however, is not so say that these unchosen cases are not of any interest. They certainly are, but in selecting the case for a limited inquiry into small-state leverage there is an obligation to choose the most scientifically significant case.

The overarching matter of concern when selecting cases is that the spectrum of preferences among the EU states, has to be somewhat strained; in the sense that the veto is given on the foundation of an explicitly bilateral conflict, and, furthermore, in solitary approach; all to secure the validity and explanative scope of the findings. This has been done with the selection of the Slovenian veto, though posing strong tests is of better value if relativized to differing cases. However, with the scope of this inquiry it has been prioritised to pose the strongest possible

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[5] It is also acknowledged that in recent years Turkey may have been less than fully committed to its path to accession. The important concerns here, though, relates to the nearer contexts of a small, vetoing state's leverage vis-á-vis other EU state's positions, and not the candidate countries' views on the topic's salience.

test of whether an institutionally given power to veto affects the vetoing states leverage. As George and Bennett notes on some scholars' views on "*.. selection bias in small studies.. [these scholars] argue that case study researchers sometimes have good reasons to narrow down the range of cases studied .. even if this increases the risk of selection bias. They point out that case study researchers rarely "overgeneralize" from their cases; instead, they are frequently careful in providing circumscribed "contingent generalizations" that subsequent researchers should not mistakenly overgeneralize*". (George & Bennett, 2005, p. 84)

2.3 Delimitation of accession negotiations

It is important to define how we understand accession negotiations and, at least, parts of the enlargement process, as our approach to the study will be subject to how we see the context within which vetoing takes place. Our view can be understood in light of Schneider's take on accession negotiations, where she writes that she does not "*treat the EU as a homogeneous bloc that negotiates with an... applicant [country as]... enlargement affects current members in fairly diverse ways*" (Schneider, 2009, p. 4). This then can be derived to express the circumstance under which negotiations take place; states of different interests and preferences.

Schneider though further takes "*into account the institutional context – the formal procedures and requirements for enlargement. For instance, enlargement requires the unanimous approval of EU members. A single "nay" vote by even the smallest one among them would derail the enlargement process*" (Schneider, 2009, pp. 4-5). It is this dependence on unanimity that results in the labelling of the action by Slovenia as a *veto*.

There is no doubt of course that EU enlargement is a process of integration into and within an institutional frame, and "*international institutions are... explicit arrangements, negotiated among international actors, that prescribe, proscribe, and/or authorize behavior*" (Schneider, 2009, p. 34). What can be concluded upon all this is that accession negotiations are both an institutional and an interstate exercise.

3 Research design

In this section the methodical and theoretical approaches will be outlined and explained in relation to answering the problem formulation. This will start by describing the field of study,

where the term leverage will be expanded upon. Following this the social research methods used during the analysis are described. These are the congruence method and process-tracing by George and Bennett. Following this will be a section on what theories have been chosen, why they have been chosen, and hypotheses formulated from the problem formulation and the theories chose. Then the chosen theories will be elaborated upon, namely liberal intergovernmentalism, small state theory including the definition of what a small state means in relation to this project and power theory.

3.1 Field of study

Although the problem formulation, in a general manner, encapsulates the context within which the study is going to be done, the most central matter that is going to be investigated is the existence of leverage. Whereas the most basic core of inspiration of the study is the consideration of whether institutions matter, whether the formal power members hold translates into actual power. The enquiry as such is bound to facilitate the investigation of leverage, as leverage, given the problem formulation, is the main reference around which any conclusion is to be of consequence for the accumulation of scientific knowledge.

A consideration on the side-line of the elaborations on leverage is the discussion of the decision to look for leverage rather than, for instance, influence. The problem formulation further denotes the right to veto as a veto *power*. It can be argued that power, influence and leverage are sometimes used inconsistently and that these concepts in various contexts can describe overlapping mechanisms. However, this study have to come to terms with their reciprocal connection as their distinction is fundamental for understanding this study's methodologically valid scope of scientific acknowledgement.

Whereas **influence** can be understood as the *process* by which any given relation, actor or circumstance etc. is *moulded* into an output, outcome or position that, to some degree, is to ones benefit, **power**, on the other hand, can be perceived as the *ability* (and/or the degree thereof) to potentially, knowingly or not, *exert influence*. **Leverage** then can designate the result of circumstances under which:

power is utilised, resulting in the enhancement of influence, and / or

facilitation of any potential power, or possibility thereof, is *enhanced*,

and thus becomes a description of an, at least latent, improvement of the ability or possibility of exerting influence, potentially stimulating change and catalysing processes.

The interconnectedness of the three concepts is aptly illustrated in Barnett and Duvall's words, as they state: "*[p]ower is the production, in and through social relations, of effects that shape the capacities of actors to determine their own circumstances and fate*" (Barnett & Duvall, 2005, p. 3). This study's take on power fall in line with what is a...

"*dimension... [of power that] works in interactions... [vis-á-vis] social constitution... [and thus] treats social relations as composed of the actions of pre-constituted actors toward one another. Here, power works through behavioral relations or interactions, which, in turn, affect the ability of others to control the circumstances of their existence. In these conceptions, power nearly becomes an attribute that an actor possesses and may use knowingly as a resource to shape the actions and / or conditions of action of others*" (Barnett & Duvall, 2005, p. 9).

Given the problem formulation, where a veto is deliberately used, and the above, the thesis seeks to emphasise the power that is actually and knowingly utilised in the search for leverage, sought for in the wish for influence (denoting the ability to form one's own fate as in the above). So why choose to investigate the presence of leverage and not influence or power?

First, the presence of power is obvious in the right to veto, in accordance with power being an attribute; this, however, does not in itself amount to actual influence. Second, the demonstration of leverage may seem to be a rather descriptive exercise, merely establishing the acknowledgement that some latent power to potentially influence exists in any given context, while, in contrast, the study of power or influence involves uncovering the actual process and dynamics of influencing, and not just the actions potentially producing power or facilitating influence. This study, however, of leverage and its existence in the chosen case, is contingent upon the analysis of particular contexts of specific actors and actions. What this basically means is that any leverage or a lack thereof is analysed in contextual relativity to two points of references: **I)** the delimited scenario wherein uneven institutional rights / powers, exercisable in institutional settings, pose differences in actors' abilities / power to influence institutional output and **II)** the potential dynamics limiting the realisation of the vetoing state's preferences and thus the potential leverage vested in the selective right / power to veto. This touches upon what must be accepted as a basic characteristic of leverage; leverage exists in

uneven conditions as leverage in itself is a relative concept; **A** cannot be in a position of leverage or in lack thereof, if not in reference to the position of **B**.

From the references above, two things can be derived on how vetoing is perceived in the context of this study. First, vetoing is understood to be a means by which to, at the very least, secure a status quo situation. This perception is in line with what Warntjen encapsulates when he writes that "*[a]n actor has veto power if his/her consent is necessary for a shift in policy. If an agreement requires unanimity all actors have veto power. Otherwise, the other bargaining parties can overrule an actor who does not have veto power*" (Warntjen, 2008, p. 207). Second, vetoing is also conceived as an instrument with which to, potentially, influence a policy or action, or, at least, the position held by the counterpart.

This instrumental role can thus be either active or latent, which is an important distinction as the counterpart of a vetoing actor could still be influenced even though the vetoing actor may have decided on vetoing. Less in the actual hope of influencing the counterpart's position on the issue, but merely with the less ambitious aim of blocking as in the above. This distinction will thus enable the study of leverage even in the case where the influence on another actors actions is merely the other side of the coin in the vetoing state's search for enhancing its ability to be in control of its own fate (as in the above on power).

This further highlights the importance of preference, as preference, among other circumstances, determines salience; an issue's salience refers to "*the level of importance that each actor attache[s] to [that]… [issue]*" (Thomson, Resolving Controversy in the European Union: Legislative Decision-Making Before and After Enlargement, 2011, p. 44). This is of interest in the thesis because, as Thomson further writes, "*[a] high level of salience is what turns a potential to influence into actual influence, because an actor with a high level of salience will put a high proportion of its potential to influence… into effect*" (Thomson, Resolving Controversy in the European Union: Legislative Decision-Making Before and After Enlargement, 2011, p. 44). This can though be derived to several meanings for this study's purpose. Firstly, the decision to utilise the right to veto, and thus risk working against the agenda of other EU members and the EU in the accession negotiations, is among other things a product of the issue salience ascribed to the conflict by the vetoing state. Secondly, the way by which the power of vetoing is able to exert potential influence, basically, works through the salience ascribed by the candidate state to a certain output or issue, as the realisation or resolution of that output or issue, respectively,

could turn out to dependent upon the vetoing actor's consent. Thirdly, the candidate state's, other EU member states' and the EU's issue salience may work against that of the vetoing state.

This fundamentally becomes an example of search for shaping one's own fate which, inherently also becomes an exercise in limiting the scope for other turnouts. This can be illuminated by Warntjen's elaboration on a view on agenda-setting power:

"*Agendas are defined… as 'the list of subjects or problems to which [decision-makers]…are paying some serious attention at any given time.'… An agenda-setter changes this agenda 'as it highlights its conception and its proposals, and makes attention to subjects that are not among its high priorities much less likely'… Thus, an agenda-setter… changes the salience of an issue and not necessarily the actual outcome. Furthermore, an agenda-setter contributes to the specification of alternatives, narrowing the number of proposals that are seriously considered*" (Warntjen, 2008, pp. 208-209).

A further interesting circumstance in the citation above is the emphasis on change in issue salience in contrast to shaping the end result. This, as in accordance with all of the above, this brings the core of what the study wish to shed light upon:

whether the utilisation of the power to veto, actually gives a small-state vetoing leverage in its ability to influence the candidate state's position on the issue, or if such matters, being an, at least temporary, hindrance for furthering the accession negotiations, are rather under the influence of larger states, bigger compositions of joint efforts in the EU and the EU itself.

It should briefly be noted that, in accordance with the definitions and delimitations of the problem formulation, under *Accession negotiations and veto*, it is not expected that EU member states necessarily are of the same opinion nor has the same interests. But it is however acknowledged that the possibility of EU institutions, as somewhat independent entities, are seeking to influence a vetoing state's position in accordance with their own agenda, and that an investigation, of whether such an undertaking may prove to be somewhat fruitful vis-á-vis smaller states, falls within the scope of study. As seen with the Macedonia name dispute, the European Commission was not fully supportive towards Greece. The positions of some of the more supranational institutions of the EU can, on their own behalf, prove to be of interest. Small states, according to Thorhallson, "*are in greater need of support from the Commission in the Council than the larger states*" (Thorhallson, Can small states influence policy in an EU of 25

members, 2004, p. 344). As one of the basic justifications for this study goes, gaining support in the Council obviously is of some significance, as Slovenia, with even the larger state of Italy, asked the Council to step in to confront Croatia.

Another key argument for investigating leverage, is the circumstance that various other contexts and mechanisms could be thought to have an effect on the candidate state's position on the issue and on the development of the conflict and its potential resolution; such matters are not just dependent on the act of a veto being given. To carry such an approach to success, of course, entails facilitating the analytical awareness needed to acknowledge the demarcations of various contexts, relationships and interconnectedness in workings of these issues. This is partly achieved by methodological explicitness, which is what the study are trying to achieve here.

In the above the study and its ability to give answers was placed in the contextual relation to two analytical points of reference. So how do these references actually fit the context of the case?

In relation to the first point of reference, it should be quite obvious, that the fact that accession negotiations are taking place is also, is a circumstance which points to the other EU member states and the EU, at some point, wish to include the given candidate state as a member of the union. This then could lead to efforts trying to overcome the blockage posed by the vetoing state's position; efforts that might take various forms which will be investigated later. The candidate state's interest and the issue of salience may also prompt the state to take actions to determine its conditions. This overall would work to curtail the vetoing state's leverage.

On the other hand, in accordance to the second point of reference, the fact that the right to veto is an institutionally given right, upheld by treaties, could make the veto so difficult to circumvent that the ensuing leverage of the vetoing state becomes quite significant. Furthermore, and very important, the vetoing state could, by being an EU member, claim support from the union and its other member states, amounting to a weighty enhancement of its leverage.

All this of course rests upon the basic assumption that the dealings within, of, among and between the states, the EU and institutional settings are subject to various, complex processes of bargaining, rules, pressure and negotiation, which begs a flexible yet tangible approach.

Below the reader will be presented with the methodological elaborations on appropriate measures to answer the problem formulation.

3.2 Methodology

In this section the three methods which the study rests upon will be introduced. Three methods has been selected to accommodate the above on the complexity of the field, and the valid scope of acknowledgement to which the study will turn below in further detail.

3.2.1 Congruence method

The optimal scenario would be to contribute the analysis with interviews of experts on the field; scholars, officials, politicians etc. This, though, has not been a real option, however, as the thesis is, of course, subject to limits of time, resources, and number of pages and researchers. What remains is the fact that, although books could be written on the subject, the thesis has to come up with an answer in adherence with the given terms; which is perfectly possible with the right approach. So as the study will not be able to conduct an idiographic assessment of the entire phenomenon, and as the study is not able to meet, let alone enter the minds of the decision makers, the study will not presume to search for proof of causal relations to conclude upon the study. Rather, the study will perform a test for congruence, thus limiting the aim of explanation to a conclusion where "*the possibility of a causal relationship is strengthened*" (George & Bennett, 2005, p. 179); the causal relationship in this case being the scenario wherein utilising one's veto power results in leverage or, due to other dynamics, less so. This will also enable the thesis to perform an analysis without having to include an insurmountable amount of data, as a test for congruence "*does not require a search for data that might establish a causal process from independent to dependent variables*" (George & Bennett, 2005, p. 182). The independent variable, which workings act as the reference point for the testing, is the *vetoing*, whereas the dependent variable, from which the study conclude upon the testing, is the degree of *leverage*. Due to the testing being the fundamental method with which the study arrive at a somewhat finalising stage before the conclusion, as it is here that the variables come into direct play, the congruence method is, as aforementioned, at the 'heart' of the analysis; the part that basically facilitates the possibility of answering the problem formulation.

It is important to notice, that although the congruence method can be used to test theories' "*explanatory power*" (George & Bennett, 2005, p. 199), this is not the direct aim. The purpose is to determine "*the possibility that a causal relationship may exist*" (George & Bennett, 2005, p. 181). Regarding the scope to which the study will be able to conclude upon the findings, it is relevant here to bring forward an earlier cited text piece, by stating that as the study have narrowed "*down the range of cases studied… to capture… [certain] relation], even if this increases the risk of selection bias… [we take appropriate measures in doing so by] providing circumscribed "contingent generalizations" that subsequent researchers should not mistakenly overgeneralize*" (George & Bennett, 2005, p. 84).

More clarity will be given in the course of this chapter. In the next part the study will elaborate on the way in which the two chosen methods will be applied in the analysis.

3.2.2 Process-tracing

This method can be useful in telling how an event came about and the causal relationship between preceding steps leading up to it. It serves "*to historicize the social sciences*" by placing events in a context of actions leading up to the variable being analyzed (George & Bennett, 2005, p. 205).

The essence of process-tracing is "To identify the process, one must perform the difficult cognitive feat of figuring out which aspects of the initial conditions observed, in conjunction with which simple principles of the many that may be at work, would have combined to generate the observed sequence of events" (George & Bennett, 2005, p. 206).

The method is well suited for case studies (George & Bennett, 2005, p. 206). Here the method will be used for analyzing the findings from the initial analysis from the case and determining what role the Commission had in the process. The variables being analyzed through the process-tracing will be same as in the congruence test on the Piran Bay dispute, the independent variable is the *veto* and the dependent variable is *leverage*.

One of the main difference between process-tracing and historical explanation, is that it can be used to test theories on cases, to see if they can be used to explain the various steps between variables being analyzed (George & Bennett, 2005, pp. 208-209).

There are various forms of process-tracing. The "*Detailed narrative*" does not require the use of theory and is aimed at giving a very detailed description of what steps led to a specific event (George & Bennett, 2005, p. 210). The "*Analytical explanation*" is aimed at giving an "*.. analytical causal explanation couched in explicit theoretical forms*" (George & Bennett, 2005, p. 211).

However, the approach that will be used in the analysis is the "*General explanation*" which "*.. constructs a general explanation rather than a detailed tracing of causal process*" (George & Bennett, 2005, p. 211). This method is well suited when a more general explanation is useful in answering the problem. "*Such process-tracing does not require minute, detailed tracing of a causal sequence*" (George & Bennett, 2005, p. 211). This is beneficial when doing a "*within-case analysis*", as it can give results with wider theoretical usefulness (George & Bennett, 2005, p. 211).

This method also addresses the issues that can arise when it is difficult to get all the internal data for the working process, because it is unavailable, secret or because agents try to hide their activities (George & Bennett, 2005, p. 207). This is relevant in this case because the diplomatic work being done in international relations is by its very nature often informal undocumented actions between agents (George & Bennett, 2005, p. 207).

The method of tracing must be adapted to the research object. Straight-line tracing is difficult in most cases because of the complex processes involved. This is another reason why the *general explanation* approach is useful in this case, because it allows a broader theory based analysis without describing a minutely detailed causal relationship between all actions (George & Bennett, 2005, p. 212).

The process also helps identify path-dependency during the analysis. This means trying to establish if the steps taken are guided and limited by the steps taken before. It is however problematic to assume that future steps are locked, but they often become more limited in scope or make it less likely that future actions will seriously diverge from the course taken (George & Bennett, 2005, pp. 212-213).

A thing that some scientist argue is important to remember during single-case studies is the difficulty in basing new theories or predictions on a single case. This problem can be alleviated by comparing the study to other studies on the same case or studies on similar cases to help verify the findings. However, one case can help with many useful observations, and in some

cases narrow the field of possible explanations sufficiently to provide a strong indication of the reasoning behind the results, so it is not fruitless to do analysis on a single-case (George & Bennett, 2005, p. 220).

3.3 Analytical approach

In this chapter, the analytical approach will be explained on a more practical level, with each step being elaborated. Starting out by going through the questions before moving on to outlining the hypotheses to be tested.

3.3.1 Theoretical framework

The theoretical perspectives will be drawn from liberal intergovernmentalism, small state theory and power theory. These perspectives will be discussed and in the analysis chapter used to form research questions to be used to guide the analysis.

3.3.2 Theoretical testing

In this chapter the study will introduce the theoretical deliberations from which hypotheses will be formed, founding the references for testing congruity. Two such hypotheses have been derived, and they will denote the point of reference:

1. The delimited scenario wherein uneven institutional rights / powers, exercisable in institutional settings, pose differences in actors' abilities / power to influence institutional output.
2. The potential dynamics limiting the realisation of the vetoing state's preferences and thus the potential leverage vested in the selective right / power to veto.

The first scenario then designates the situation in which the veto power does bring about some degree of leverage, whereas the other denotes the circumstance where the effect of the veto power is curtailed by other EU member states' agenda and that of the EU.

In light of the study and its aim it is of some value to include some insights from a study by Jonathan B. Slapin (Slapin, 2011) that looks into "*sources of bargaining power at... [intergovernmental conferences (IGCs) between EU member states]... which member states achieve their goals and why*" (Slapin, 2011, p. 1). Even though Slapin's analysis concerns IGCs

and thus constitute a take on bargaining within a different framing than in this case, it is still of inspiration as it includes two things fundamental to the study: **I)** a test of "*two competing theories of bargaining power*" (Slapin, 2011, p. 2) and **II)** an inquiry into the dynamics of the veto. Regarding the first point, which is the main part of interest to this paragraph, it should by now be quite straightforward that the study relates to issues of bargaining power, where veto power can be perceived as a bargaining power. However, there is a discrepancy between the setting in which this case unfolds and that of interest in Slapin's study. So to which degree do they differ?

First, there is the type of institutional framework that underpins the negotiations. ICGs, attended by EU member states negotiating treaties, are a rather different context than accession negotiations in the Council of the EU. Slapin himself regards IGCs as institutional settings due to their subjectivity to rules (Slapin, 2011, p. 10), and accession negotiations are obviously also to be counted as such; even more so, arguably. Slapin, to conclude upon his research, tests institutionalism and intergovernmentalism, arguing that "*[i]nstitutionalism suggests that bargaining power is related to the rules governing relations*" (Slapin, 2011, p. 2), whereas intergovernmentalism "*suggests bargaining power is derived from member state size and resources*" (Slapin, 2011, p. 2). The elaboration in the following paragraphs, which will be divided between the two theories, discusses and argues for the utility of institutional and intergovernmental aspects in forming the hypotheses. Thus, they also form an assessment of which degree these two theories fit the points of reference above, and the frame in which the phenomenon[6] of interest takes place.

3.3.3 Elaboration on the utility of institutionalism

Adding to his description of institutionalism as a theory of bargaining power, Slapin also describes institutionalist studies as concerned with "*how institutional arrangements arise, something which has been the focus of many scholars of historical institutionalism*" (Slapin, 2011, p. 9). This touches upon a main question on the study's utility of institutionalism; the pivotal

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[6] Being a small EU member state's vetoing in accession negotiations with a candidate state, with which it is in an ongoing conflict.

aim is to inquire into the question of the potential adherence to formal rules; not their creation. So what can be said in this regard?

Slapin writes that "*new institutionalist studies in the US examine how rules and preferences interact to produce policy*", which could seem to open up a window for the usage of some institutionalist-given aspects for this study's purpose. The given references for this matter though should be seen in the light of Slapins purpose with utilising institutionalism. As he writes:

> "*I approach the analysis of institutional design in the EU by treating the arena in which institutions are negotiated, ICGs, as themselves institutions governed by rules… In other words, I focus on the rules at IGCs which allow these conferences to produce stable institutional arrangements… Whereas much of historical institutionalism focuses on the conditions under which an institutional outcome we observe is, in fact, a self-sustaining equilibrium…, I explicitly examine the choices that actors make when constructing these institutions*" (Slapin, 2011, p. 10).

So what is Slapin's aim? He himself writes, that he "*offers a novel method for studying what leads actors to collectively select specific institutions in a multilateral bargaining environment*" (Slapin, 2011, p. 10), which thus places his study on a clearly different path than this one. On the other hand Slapin also states that he "*explores sources of bargaining power at… IGCs… examines which member states achieve their goals and why*"; purposes that are closer to the scope of this study. Later on, Slapin states that "*institutionalism suggests that bargaining power is related to member state's preference relative to the status quo and the state's right to veto and final treaty which leaves it worse off compared to the status quo. According to this model, all states could potentially have bargaining power because treaties require unanimous support to take effect*" (Slapin, 2011, p. 65). Several interesting things can be taken out of this:

First the relation between bargaining power, preference, status quo and the right to veto quite well fits this study's understanding of the habitat, so to speak, of this study. Secondly, it shows institutionalism's attention towards both the creation of institutions and their ensuing effects on behaviour, which is fully in line with this study's delimitation of accession negotiations. So as far as the phenomenon in question is concerned, institutionalism is applicable in forming the

hypothesis that veto equals leverage; regarding the context within which vetoing and leverage takes place also fits the arena of study, as far as the study can define accession negotiations as institutional elaboration. It is exactly in the case of adherence and respect of the veto by mutually recognised rules among states, within an institution, that the matter of leverage, to a further degree, becomes an institutionally given circumstance; both in the extending of an institution and the effects of an institution.

It is, then, if the above it so be clearly understood, important to clarify, that, within the hypothesis derived by institutionalism via the theory's emphasis on rules and their effect on behaviour, any leverage, obtained by the vetoing state, is doing its workings primarily within the integrationist intention (or de facto blocking thereof) of accession negotiations. It is true that the conflict that is the background of the chosen case is explicitly bilateral of nature, and that it is in relation to this bilateral relationship that the leverage is defined. However, to this institutionalist approaches will point to the basic foundation of any 'leverage-by-veto' at all; adherence to formal rules.

Now the chapter will now turn to deliberate on the use of intergovernmentalism for forming the second hypothesis.

3.3.4 Elaboration on the utility of intergovernmentalism

As aforementioned Slapin states that, according to intergovernmentalism, "*power is related to the relative size and resources of member states*" (Slapin, 2011, p. 65); it disagrees with institutionalism on the "*sources of power*" (Slapin, 2011, p. 66), and thus emphasises large states' "*ability to affect… bargaining outcome*" (Slapin, 2011, p. 65). In Slapin's research, though, this relates to the very setting that bargaining takes place in; the same frame that his test of institutionalism operates within, namely being IGCs. This is the same in this study, however, but the difference between Slapin's enquiry and this study's is the fact that the conflict, underlying the chosen case, are not of integrationist character or, by nature, in any way related to the accession negotiations. The dispute only becomes an issue within the context of accession negotiations because of the veto is given on background of the very conflict.

This question however does not pose a problem, as it has already, in the above, been pointed to the importance of preferences; it is the preferences that lead states into taking positions. Given by the fact that no large state, in this case, is vetoing further negotiations, chances are that

negotiations on the given conditions was in the interests of those large states. This means that the vetoing by a small state becomes a matter of some degree of salience to other EU states, including the larger states, making the veto and, partly so, at least, the underlying conflict a sphere of interest to EU states.

Finalising this discussion then, it is claimed that intergovernmentalism is quite applicable in shaping a hypothesis that size equals leverage, appropriate to this study.

Concluding on deliberations on both institutionalism and intergovernmentalism as being theories on integration, one should pay attention to the fact that the leverage or the absence of leverage this study is approaching can be seen in a wider context than merely a bilateral frame. After all, the basic puzzle, underpinning the thesis, is whether institutions or size matter under these circumstances. A question that would not be valid if not for the institutionally given right to veto and the integrationist stage in which the vetoing takes its role.

3.3.5 Hypotheses

It should be noted that the study is not as such testing theories but hypotheses. When concluding on the thesis of course the study will seek to abstract the findings into implications on the used theories ability to explain the phenomenon being studied here. Theoretical derivation of hypotheses is important though, due to the very same reason that study will be able to elaborate on the power of explanation of institutionalism and intergovernmentalism; in, to any degree, testing an independent variable's effect on a dependent one, some degree of prediction has to be argued for. One cannot argue for the scientific nature of a test, if no argued relation between action and effect is theoretically established. As George and Bennett writes, "*[t]he essential characteristic of the congruence method is that the investigator begins with a theory and then attempts to assess its ability to explain or predict the outcome in a particular case… [adding that t]he theory posits a relation between variance in the independent variable and variance in the dependent variable*" (George & Bennett, 2005, p. 181).

Utilising theories in deriving hypotheses is thus central to the validity for this study, and for the ability to arrive at any scientific conclusion; no matter to what degree the aim of the study is to investigate circumstances for small state's leverage by vetoing candidate states, rather than per se theories' explanative power on the subject. Again, the study wish to bring notice to the fact that it, when concluding upon the findings, will also elaborate on the study's implication for

what can be said on institutionalism's and intergovernmentalism's explanative power on the research question.

Here now is the actual hypotheses:

Institutionalist inspired hypothesis:

Slovenia, utilizing their veto power, do get leverage over the EU candidate country Croatia with which they have a conflict during the accession negotiations.

Intergovernmentalist inspired hypothesis:

Slovenia do not, by utilizing their veto power, get leverage over the EU candidate country Croatia with which they have a conflict during the accession negotiations.

As the research design have hereby been finalised a small model is presented with an overview of the design. The table below that gives an impression of how the analysis will be conducted, illustrating the structure of the research design in a simple manner, also giving a figurative sense of how the analysis builds up, leading out, from the approach to the case, through the 'accumulating' test for congruence, to the final conclusion.

			CASE
Theoretical approach	relevant theoretical aspects of theory A	question 1 question 2 question 3	
	relevant theoretical aspects of theory B	question 1 question 2 question 3	
	relevant theoretical aspects of theory C	question 1 question 2 question 3	
Congruence method	preliminary discussion		
	test for hypothesis I		
	test for hypothesis II		
	preliminary conclusion		

3.4 Theoretical framework

Here follows an introduction to the theories used during the analysis, with a focus on the aspects relevant for the inquiry done in this project and not just their general meaning.

3.4.1 Liberal intergovernmentalism

This has become one of the key theories when analyzing integration in the European Union since it came forward in the early 1990s. Andrew Moravcsik developed it by tying together several theories including intergovernmentalism, rational institutionalism and neofunctionalism based in a backdrop of realism (Moravcsik & Schimmelfennig, 2009, pp. 67-68).

Liberal intergovernmentalism is divided into three steps when looking at integration. The first is *national preferences*, where the states internally shape their agendas. The second is *substantive bargaining*, where states engage in interstate negotiations under pressure from both supranational actors and under both power and information asymmetries. Lastly is *institutional choice* whereby states sometimes, at the end of the substantive bargaining process, sets up international institutions to safeguard deals reached against future changes in national preference and safeguard their gains (Moravcsik & Schimmelfennig, 2009, pp. 69-73).

In this report, the two first steps will be used to frame the analysis of the report as well as for analysis the main analysis. National preferences is an important step, to help gauge the relative success or failure of the member-states in negotiations to reach a beneficial deal closer to their preferences. Having a good knowledge of these preferences will help in the evaluation of whether or not the deal reached is estimated to be better than what could be achieved without being a member of the EU. Secondly, substantial bargaining is used as the frame for how the deal was reached / is being reached and what mechanisms are in play to influence the result in a beneficial or detrimental way for the member-states national preference. The third step is not relevant in this report, as it deals with establishing new institutions to safeguard deals reached, which is not relevant in the problems and contexts being dealt with, although a special tribunal is established to deal with the Piran Bay dispute, but the mechanisms of the specific tribunal is not relevant here. The first two steps are also important in guiding one of the analysis steps, as liberal intergovernmentalism is grounded in realism and can therefore be useful as a theory critical of small-states gaining increased leverage through international institutions. Therefore, the first two steps will be described in a bit more detail, with a focus on the parts relevant for the analysis in this report.

The national preference segment is relevant in establishing what the ideal outcome is for the member-state in regards to the conflict studied later. Preferences will vary over time from state to state but also inside a single state. Moravcsik puts it as "*the foreign policy goals of national governments vary in response to shifting pressure from domestic social groups, whose preferences are aggregated through political institutions*" (Moravcsik & Schimmelfennig, 2009, p. 69). Preferences are issue specific and economic concerns will almost always play a central role, but it does not have to be the only concern. In the case used in this thesis there are also matters of ideology and national feelings intertwined with the conflict.

Substantive bargaining is seen in this thesis during the accession negotiations. State preferences rarely completely converge, a fact obviously illustrated here by the conflict chosen. The theory posits, "*States must overcome collectively suboptimal outcomes and achieve coordination or cooperation for mutual benefit, yet at the same time they must decide how the mutual gains of cooperation are distributed among the states*" (Moravcsik & Schimmelfennig, 2009, p. 71). This shows the room there is to distribute the relative gains from a bargain, which in this relation is relevant because if the relative gain is likely bigger when done thorough the EU system for the member-state, it would show a relative power gain for the member-state as opposed to resolving the conflict through bilateral channels. This also shows that relative bargaining power of the involved actors is very relevant, so in the analysis it is important to evaluate, whether the major European powers have pressured the member-states to accept a detrimental deal to remove the veto and move the overall negotiations forward. Then again if the system works as it looks in theory, it would be expected along the lines of liberal intergovernmentalist thinking that actors benefiting the most from no bargain should be able to elicit the biggest concessions from the opposing parties, in this case the candidate country, to give them a more beneficial deal. This asymmetrical interdependence could be a potential key element in the analysis, as the part with the biggest potential gains from sealing a deal should be most willing to make compromises to see the negotiations closed. However, it is also important to note the strong backdrop of realism in the theory, as it posits great leverage with the dominant state powers. So if the national preference of the member-state runs contrary to major European powers, it would be expected that the institutional setup granting the veto power would be severely limited in terms of actual concrete leverage gained by the member-state.

Liberal intergovernmentalism is an integration theory, which is not specifically what this report is dealing with. But as argued above it will provide a strong methodical framing for how to proceed when using the congruence method to test the theories against the cases to illuminate whether the member-states gains additional leverage in the negotiations by utilizing their veto power.

3.4.2 Small state theory

Most international relations theory focuses on the great powers, but there is still a big selection of literature dealing with small states. The first obvious problem is how to group states and by what variables to differentiate them. There are a number of quantitative indicators used like size of a country's military, GDP, territory etc. and qualitative indicators like the perception of other countries, administrative capabilities etc. This is discussed further in the following chapter dealing with how to define a small state.

The field of small state theory is fairly fragmented, with no grand theories universally recognized. Therefore, some of the main trends and approaches will be covered here.

Asle Toje (2011) identifies four common traits exhibited by small states in the literature dealing with small states.

Small states tend to opt for dependence on a greater power or neutrality. If the state is situated in a position of strategic importance to a great power, they will tend to be dependent on that power and try to accommodate their wishes. If the small state is located in a region characterized by security and dominated by a great power, then they will tend to opt for neutrality in the international system (Toje, 2011, p. 47).

Small states know they cannot shape the global order as a great power might, so they focus on the most prominent threats to their existence and try to improve the conditions potentially threatening their existence or maintaining a status-quo (Toje, 2011, p. 47).

International organizations tend to be favored by small states, as they can be used to move away from the international security anarchy among nations towards an international rule by law. These organizations also help the small states reduce their cost of conducting international diplomacy. Small states are defensive by nature, as they can only influence the region closest to

them and has no hope of achieving a regional hegemony wherein to achieve relative safety (Toje, 2011, p. 48).

These four points also highlight the problem David Vital sees for the small states, as he looks at them through a prism of realism where the states are operating in an international system in a state of anarchy with nations being rational and egoistic (Vital & Nye, 1971). This leads on to looking at an element of the research question in this report, does the EU help overcome the purely anarchic nature of international relations, so small states gain more leverage relative to their larger counterparts, or is the system still completely dominated by the greater powers.

Thorhallsson has studied the small states in an EU-centric perspective relevant for this report. Part of the foundation of the EU is protection of small states. He identifies four ways the states influences the EU and how they differ from the larger states.

The small states have a greater prioritization in what matters to try to achieve results in than larger states. They focus their efforts in fields where they can derive direct benefits, giving them a smaller interest range, reflecting their relatively small administrative capacity to influence. The small states are more flexible than their large state counterparts, dealing with a larger array of responsibilities on their own. This also means more informal working methods to reach decisions in the small states, as opposed to larger states that more exclusively relies on a formal vertical approach. The administrative staff of smaller states have a greater level of autonomy, except in matters dealing with points of great interest to the states. This eases the transactional costs of operating in the international system for the small states. The staff also generally have an easier way of contacting their ministries and even ministers directly responsible for the field they are operating in, resulting in a fast way to get decisions on a national position, as opposed to the more formal hierarchical structure of the larger states. These smaller administrative capabilities result in their staff having a higher frequency of meetings in the EU, often resulting in them getting a greater experience than their colleagues working for the larger states. However, they also deal with problems with them often not having a strong national position on issues to rely on, making them more insecure about what resolutions to push for (Thorhallson, Can small states influence policy in an EU of 25 members, 2004, p. 338).

Thorhallsson highlights advantages and disadvantages in the small states administration, which can also be seen as a key factor in differentiating the small states from the larger ones.

Administrative capability can be viewed as a key difference in how they handle the international system, as they have to adapt and overcome weaknesses resulting from a smaller amount of resources. This is a key reason why small states favor international organizations, as it can help them decrease the costs of conducting repeat business. Still they have fewer resources, and are forced to rely more on personal relationships and focusing on more narrowly defined interests than their larger counterparts do, because they so to speak are administratively challenged.

Thorhallsson further explores the administrative capabilities and their effects on small states interactions in the international system in other texts. He sees several reasons for using this point as one of the indicators of a nation's capabilities and power. Besides the points touched upon already he sees the role of the permanent representative to the EU as being different, because the officials from the small states handles more matters and have a greater hand in shaping policy (Thorhallson, Small states in the European Union: A theoretical approach, 2002, p. 57). This leads to the officials being responsible for policy-making, negotiations, and implementation. "*It is often the same official who is involved in domestic policy-making, attends committees in the Commission, attends working groups in Council, advices the minister for meetings in the Council of Ministers and subsequently implements the directive*" (Thorhallson, Small states in the European Union: A theoretical approach, 2002, p. 58). Thorhallsson also notes the small states close working relationship with the Commission, which is sometimes viewed as being small state friendly, where they tend to cooperate with it as opposed to the larger states, which more often are in conflict with it (Thorhallson, Small states in the European Union: A theoretical approach, 2002, p. 66).

In direct relation to this project, Thorhallsson also identifies a key difference between small states and greater powers. Small states tend to be inflexible on important issues and more flexible on less important issues. The larger states tend to be inflexible on all matters (Thorhallson, Small states in the European Union: A theoretical approach, 2002, p. 60). The smaller states focus their more limited resources in an effort to maximize results in areas where they derive direct benefit, and they use the less important areas where they derive small benefit as bargaining chips with the other states to obtain support for their positions in key areas.

So while quantitative markers like GDP, population, size and military capabilities can help both define and explain why small states act differently in the international system than greater

powers, it is also relevant to look at other factors like the size of their administrative bodies to get an idea of what scope of issues a state can engage in. All these factors are also shown to explain why small states generally are very willing to support free trade, join international bodies and military organizations. These ease their transactions, reduce costs of diplomacy and help guarantee independence.

3.4.3 Small state definition

A short description of the term through theoretical means is useful, because it is highly used throughout the thesis and as such is central in the understanding of the analysis.

There is no definitive answer to what constitutes a small state. Scholars, when trying to define the term, mention often both quantitative and qualitative parameters such as economy, military, cultural influence, technology, administrative capabilities, scientific accomplishments and so on. No matter the definition, there certainly has been a growing number of states during the last decades, especially following the First World War, the decolonization and the breakup of the Soviet Union. This also means that, as the earth has a finite space, more states must mean more relatively small states (Hänggi, 2010, s. 80).

The first group of factors are the physical or quantitative like geographic size, population and GDP (Hänggi, 2010, s. 81). These factors also carry a strong link to traditional military capabilities: how many soldiers can a country put into the field, how well can it equip them, how well can it feed them and so on. This also means that, in a modern European context, these factors may not be entirely satisfactory to rely solely upon, when defining a small state. David Vital has one of the influential definitions here saying that for developed states 1-15 million in regards to population constitutes a small state and 20-30 million for developing countries. Countries below this threshold is considered microstates (Hänggi, 2010, s. 83).

The other group of indicators are the qualitative, which can also be summed up as the perception of a country by both its wider environment and by itself. Nugent describes it as an "*..evaluation of a state's relationship to its wider environment – which possible considerations including the amount of influence a state exercises and the extent to which it perceives itself and is perceived by others as being small*" (Lee, 2006, s. 32). This also brings in the possibility of defining a state by its relative power (Hänggi, 2010, s. 81-82). Instead of just looking at what it

can do, then look at international bodies like the UN, NATO, EU and so forth and looking at what it actually accomplishes.

In the context of this thesis, a workable central parameter for defining small states is then clearly hard to come by. When reading small state literature the only clear fact in regards to defining what small states are is that there are no clear definition. Therefore, the definition chosen has to be seen in context of this study. Population size may seem as a limited way of defining small states, but with the context of the EU it becomes very relevant. With the present Nice votes rules in the Council, state population decides how many votes each country has. When the system is replaced in 2014 with the Lisbon rules, total population size of countries voting yes or no on a proposal will be a determining factor. So by looking at the current vote spread under the Nice rules countries have between 3 and 29 votes (Council of the European Union, 2013). Therefore, for the purposes of this report 14 votes will be the upper limit for small states, as this is Romania with a population of about 20 million just in the high end of Vitals definition of small and large states. This leaves Germany, France, Italy, the UK, Spain and Poland as big states and the rest of the EU states in the small states category.

3.4.4 Power Theory

Due to the fact that the veto power is the key action giving reason to our case selection, and that the phenomenon being investigated is leverage or lack thereof, it would only seem sensible to include theoretical perspectives on the exertion, influence and workings of power. This will enable us to recognise and characterise some of the dynamics through which the vetoing state, the candidate state, the other EU member states and the EU institutions engage in the issues relating to the vetoes. Before we go on to encircle a theoretical framework on the topic of power for our purpose, a short argument for the choice of literature is of some ontological value.

Barnett and Duvall (2005) pose an argument for discussing the relation between the conceptualisation of power and an understanding of global governances. The motive for their work in *Power in Global Governance* (2005) was a search for a more nuanced and adaptive approach to the concept of power. They criticise scholarly discussions on global governance for suffering from the "*discipline's tunnel vision when identifying power*" (Barnett & Duvall, 2005, p. 2). Barnett and Duvall argue that a good part of scholarship concerned with global governance underestimates the significance of power as an analytical key concept in coming to terms with

the unfolding of global governance (Barnett & Duvall, 2005, p. 4). They posit that this stems from debates too easily connecting power and realism in an almost conceptualising, founding manner that limits the analytical scope of power; material resources become nearly all there is to power and its exertion (Barnett & Duvall, 2005, p. 2). So in assessing global governance, an often very "liberally" expressed and principled subject and phenomenon, especially so in the fading of the Cold War (Barnett & Duvall, 2005, pp. 5-6), power, as, in slightly loose writing, being understood as "*realism's prerogative*", has been somewhat neglected on the field. The problem in this, in Barnett and Duvall's words, is that…

> "*.. governance and power are inextricably linked. Governance involves the rules, structures, and institutions that guide, regulate, and control… features that are fundamental elements of power*" (Barnett & Duvall, 2005, p. 2).

But why are we even concerned with power in global governance?

The concept of global governance covers a vast field of actors, contexts, processes, and interconnections; as Anthony McGrew (2011) describes it:

> "*an evolving global governance complex… – embracing states, international institutions, transnational networks and agencies (both public and private) – that functions, with variable effect, to promote, regulate, or intervene in the common affairs in humanity… comprises of the multitude of formal and informal structures of political coordination among governments, intergovernmental and transnational agencies – public and private – designed to realize common purposes or collectively agreed goals through the making or implementing of global or transnational rules, and the regulation of transborder problems*" (McGrew, 2011, p. 25).

Safe to say, this paper will of course not perform an exhaustive assessment on every aspect of the enormous amount of subjects and actors – not even if we put all of those in roughly arranged categories. Our interest and aim in considering perspectives on power in global governance lies in applying a power-concept adapted to a somewhat argued connection between or coinciding of the evolvement of global governance, on the one hand, and, on the other, a, to some degree, "softening" of states' sovereignty .

Taylor and Curtis (2011) are touching upon a different topic when describing the UN's increasing willingness to intervene on matters within states as an indication of "*a movement towards global governance and away from unconditional sovereignty*" (Taylor & Curtis, 2011, p. 321). However, as evident from the case-description, supranational and intergovernmental actors and their institutional setup may just be affecting issues traditionally thought of as inherently matters of states; it is a key question underlying the problem formulation.

In the next paragraph, the study's theoretical concepts will be presented.

Concepts of power

In general, part of the main contribution of theoretical perspectives on power has been "a consideration of how, why, and when some actors have "*power over others*" (Barnett & Duvall, 2005, p. 3). As we have already touched upon, *"[p]ower is the production, in and through social relations, of effects that shape the capacities of actors to determine their own circumstances and fate*" (Barnett & Duvall, 2005, p. 3). Since we are dealing with the preferences of states and institutions and, on the one hand, the potential difference in these preferences, and, on the other, the outright contentious relation between some preference positions, the habitat of the states within the context of this very case becomes that of the relation between reciprocal action and reaction in the "*range of ways in which actors are constrained in their ability to determine their policies and their fates*" (Barnett & Duvall, 2005, p. 2). This of course also concerns institutions and not just states.

The main emphasis in the analysis of power will be laid upon typological aspects outlined by Barnett and Duvall (2005); general perceptions of power fitting the realm of global governance. A description will follow below.

Compulsory power denotes "*the direct control of one actor of the conditions and actions of another*" (Barnett & Duvall, 2005, p. 15). "*In terms of sheer influence, especially for scholars of international relations, arguably no definition surpasses that of Robert Dahl's earliest formulation. For him, power is best understood as the ability of A to get B to do what B otherwise would not do*" (Barnett & Duvall, 2005, p. 13). Exercised power by A does not need to be intentional, and so "*[c]ompulsory power is present whenever A's actions control B's actions or circumstances, even if unintentionally. As Bachrach and Baratz argue, power still exists even when those who dominate are not conscious of how their actions are producing unintended effects*"

(Barnett & Duvall, 2005, p. 14). It is also not delimited to be used only in relation to material resources (Barnett & Duvall, 2005, p. 15).

Institutional power, in contrast to the direct nature of compulsory power, this mode of power entails "*actors' control of others in indirect ways*" (Barnett & Duvall, 2005, p. 15). This conceptualization seems particularly apt to describe the central feature of action in our problem formulation, namely the vetoing on basis of a conflict of interests, as an example of institutional power unfolding includes the circumstance in which "*... A's actions affect the behavior or conditions of others... [via] institutional arrangements (such as decisional rules... and structures of dependence)*" (Barnett & Duvall, 2005, p. 16)

This further touches upon thoughts on dependencies in the relationships of the concerned actors. The various relations further differs inherently due to a multi-layered nature of relationships and contacts (formal, informal; personal relations etc.).

Structural power "*... concerns the structures – or, more precisely, the constitutive, internal relations of structural positions – that define what kinds of social beings actors are*" (Barnett & Duvall, 2005, p. 18). In contrast to institutional power, that "*focuses on the constraints on interest-seeking action, structural power concerns the determinations of social capabilities and interests*" (Barnett & Duvall, 2005, p. 18). This typological conception thus emphasizes the power lying in mutual constitution by the relationships relating actors to each other and by the positions these actors hold; all in relation to capabilities and perceived interests (Barnett & Duvall, 2005, pp. 18-19).

Productive power emphasizes "*generalized and diffuse social processes*" in which "*constitution of all social subjects with various social powers through systems of knowledge and discursive practices of broad and general social scope*" is elaborated (Barnett & Duvall, 2005, p. 20):

> "whereas... [structural power] works through direct structural relations, the latter entails more generalized and diffuse social processes. Specifically, and at the risk of gross simplification, structural power is *structural* constitution, that is, the production and reproduction of internally related positions of super- and subordination, or domination, that actors occupy. Productive power, by contrast, is the constitution of all social subjects with various social powers through systems of

knowledge and discursive practices of broad and general social scope" (Barnett & Duvall, 2005, p. 20).

The various modes of power will stand clearer to the reader when utilised.

In this respect, as in some of the others, especially so the structural power, we should tread cautiously; alone, the congruence method limits the scope of causality that can be inferred, which thus requires the contributing method of process-tracing in order for us to, in any valid manner, claim to conclude on perspectives of productive power. We will not then, include this concept in our analysis.

4 Analysis

Here the three analysis sections will follow, guided by liberal intergovernmentalism and power theory on the case and process-tracing in relation to the Commission.

4.1 Liberal Intergovernmentalism

This part will analyze the case through liberal intergovernmentalism. The theory further detailed in a previous chapter looks at international relations from a realist perspective. States are the primary actors and powerful states dominate relations. International relations are affected by international organizations, but mostly as a tool to reduce transaction costs and stabilize long-term deals against future preference change in other states. The case will, guided by research questions, test if these claims from liberal intergovernmentalism are supported, and as such will be a strong indicator towards Slovenia not gaining any significantly increased leverage to resolve the bilateral conflict.

Research questions:

- Does Slovenia's preferences in resolving the conflict run contrary to the big EU states?
- Was pressure applied to Slovenia to accept a solution less satisfactory than its preferred position in the dispute?
- Did Slovenia resolve the conflict with a result close to their national preference?
- Are there signs of Slovenia having increased leverage against Croatia in their handling of the dispute through the accession negotiations?

Does Size Matter?
A case study of the Piran Bay conflict

Does Slovenia's preference run contrary to the big EU states?

This is important to determine. If the big EU states favor Slovenia's preferred result, it would be expected that they would have an easier time getting it. On the other hand, if they were opposed it would be expected that Slovenia would reach something short of their preferred result. In addition, if the big states are generally indifferent to Slovenia's preferred result or their main concern is the accession Slovenia is vetoing, then that is the main concern here. Because that would mean Slovenia is blocking the bigger states long-term goal, getting Croatia to accede to the Union.

The only large European state that is directly affected by the Piran Bay area is Italy. As shown in a previous section both Croatia and Slovenia share a coastal border with Italy, but the direct borderline with Italy has not shifted since the breakup of Yugoslavia, it is just with two countries instead of one now. However, Croatia did draw some ire from Italy when they unilaterally made a protected fishery and ecological zone. This hurt Italian fishing and Croatia fumbled a bit with their handling of the situation, pledging to change the law and then passing it in its original form after all. However, Croatia agreed to delay implementation of the zone until getting an agreement with EU about fishing easing the situation (Trauner, 2011, pp. 79-80). This in the end appeased Italy and removed a potential powerful adversary in the accession negotiations.

The big states were in opposition to the Slovenian veto. German European Parliament member from CSU Bernd Posselt heavily criticized Slovenia's calling it an act of "*anti-European aggression*", stating that it was "*blackmail*" and appealed to Sarkozy saying he should "*not to allow to be thus pressured and to publically reprimand Slovenia*" (Dalja.com, 2008). This was done because France at the time had the rotating presidency during the Slovenian veto to open new negotiation chapters. French officials tried to mediate a resolution to the dispute or a way of getting it removed from the accession negotiation. A French presidency spokesperson said: "*The French Presidency made mediation efforts for weeks, day by day. We have proposed solutions, but unfortunately, these have not been conclusive. And the Slovenian Prime Minister [Borut Pahor] stated that his country would only sanction the opening of one chapter and the closing of three*" (EurActiv.com, 2008). Speaking generally, the entire European project has been one founded on bringing long-term peace to a war-torn Europe. Yugoslavia was not a member of the Union, but the country lies right in the EU's backyard and as such, it is hard not to see the

civil war in the midst of Europe as some form of failure of the European project. Therefore, the membership of the former Yugoslav states such as Croatia has been an important step in guaranteeing stability and security in the region through reforms and increased prosperity. This was also underscored by the fact that Croatia had to turn over suspects of war crimes to the war-crime tribunal in The Hague (Kuzmanovic & Gomez, 2013), as a requirement for them to accede to the Union.

Therefore, in answering the research question several things stand out. The only other state to have a direct stake in the Piran Bay conflict was Italy. Croatia did draw some anger from Italy over them unilaterally setting up the protected sea zone, but Croatia drew back and agreed not implement it without having an agreement with the EU. Italy did briefly talk about a possible veto against Croatia, but Croatia moved swiftly to amend the situation, ensuring that Italy was not seriously put off by their dispute with Croatia. The other major European states like Germany, France and Britain does not have any direct stake in the conflict and as such must be considered to be rather indifferent with whether or not Slovenia reaches their preferred outcome to the conflict. Furthermore, the large European states were all supporting membership as long as Croatia successfully completed negotiations of the chapters, so the Slovenian veto must have been at least a small nuisance, as it blocked the timetable and added unnecessary problems to the process. So Slovenia's use of the veto, while formally fully within the negotiation parameters, must have been somewhat troublesome for the major EU powers.

Was pressure applied to Slovenia to accept a solution less satisfactory than its preferred position in the dispute?

It is hard to find hard documentation of what kind of pressure was applied to Slovenia to end its blockade of Croatian accession negotiations, but it seems clear that diplomatic pressure was applied in meetings. Several texts and politicians allude to it, for example a Croatian politician commented on the block saying: "*The European Union -- notably Sweden, current holder of the EU presidency, its Foreign Minister Carl Bildt and the rest of the EU who did not want to watch this show any more -- put pressure on Slovenia*" (EUbuisness, 2009). Scholars also commented on the apparent back down from Slovenia: "*Following the EU pressure, an agreement was reached to submit the dispute to the international arbitration*" (Vrbetic, 2013, s. 328).

Another element of pressure came from how the EU officials use the accession treaties. The Croatian accession treaty had some other elements in it not linked to the accession. This is done because by its nature an accession treaty is a new EU treaty that must be approved by all member states, so if small changes are needed for the treaties EU is founded on, this is a useful way of implementing them without the difficulty of drafting a new major EU treaty. This was also the case with the Croatian accession treaty, as it was used to implement some of the opt-outs required by Ireland to pass the Lisbon treaty ".. [Croatian] *officials hope the pressure may start to build on Slovenia instead. Concessions offered by the EU to the Irish to secure a yes vote to the Lisbon treaty this autumn could be enshrined legally in Croatia's EU accession treaty, which has to be ratified by all existing members. If so, a Slovene veto would obstruct the entire EU, not just Croatia*" (The Economist, 2009).

There are also empirical findings suggesting that if a state is too hardline in pursuing a particular position in the Council it can hurt them in future dealings. It hurts the potential goodwill with states they could otherwise corporate with on issues and are as such dangerous. This perhaps especially applies to new member states, as they are not as well integrated into the system as the old member states. Related to this is the empirical findings showing that the old western European states are better coordinated amongst themselves in many of their policy positions than the new central and eastern European member states (Thomson, The Relative Power of Member States in the Council: Large and Small, Old and New, 2008, s. 255-257). This helps underline the probable pressure applied to Slovenia to either settle their dispute with Croatia fast or take it out of the accession negotiations. Not doing so but sticking with their veto for a prolonged time period would likely have resulted in ever-increasing pressure from both EU officials seeking to finalize negotiations with Croatia and other state leaders trying to end the matter and discuss other more relevant issues to them. Slovenia would be hard pressed not to end their veto fairly fast, because their wishes in the case was contrary to that of other countries whose goodwill they would want in other areas in future cases, so sticking with their veto could potentially be a very costly affair if kept up for a long time. This is also in line with the small state theory, as it shows the small states have relatively few key issues, and if they want their positions to hold during negotiations, they need to have the support from the large states and of at least some small states. This means Slovenia will need to be on good footing with the large states, but Croatia is also a logical partner. They are on friendly terms and has

not been to war with each other during the breakup of Yugoslavia, so they would be a natural ally in the Council for Slovenia. This might also have figured into their decision to end the veto, as clearly the state that put the most pressure on Slovenia to lift the veto was Croatia, and keeping the veto in place for a prolonged period could potentially have severely damaged bilateral relations.

Did Slovenia resolve the conflict with a result close to their national preference?

Slovenia was willing to accept the Drnovšek-Račan agreement as shown previously. This would have granted them about two thirds of the bay, direct access to international waters through a special maritime corridor and most of the areas along the Dragonja river they wanted. The agreement passed the Slovenian parliament, so at the very least this was an acceptable solution to them. However, it cannot be directly assumed that this is the preferred position of Slovenia, but rather more likely that it was the best solution they were able to negotiate with Croatia at the time. What their preferred position is exactly is difficult to determine precisely, but it seems reasonable to assume they would like direct access to the high seas without having to use a special corridor in Croatian waters and control with all the areas along the Dragonja River with a significant Slovenian population.

This means the result is not that close to their preferred position. Using the Drnovšek-Račan agreement as a point of departure, they did not even secure that much. The conflict was lifted out of the accession negotiations with the Border Arbitration Agreement from 2009. This means the dispute is now going to be settled by a special tribunal in the UN with assistance from the EU. This is seems rather close to the EU and Croatian wish that the dispute be lifted out of the accession negotiations and dealt with separately and the Croatian wish that the matter be handled like a legal dispute rather than a political dispute. While the outcome of the tribunal has not yet arrived, it seems clear that even if using the Drnovšek-Račan agreement as a baseline national preference for the Slovenian government then they have still been unsuccessful at resolving the conflict with a result close to their preferences. This fits well with liberal intergovernmentalism and realism that posits the greatest power with the major states, and as they have had little concern for the Slovenian wishes in this matter, it could not be expected that their formal leverage in form of the veto would yield them a great amount of pressure to resolve the conflict in their favor. However, if we look purely at the formal wishes of Slovenia that the Croatian documents submitted during the accession negotiations they felt

prejudged the border drawing in the dispute in favor of Croatian wishes, then it could be seen as a success. This does not however seems unlikely as the sole reason behind the extended veto, as such a demand from Croatia would likely have been met fast, if they did not try to use the situation in their favor to get a final solution that was beneficial because of their apparent position of power.

Are there signs of Slovenia having increased leverage against Croatia in their handling of the dispute through the accession negotiations?

Slovenia managed to stall Croatia's accession for a time, but it seems limited what they achieved by it. They managed to get accession documents removed they felt prejudged the dispute in Croatian favor, not much else. As shown above they did not even get as good agreement as they were able to negotiate bilaterally with Croatia in 2001, although admittedly that agreement failed because it could not pass the Croatian parliament. The use of the formal power they had through the veto does however appear to have had several reverse informal effects caused by the political maneuverings of both the larger EU states and Croatia.

If we briefly look through the dispute and solution through a prism of a more classical form of realism than used by liberal intergovernmentalism with the recognition of an anarchic system, states being the primary unitary and rational actors whose primary concern is survival some trends can also be seen (Slaughter, 2011, s. 1-2). Clearly, survival was not an imminent concern in this case, but recognizing states as rational and unitary actors that takes precedence over international institutions, which liberal intergovernmentalism also recognizes, then we can see this dispute and the resolution as the result of political maneuvering of Slovenia that did not bring a very fruitful result. Slovenia was faced with possible long-term negative results if it stood its ground by alienating the principal actors within the EU like Germany and France. They could risk severely worsening their relations with their neighbor Croatia. Croatia who is more than twice their size and with whom Slovenia have a considerable amount of their exports to.[7] Finally, the initial reaction from Slovenia to use the veto initially seems to be entirely rational, as it apparently would seem to grant them an immense leverage over Croatia. However, the long-term rational realities quickly soured this image, prompting Slovenia to change course in

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[7] In 2012 6.2% of Slovenian exports went to Croatia (CIA, 2014).

the matter and accept the dispute to be removed from the accession negotiations without gaining any major results from their apparent position of great leverage.

4.1.1 Preliminary Discussion

Looking at the Piran Bay dispute through liberal intergovernmentalism within a realist perspective provides a strong explanation for the course of the dispute under the accession negotiations. The big member states was in essence indifferent to the solution of the conflict, but opposed to postponing Croatia's accession, which was the apparent result of the veto, because they supported Croatian membership. They were perhaps not directly pressuring Slovenia to accept an unfavorable solution to the conflict, but they were pressuring Slovenia to remove the conflict from the accession negotiations, essentially diminishing the otherwise apparent power of the veto. Slovenia was probably under considerable pressure to do this, because they otherwise risked their long-term relationships with key partners in the EU whose goodwill they would have to rely on to win a favorable outcome to other future unrelated issues. Thus, the use of the veto might have been a rational choice initially, but afterwards the rational choice quickly became to accept an apparent defeat not to risk damaging their international relations. This was an internally problematic maneuver however, as evidenced by the very close referendum held on the deal in Slovenia with 51% in favor and 49% opposed (MMC, 2010). That the politicians in Slovenia pushed ahead despite this very evident public division only shows how important it must have been for the Slovenian leaders to get this issue settled and removed from the accession negotiations, even though the result seems rather poor. There are evidence supporting several of the Slovenian claims in the dispute, so impartial arbitration might not be entirely bad for them. However, there is a very real danger that their direct access to the high seas is going to be threatened, forcing them to give some concessions to either Croatia or Italy to maintain their access to the high seas.

4.2 Power analysis

This chapter will analyze the Slovenian veto and its contextual dynamics from the theoretical perspective of power concepts as introduced in the study's theoretical framework. Initially an assessment of the context of enlargement and the dynamics of norms, bargaining and disputes will be given. This will serve the purpose of paving the "empirical-analytical" ground of the ensuing assessment of modes of power in and of the various levels of relations.

4.2.1 The dynamics of norms and enlargement contexts

To analyze the event of vetoing from a power perspective it is necessary first to understand the mode of bargaining in the Council. The relation between power and "*logic of actions*" (Lewis, 2008, s. 166) in the Council is noted by Lewis (2008) as he writes that...

> "*power in the Council transacts in several currencies. Some are familiar to students of 'power politics' and can be seen in a range of material and formal dimensions: voting weights, decision rules... and so on. Others are familiar to sociological and constructivist approaches that stress informal rules and discursive resources in a given institutional context with its own organizational culture, norms and cognitive maps. The currencies of power ... here... include a common discourse, thick trust, persuasion, appeals to fairness or empathy, and the normative strength of an emerging consensus to delegitimize outlier positions*" (Lewis, 2008, s. 165).

On distinguishing modes or logics of social behavior in the Council Lewis writes that among other acts "*reliance on formal votes... and... implicit or explicit veto threats*" (Lewis, 2008, s. 169) are to be expected under scenarios of strategic behavior. When compared to the notion that "*[t]he consensus-seeking assumption is a very basic rule of the game in Council negotiations, and a point frequently referred to by Council participants during interviews*", other member states' reactions to the Slovenian becomes interesting; not just to determine the spectra of interests and plausible objects, but also in point to modes of power.

As it quite clearly appears from the preceding analysis chapter other member states' clearly saw the Slovenian veto as an act of pressure and obstruction of the interests of the EU itself and the member states. On a more general scale, it is interesting to take note of the EU policies towards the Western Balkans with for instance the Stabilization and Association Process and their implementation. As Trauner (2009) writes, "*the EU has been successful in creating an extended zone of governance in South-Eastern Europe*" (Trauner, 2011, p. 178) due to the strategy towards the Western Balkans in providing "*clear short incentives in addition to the... incentive of membership*" (Trauner, 2011, p. 178). Trauner concludes that "*[i]n order for EU's strategy to remain effective... short-term incentives need to be supported by serious commitments concerning any prospects of full membership*" (Trauner, 2011, p. 178). It is possible to argue that the continuation of such an activity is somewhat contingent upon the perceived seriousness of commitment, although of course other elements do add to that picture as well.

On a more contextual note it is worth juxtaposing the aforementioned interests in granting Croatia membership, and the response from the French presidency with that of the following Czech presidency (from January to June 2009). Beneš (2010) writes that "*the promotion of further EU enlargement had been listed as one of the key priorities of the Czech EU Presidency*"

(Benesš, 2010, s. 204). It was "*stressed by [former Czech prime minister Mirek] Topolánek, [that] the Czech Republic [was]... ready to undertake everything in its power to help Croatia open and close the required number of Chapters*" (European Union Newsletter, 2009).

On the other hand, as Beneš writes, the Czech Presidency was influenced by "*a strong adherence to the norm of "consensual decision-making free of coercion"... [and the] idea that the rules of unanimity and non-coercion should be respected at all costs*" (Benesš, 2010, s. 208). This touches upon one of the contested topics in the subject of international relations and institutional rules; why institutions even exist. A question that we will return to in the next chapter. As Beneš goes on, he sheds light on some rather "theoretically" explained implications of the Czech stance:

> "*The consensual decision-making (veto) is often seen as some kind of emergency break which ensures that the dynamism of European integration does not threaten key national interests...as a bulwark against the powers (the big EU members)... against political and diplomatic "coercion" or even against "pressure" from the EU ("Brussels"), which is often portrayed as the power sui generis but with the same negative connotations - i.e. the connotations of being coercive... While Czech diplomats (and some politicians) do admit that bigger states do "naturally" have a decisive influence, politicians are determined to defend the normative ideal of "the equality of states" at all costs. Within this discourse, the ideals of "consensual decision-making free of coercion" and "equality of states" are the key components of a more general norm of "state sovereignty""* (Benesš, 2010, s. 208).

In the end "*[w]ithin this social context, the Czech Republic, acting as a presiding country, found it inappropriate to exert pressure on Slovenia... The EU enlargement is an agenda decided unanimously by all member states and the Czech Republic fully followed the imperative of consensus and non-coercion*" (Benesš, 2010, s. 209).

The underlying logic in this seems to be a somewhat general tendency. Both the French and Czech presidency, the Council and the Commission supported the position that the border issue was a bilateral conflict and should not be related to the accession negotiations (European Union Newsletter, 2009). The proposal of the French presidency to end the blockade was the outlining of an agreement on the terms that the borders would not be prejudged by any of the parties; only Slovenia rejected it. A most interesting argument for the lack of EU members' willingness "*to strong-arm an EU member*" (Geddes & Taylor, 2013, s. 11) is posed by Geddes and Taylor (2013) in ascribing it to "*the precedent this represented*". They even write that France pressured Croatia more than Slovenia to reach a solution.

When later on the Commission proposed a combined approach with bilateral negotiations and third-party arbitrations no result came of it. It drowned in Slovenia's insistence on a European solution and Croatias' call for the use of the International Court of Justice (Geddes & Taylor,

2013, s. 12). The EU kept its stance though and "*a five-strong panel of legal experts to develop a joint statement not prejudging the dispute and build trust, and then move on to finding a settlement process*" (Geddes & Taylor, 2013, s. 12) was proposed. As Geddes and Taylor put it, "*Slovenia and Croatia saw this as a way forward but little was achieved until Ivo Sanader's resignation on 1 July 2009. He was succeeded by Jadranka Kosor*", who took part in three meetings which ended in an agreement on international arbitration that meant Croatia would not prejudge the borders and Slovenia would lift its blockade of the accession process.

It is worth noting what the agreement entails on the role of the EU:

> "*Neither the European Commission, nor the EU, was a party to the agreement, confirming the dispute's bilateral status, but the Commission would 'provide its good offices'[(EUROPA, 2012)], lauding the agreement as 'a positive political signal for the further development of the good neighborly relations between the two countries as well as for the Western Balkans regions... showing how difficult issues could be solved'[(EUROPA, 2012)]*" (Geddes & Taylor, 2013, s. 13).

With the EU's and its member states' interests in finalizing Croatia's accession, the response towards the blockade and the yet prevailing unwillingness to actually force the hands of Slovenia seems to amount to a respect for the institutionally given right to block negotiations. This leads back to the opening of this paragraph; how does Slovenia's' veto fit into "*the Council's normative environment [where] the consensus-seeking reflex comes close to attaining a 'taken-for-granted' quality... [, and when] mobilizing a blocking minority [or] threatening veto... is considered under most circumstances to be inappropriate*" (Lewis, 2008, s. 171)?

Not very well, clearly, though Slovenia is by no means the first state to block the accession negotiations of a candidate state or talks of accession. Negotiations on a Slovenian association agreement was itself blocked by Italy "*due to a dispute... over expropriated Italian property in the border area*" (Urpelainen & Schneider, 2009, s. 12). In 1994, Italy had demanded that the property be returned. When Slovenia did not give up the property Italy vetoed the negotiations arguing that Slovenian legislation on the purchase of land by foreigners was not in line with EU law (Geddes & Taylor, 2013, s. 12).

The accession of Slovenia was part of the Eastern enlargement. According to Schneider and Urpelainen (2009):

> "*The accession negotiations illustrate how uncertainty about the requisite level of reform induced a race, as applicants chose high level of reforms and accepted discriminatory membership rights in several issue areas, despite high domestic political costs. These reforms benefited the current member states. Indeed, the case is particularly interesting because the European Union experimented with two different approaches. Whereas the initial "differentiation principle"*

> *diminished reform efforts in the candidate countries, the "Regatta principle" dramatically increased reform efforts. Consistent with our theory, the main reason was that the differentiation approach created uncertainty about accession regardless of reform while the regatta approach created uncertainty about accession without full reform*" (Urpelainen & Schneider, 2009, s. 10).

Furthermore, the EU refused to set up a timetable for the enlargement process, which favored the states that best and rapidly committed to reforms and the implementation of the *acquis* communataire (Urpelainen & Schneider, 2009, s. 11-12). Overall, one of the conclusions in the study was "*that a high number of applicants can further aggravate uncertainty [rendering c]andidates… afraid of being left behind, so they chose very high level of reforms in response*" (Urpelainen & Schneider, 2009, s. 23). In the case of the Italian-Slovenian dispute, no member states pressured "*Italy into accepting the association agreement, even though no other applicant had to accept similar demands*" (Urpelainen & Schneider, 2009, s. 12-13) (getting legislation on foreigners' purchase of land in line with that of the EU). In the end, Slovenia conceded and the agreement was finalized quite some time after those of other Eastern candidates (Urpelainen & Schneider, 2009, s. 13).

Geddes and Taylor (2013) disagree with Schneider and Urpelainen in stating that "*there was strong international pressure on the Italian government*" (Geddes & Taylor, 2013, s. 9), and that Germany was an adamant supporter of Slovenian accession. They even go so far as to conclude that Italy altered its policy (Geddes & Taylor, 2013, s. 7), pointing to "*[i]ntegration's transformative effects*" (Geddes & Taylor, 2013, s. 10) and the pro-European approach of the Italian governments at the time. Their conclusion is based on the following paragraph:

> "*EU engagement is a context-driven mix of the enabling and the connective but the EU aspires to, and sees itself as embodying, a particular conception of peaceful inter-state behavior. Engagement with the EU involves, therefore, a constructive impact (Diez et al. 2006: 584). Sustainable dispute resolution rests on the society-wide diffusion of norms that downgrade sovereignty and identity. The EU's aim is that over time these atavistic responses become obsolete (as argued by Hoffmann 1966), losing attractiveness and legitimacy, neutralizing their ability to sustain conflict. This has two problems: first, the state is far from obsolete, retaining sufficient resources and legitimacy to be 'obstinate'; and second, context-dependency means it takes time to work and contexts can change. The EU is, irrespective of its preferences, an actor but its role is not neo-functionalist. Rather it assumes the EU's passive and active leverage (Vachudova 2005) are sufficient to overcome (or at least neutralize) domestic opposition and stimulate change. The constructive impact is most likely to overcome conflict but is very demanding and it takes a long time to work. A constructive impact necessarily requires elite and societal involvement, so is vulnerable to domestic*

political exigencies and can be disrupted if the EU is perceived as partial or autocratic" (Geddes & Taylor, 2013, s. 7).

Furthermore, the EU seems to be wary of getting directly involved in somewhat identity-driven contentions, preferring conflicts resolved in the course of bilateral negotiation or with the involvement of a third-party, as the process of enlargement, when intertwined with identity politics, can turn damaging for the legitimacy of the EU (Geddes & Taylor, 2013, s. 16):

"*At the heart of the EU's role in border conflicts is a paradox: the power asymmetry integral to enlargement, which points to a compulsory impact, in reality limits the EU's transformative power because its assertion could destabilize both domestic politics and enlargement by stimulating illiberal politics*" (Geddes & Taylor, 2013, s. 16).

The Italian-Slovenian dispute then was influenced by the "*EU's transformative power*" (Geddes & Taylor, 2013, s. 17), whereas in the Slovenian-Croatian case the effect was not as evident. The stance on norms among the vetoing members differed as compared to the Italian government, Slovenia and Croatia slowly altered their position on national interest towards a position seeking compromise for the long-term benefits of integration (Geddes & Taylor, 2013, s. 17).

In the next chapter, we will seek to elaborate further on all this in the concepts of power.

4.2.2 Dynamics of power

In this part of the chapter the concepts of power introduced in the theoretical framework will be applied the dynamics discussed above. Initially compulsory power will be discussed before moving on to institutional power, structural power and the productive power.

Compulsory power

Concerning the Slovenian veto, it was and could only be given by virtue of the institutionally given framework of unanimity; without the specific institutional design, no veto would have been given. Compulsory power then is only interesting in assessing what might curb the veto's potential effect on the Croatia's stance.

As evident from the above, even though pressure was exercised, and that norms and rational behavior on behalf of the parties to the dispute may have drawn and pushed a solution in a somewhat particular way, no real, apparent compulsory power was wielded. It is quite clear that the pressure, the party's strategic behavior and, of course, the norms have been taking place in and of the institutional context. In that regard,

"*whereas compulsory power typically rests on the resources that are deployed by A to exercise power directly over B, A cannot necessarily be said to "possess" the institution that constrains and shapes B. It is certainly possible that a dominant*

actor maintains total control over an intuition, which, in turn, lords over other actors. If so, then it is arguably best to conceptualize the institution as possessed by the actor, that is, as an instrument of compulsory power" (Barnett & Duvall, 2005, pp. 15-16).

This in turn leads to the following contemplations on institutional power.

Institutional power

As argued in the above, the veto must be assessed as an institutional power. As Barnett and Duvall (2005) argues, that with institutional power, "*spatially, A's actions affect the behavior or conditions of others only through institutional arrangements (such as decisional rules..., and structures of dependence)*" (Barnett & Duvall, 2005, p. 16). This has two implications though; the aspect of dependence, in short terms, works for Slovenia and against Croatia and the EU, while, in the longer run, favors the consensus-seeking collective. In the below the two implications will be elaborated separately.

Dynamics favoring a consensus-seeking approach

As Lewis (2008) writes,

> "*the Council's decision-making culture [as mentioned above] does not impose normative standards, nor are enforcement mechanisms for violations very visible or threatening for members who would decide to do otherwise. Few formal sanctions exist for those who would choose to wear methods of 'power politics' on their shirtsleeves. One clear illustration of this is Britain's 1996 'non-cooperation' policy. But even in this case of explicit instrumentalism, we can see the 'non-strategic' culture at work as well. Some Council insider claim that British 'non-cooperation' may have caused more long-term reputational harm than was gained... And subsequent efforts ... to repair 'process' and 'relationship' interests in Brussels post-non-cooperation support the international norms argument that certain expressions of instrumentalism simply are not appropriate or legitimate*" (Lewis, 2008, s. 182).

Comparable to the abovementioned on Slovenia's and Croatia's changing stance, slowly giving more and more concern to the long-term benefits of integration, is a further note from Lewis. As he hypothesizes and later concludes, a member state would relinquish a preferred "*position rather than exercise a veto... [when, i]n a mode of strategic bargaining, ... a negotiator realized that... exercising a veto... would have material and/or reputational costs on future issues*" (Lewis, 2008, s. 172). Of course in our case, the veto has already been given, but it must be assumed that the longer a veto lasts the more contentious the position will become; thus furthering the risks of losing out on potentially needed support on future interests. This then posed an

institutional power, affecting Slovenia into conceding to the agreement of international arbitration, as to decrease the risks of missing potentially needed support on future interests.

The underlying "tectonics" of this is, at first glance, the "*economistic-rationalist*" (Rosamond, 2010, s. 110) institutional argument for institutional design, designated by rational choice institutionalism emphasizing, among other things, intuitions' "*impact upon the ways in which actors pursue... [their] preferences*" (Rosamond, 2010, s. 110). In this case altering Slovenia's strategic behavior to what is deemed normatively appropriate in the Council (Lewis, 2008, s. 171); "*logic of appropriateness*" (Lewis, 2008, s. 168). We will return to this below in assessing productive power.

For now, we will proceed with the mode of dependency that enables Slovenia to veto and seeking to press for a position closer to its national interests, which Lewis (2008) denotes as "*logic of consequences*" (Lewis, 2008, s. 168).

Dynamics enabling the Slovenian stance

Furthermore, though, this approach to institutionalism also stresses that institutions are designed to approach collective problems and "*to maximize gains from co-operation*" (Lowndes, 2010, s. 75), and by historical institutionalism stressing, among other things, that "*[i]nsitutions are designed for particular purposes in particular sets of circumstances*" (Rosamond, 2010, s. 111). In this regard, some of the work by Kapstein (2005) and Gruber (2005) may cast some light on the unwillingness of the EU and the member states to actually circumvent or effectively curb a member's veto. Even though the EU as a whole and some of its larger member states could be expected to be empowered with the necessary resources to compel a recalcitrant state, doing so would violate the EU's own rules; rules designed as egalitarian privileges:

> "*Without fairness considerations firmly in place to harness and restrain the constant exercise of compulsory power, there can be no durable... governance[, meaning]... that there is power in the pursuit of fairness*" (Kapstein, 2005, s. 101).

As Kapstein further argues...

> "*fairness matters to those who wield compulsory power because of its instrumental value in contributing to the robustness and stability of social arrangements. In this rendering, fairness may be conceptualized as part of the software that is used to program institutional power. In the absence of fairness considerations, the fundamental legitimacy of international institutions is more likely to be questioned by the participants... As Andre Hurrel writes in his contribution to this volume, "A great deal of the struggle for political power is the quest for authoritative control that avoids costly and dangerous reliance on brute force and coercion"... Fairness considerations are inserted into institutional*

arrangements to provide a hedge against threats to these basic structures" (Kapstein, 2005, s. 82).

As seen in the previous part of this chapter though, the EU's concern with its legitimacy can be a two-edged sword. But in this case, as we have already seen, the acknowledgement of the benefits of integration, with the dependency on keeping in line with the consensus seeking norms, prevailed, whereas the above on institutional design seems to stress the instrumental nature of the setup's exertion of governance power, inwards amongst its members, rather than its efforts in securing the normative stance in supporting specific preferences of any one state, namely a small state, on external bilateral matters.

Another interesting argument that could explain the lack of force on behalf of the EU or larger member states is that not only can "*unanimous accession rules... secure voluntary participation by weak states while actually benefiting major powers*" (Urpelainen & Schneider, 2009, s. 27)*. When the establishment of "unanimity voting endogenously creates uncertainty about the requisite level of reform, and the membership candidate cannot afford to stay outside, all members of the international institution stand to benefit from the unanimity rule*" (Urpelainen & Schneider, 2009, s. 27).

Furthermore, in returning to Gruber (2005), the argument is posed that...

> "*[e]fforts to exercise direct leverage in the... sense of "compulsory power" typically impose high costs on the compeller and compllee alike and are thus riddled with credibility problems. Rather than applying direct pressures and dealing with these problems, an A which wants to alter the behavior of B is far more likely to engage in indirect methods, chiefly... those involving manipulation of B's choice set. Being indirect, these methods leave it to B to decide how to respond, and so B's decision, though limited to a circumscribed set of options, remains strictly voluntary. [And]... the B's... choose to participate in these arrangements. Power is exercised, but no one's hands are tied*" (Urpelainen & Schneider, 2009, s. 27).

In accession negotiations there are only two options; status quo or furthering of negotiations. Slovenia's preferred solution in the dispute, when vetoing, denoted an interest and not an elaborated policy suggestion for "EU-sponsored" implementation. Which points towards a discrepancy in the Slovenian approach; even though the Slovenian veto was given due to concerns on prejudged borders, and the French proposal sought to counter that very issue, it did not make Slovenia, utilizing the veto's institutional power, alter its position. Moreover, as the EU was adamant that the conflict was a bilateral issue and not a European question, it had clearly signaled that taking the negotiation process hostage to national interests would not win much support. Thus limiting Slovenia's options, referring, among other things, to norms such as good neighborly relations and modes of conflict resolution. As remarked before, the EU

specifically mentioned the region of the Western Balkans in that regard; a region with many border issues, many yet open national- and identity-fuelled wounds and interests - and potential future headaches for Europe. But also a region in need of the sustained prospect of nearer relations to the EU. The EU's position was made very clear in a speech in Albania by the former German foreign minister, Guido Westerwelle, while, according to Geddes and Taylor (2013) cautioning the Balkan region "*against nationalist sentiment especially at election time*" (Geddes & Taylor, 2013, s. 6):

> "*The common goal of the states in the region is, one day, to be part of the*
> *European Union, where we have freedom of movement for everybody. That is why*
> *a redrawing of national boundaries is out of the question, including the Balkans.*
> *In Europe, borders are losing their significance*" (Geddes & Taylor, 2013, s. 6).

In the beginning of this chapter on institutional power, it was stated that such mode of power, among other channels, was exerted through, among other factors, structures of dependence. Understanding such structures are important in assessing "*constitutive, internal relations of structural positions... that define what kind of social beings actors are*" (Barnett & Duvall, 2005, p. 18). This will be further disused in the following.

Structural power

The dynamics and contexts of power in the above can be understood to derive from the way in which the actors perceive their interrelation and how that perception influences their behavior. As noted above the role of what can be denoted as dependence seems to be playing a pivotal role. The institutional framework of accession negotiations are not just made up of the actions, but also the institutional positions to which the actions are subjectively ascribed as preferred, necessary etc.; the given structural mode constitutes the actors self-image in that given context (Barnett & Duvall, 2005, p. 18).

As already made clear in the beginning of this paper, the nature of relations in this case is based on the context of integration of states. It is however not without significant implications. Integrationist efforts invariably entail the enhancement of global governance, presenting nation-states with opportunities, challenges and even perceived threats. It is within this field that the Piran Bay dispute becomes an reflection of "*the tension between the EU's unbundling and re-bundling of territory: the tension between Westphalian and post-Westphalian sovereignty, a tension articulated in Westerwelle's speech*" (Geddes & Taylor, 2013, s. 17).

As already touched upon, the capacity to shape ones fate is at the heart of the dynamics of power and therefore contention as well. As far as "*structural relationships... distribute the capacity to act*" (Rupert, 2005, s. 210), the question is what relationships and capacities, derived by the structural position, and what particular contexts the actors are situated and acting within.

Even though Hurrell (2005) is contemplating the implication of the UN's workings, his juxtaposition of the "*compliance with international legal and political norms*" (Hurrell, 2005, s. 39) and *conditionality* (itself a mix between a compulsory and institutional power) quite aptly characterizes the overarching structural conditions (of the above structured dependence as well) of Slovenia and Croatia. First, he describes conditionality as...

> "*an important aspect of institutionalized power in a globalizing system, not least because it usually has a consensual element and occupies the murky space between direct economic coercion and sanctions on the one hand, and freely entered-into contractual arrangements on the other. In contrast to the drama of the coercive intervention, it represents a long-term and often hidden means of shaping how other societies are organized*" (Hurrell, 2005, s. 39).

He then emphasizes the increasing tendency to pose conditionality and institutionalization, labeling it a very significant form of power, as it represents the "*control over membership norms of international society and the capacity to delegitimize certain sorts of players through the deployment of these norms*" (Hurrell, 2005, s. 40). Without presuming to compare the UN and the EU or their habitat, so to speak, there are still some resemblances, when contemplating what we have acknowledged through this paper. As Geddes and taylor (2013) concludes:

> "*[t]he EU... [promotes] a constructive impact, seeking to embed the 'EU way' into domestic politics to transform inter-state relations. Embedding an EU identity, discourse and norms focuses on enabling (linking domestic political agenda to integration to justify extensive, and invariably painful, adaption) and connectivity (multiplying contacts between actors over time)*" (Geddes & Taylor, 2013, s. 17).

In Hurrell's (2005) words *"[a] state that refuses to accept either non-derogable core legal norms or those norms that are particularly prized by powerful states and embedded in within institutionalized conditionalities runs the risk of being branded a "rogue" or "pariah" state*" (Hurrell, 2005, s. 41). Even though the branding does not fit the context of this study, we have seen, in the above, that a state taking a stance that comprises of acts that disagrees with the established norms, must do so while continuously weighing out the implications of not adhering the common goal, as said by Guido Westerwelle above.

Furthermore, the restrain in the two state's abilities to shape their own conditions does not only come from norms, or logic of appropriateness, imposed by the EU. It is important to note that in this regard the EU and the structure of integration, and further and deeper encounter with global governance is not on and the same. The structure and the actors (both the powerful and the weak, states and institutions) interacts in reciprocal subjectivity and –constitutiveness (Rupert, 2005, s. 209). The critical topic here is not just simply who is dominating who, but

rather the complex question of how "*powers to act are distributed asymmetrically, [denoting]... structures domination*" (Rupert, 2005, s. 209).

Due to the differing institutional status of Slovenia and Croatia, the foundation of "conditionality" is of course also different. Croatia seems to be the least favored in terms of powers to act, and really is under a context of conditionality, given the accession negotiations. Slovenia however is a member state and has the right to veto but most do so under some normative criticism; Slovenia does not have to live up to conditionality, but is still under "structural pressure" to adhere to the norms and expectations of the EU on long-term. Slovenia's dependence lie in its aforementioned need of being on good stance with other members, to maximize the benefits of being a member.

The problem for two states noticed above is the deep-rooted nation- and identity-infused position towards historically and culturally embedded self-perceptions; border issues being just some of the tensions more or less easy to reinvigorate with the dissolution of Yugoslavia as backcloth to present contentions.

What is interesting to contemplate is that their further empowerment, to some degree, depends on the EU, when the EU, again to some degree, is the institutionalized enforcer of the structural mode that curbs their efforts; Slovenia utilizing its veto, securing national interests while going against the wishes and norms of its colleagues in the Council. Croatia seeking to argue for the usage of international legal order in countering a threat to its national identity while itself not being completely cooperative towards proposals from the Commission. Both of them rendering national interests too important in the eyes of the EU. This can be further understood in relation to, among other things, the above on "*the tension between Westphalian and post-Westphalian sovereignty*" (Geddes & Taylor, 2013, s. 17). Slovenia's and Croatia's own perception of that tension – the tension in not being in empowered to fully determine their position in relation to each other and the structure in which they, not only define themselves and each other, but acknowledge the need and interest to do so.

The structural power then is the combined constraints embedded in the positions that actors hold and internalize in self-perception, in interrelation to each other within the context of deeper integration into global governance. On a last note, it might then be tentatively put forward, that, even though we, in the paragraph on compulsory power, held that no actor had control of the institution of the EU, the institution could seem to take the form of a compulsory power, wielded by the workings of the structure complex.

In the end, one could argue that the final resolution in the agreement on international arbitration and its implications for the accession negotiations was in adherence to the reciprocal structural positions between Slovenia, Croatia and the EU. Slovenia lifted its blockade; Croatia agreed not to prejudge the border; the accession process was on track again. Slovenia did not obtain a specifically European solution, but did avert prejudgment. Croatia did

not obtain the possibility of presenting the dispute to the International Court of Justice, but did however get its accession process back in progress and did furthermore avoid the European solution, Slovenia advocated for. The EU got the accession negotiations on track again, while also keeping itself disentangled from potentially legitimacy-damaging intervention in actual dispute setting. Not least the EU furthermore utilized the case to signal to the Balkans that border disputes was strictly a bilateral issue, while still, somewhat in the name of good neighborhood and collective solidarity, providing offices for the arbitration to come.

Productive power

This paragraph will initially turn to the "*logic of appropriateness*" (Lewis, 2008, s. 168), that was presented as a potential institutional power, when steering action. However, the determination of what is entailed in that particular logic of action is an example of productive power. Before moving on with that question a presentation of yet another logic of action is necessary. Besides the logic of appropriateness, this part of the analysis will elaborate into another of the Council's non-instrumental logic of actions; the *"[a]rgumentative or discursive behavior (logic of arguing)"* (Lewis, 2008, s. 168), which Lewis (2008) also calls the deliberative mode (Lewis, 2008, s. 173). In this mode, there is a utilization "*of principled debate and the collective legitimation of arguments*" (Lewis, 2008, s. 171):

> "*While bargaining relies on the use of promises and threats... arguing rests on claims of factual truth and/or normative validity... Under conditions of deliberation, any individual preference can be assessed in terms of its coherence with the permissible basic norms (such as reciprocity...), and all the preferences which fail to withstand the test are eliminated from the sample of possible solutions*" (Lewis, 2008, s. 172).

The reason why states might, in this case, act according to these logics of actions has been elaborated in already. What can be added though is that...

> "*for all but a few... nations, sovereignty no longer exists in the freedom of states to act independently, in their perceived self-interest, but in membership in reasonably good standing in the regimes that make up the substance of international life...The need to be an accepted member in this complex web of international arrangements is itself the critical factor in ensuring acceptable compliance with regulatory agreements... The need to remain a member in good standing is felt more acutely by states with the least compulsory power,.*"
> (Johnstone, 2005, p. 188).

Slovenia's willingness, in the end, to follow the logic of appropriateness has already been elaborated. What is interesting to note however, is how both parties seemed to have been elaborating their positions against each other in, among other modes, the mode historical, legal

deliberation, referring to juridical implications of historical rule over the disputed region. The same pattern is seen in the Slovenia's argument for a European solution, even though, as we have seen, Slovenia was actually labelled un-European due to its veto.

On the other hand, Croatia was a proponent of the International Court of Justice. Probably also because any other solution than a European one would be less of victory for Slovenia than not. Furthermore, a case at the International Court of Justice might have stalled the process turning the dynamics against Slovenia being put under further pressure from the EU to end the blockade, and accept accession negotiations with the prejudging documents.

So who wields the productive power?

In this respect Johnstone's (2005) inquiry into what role law has in international politics is of some interest, as he focuses his study on the power of interpretive communities in determining the decisive practices in the Security Council and the United Nations (Johnstone, 2005, pp. 185-186). What is especially interesting to us is that he outlines "*a conception of law as a process of justificatory discourse, and explain the role of interpretive communities in that process*" (Johnstone, 2005, p. 186). As he writes:

> "*[L]aw operates largely through particular form of discourse – a process of verbal interchange or "diplomatic conversation"... It is driven by a felt need to justify: "an effort to gain assent to value judgments on reasoned rather than idiosyncratic grounds"... Whatever a state's motivations for action, to be persuasive it cannot base its case purely on ground of self-interest*" (Johnstone, 2005, p. 187).

Law then is a "*discursive process*" (Johnstone, 2005, p. 187), which in turn, by emphasizing "*legal norms imposes limits on the style of argument or mode of deliberation*" (Johnstone, 2005, p. 187).

Johnstone (2005) then introduces the concept of *interpretive communities*, denoting...

> "*the power of institutional settings, within which assumptions and beliefs become matters of common sense... The interpretive community constrains interpretation by providing the assumptions, categories of understanding, and "stipulations of relevance and irrelevance" that are embedded in a particular practice or enterprise. All professional interpreters... are situated within an institutional context, and interpretive activity makes sense only in terms of the purpose of the enterprise in which the interpreter is participating"... interpretation is constrained not by language of the text, or its context, by the "cultural assumptions within which both texts and contexts take shape for situated agents... meaning is produced neither by the text nor by the reader but by the interpretive community in which both are situated*" (Johnstone, 2005, pp. 189-190).

An important thing to clarify here is that the interpretive community denotes a mode of interpretation and not an actual group of people as such (Johnstone, 2005, p. 190). In Johnstone's (2005) work, the interpretive community exercises its influence by directly assessing and judging given interpretations of the law, and by, indirectly, virtue of states measuring "*their own interpretations against anticipated judgment of the community*" (Johnstone, 2005, pp. 192-193). It follows thereof, that...

> "*[t]he interpretive community… is the locus of various types of power. By setting the parameters of legal debate, it evinces productive power, and, by steering action in a direction that can only be justified in terms of accepted legal norms, it wields institutional power*" (Johnstone, 2005, p. 193).

As the EU has been refusing to force anyone's hand or to take part as an arbitrator, ironically, the EU has been the "judge", the limiting factor, for what accounted for sound arguments or proposals.

It would seem that through EU's productive power, Slovenia in the end terminated the blockade, agreeing to the arbitration process. And the same can be said of Croatia, effectively conceding to prejudge the borders.

4.3 The Commission

The Commission plays an important role in accession negotiations. When a country seeks accession to the Union the Commission submits an opinion on the readiness of the country based on the Copenhagen criteria to the Council who must then unanimously adopt a position to begin negotiations with the country. During the negotiations, which are formally conducted in bilateral inter-governmental conferences, the Commission key role is to monitor the candidate country, submitting regular reports on the status of the candidate in relation to each chapter of the acquis (European Union, 2007).

This part of the analysis will look at the Commission to see what role the institution played in the emergence/absence of leverage and what determined this role.

The analysis will be guided by research questions, which will help guide the investigation in answering the problem formulation.

Research questions:

- Does The Commission have an agenda in the case that supports either Slovenia or Croatia?

- The Commission is sometimes viewed as the defender of the small states, does this view apply in this case?
- Was the result sought after by the Commission similar to that of the big states?
- What was the Commissions relationship to the Council in this case?
- Can some of the conclusion to the dispute be directly attributed to work by the Commission?

Does The Commission have an agenda in the case that supports either Slovenia or Croatia?

There are no indications that the Commission has a position relating to how it wants the dispute resolved, but it is very clear that the Commission has had an agenda of removing the Piran Bay dispute from the accession negotiations. Crisztina Nagy, a Commission spokesperson in 2008 said: "*The commission has consistently maintained the view that the border issue is a bilateral issue that should not be brought to the table of the accession negotiations*" (Sina, 2008). She went on to say: "*The commission regrets that Slovenia cannot accept the solution proposed by the (EU) presidency .. As a result, we now have a considerable number of chapters that are technically finalized but cannot be processed by the accession conference*" (Sina, 2008). Olli Rehn, Commissioner for Enlargement, also tried to formulate a solution under which an independent commission would be set up to mediate the dispute, which would then refer unsolvable matters to the International Court of Justice. However, the two parties were not able to find a mutually acceptable wording for the documents detailing the framework of the commission (Vucheva, Croatia accepts EU mediation in border dispute with Slovenia, 2009).

Therefore, while the Commission has not had any agenda regarding how the Piran Bay dispute should be resolved, they have had a clear position stating that they wanted it removed from the accession negotiations. They have even supported efforts by the presidency in negotiating a solution and tried to get a solution of their own through. Consequently, while they are supporting neither of the two countries, their efforts are to some degree detrimental to the Slovenian efforts. How much leverage the Slovenian veto lost by having the Commission working to remove it is impossible to quantify. But clearly having one of the EU institutions oppose their veto must have meant a lessened effect of the veto, as Croatia knew that while they did not have them on their side in the dispute, they at least had them on their side when it came to getting the veto removed.

The Commission is sometimes viewed as the defender of the small states; does this view apply in this case?

The Commission is the EU's executive body, representing the EU and its interests as a whole, proposing legislation, implementing policies and doing the day-to-day management of the Union (European Commission, 2014).

As briefly touched upon in the small state theory section, the view of the Commission being the defender of small states is fairly common. Indeed, it is clear that small states rely on the Commission often. There are several reasons behind this. The small states have relative small staffs assigned to the EU and as such their officials have more regular interactions with the Commission. This makes them develop a *routine working process*,s as Thorrhallson calls it, making it easier for them to affect the early formation of new policy from the Commission (Thorhallsson, 2004, s. 343). This means that the small states often only have one or two people assigned to each policy area, and as the Commission often only have one rapporteur responsible for each Commission proposal, they can get a comparatively big influence despite their size (Thorhallson, Small states in the European Union: A theoretical approach, 2002, s. 59). This further relates to the strength of the small states position in the Council, as Thorhallsson puts it: "*A small state that is able to state that the Commission is on its side is in a much better position than on its own. As a result, small states try to avoid confrontation with the Commission and instead emphasize cooperation with it*" (Thorhallsson, 2004, s. 344). Or as an official from the Netherlands put it: "*.. there is a major difference for us to start negotiations having the Commission on our side, being able to say we agree fully with the Commission. It is a big advantage*" (Thorhallson, Small states in the European Union: A theoretical approach, 2002, s. 60). However, as far as the research question goes, Thorhallsson does not see the Commission as defender of small states: "*The Commission is not a defender of the interests of small states. Small states have to defend their interests on their own*" (Thorhallson, Small states in the European Union: A theoretical approach, 2002, s. 60), but the Commission is a key partner for the small states "*The emphasis which the small states have put on the continuing role of the Commission in the institutional reform of the EU shows the importance they place on it*" (Thorhallson, Small states in the European Union: A theoretical approach, 2002, s. 60).

Therefore, while the question implies that the Commission has a special interest in defending small states, this is not true. However, the small states have a much easier time influencing the

Commission and does not have to rely as much on winning in a multilateral contest in the Council if they can get the initial Commission proposals influenced early in a bilateral contest. Of course, these statements and reflections are more generally aimed at the normal procedures within the Commission, and are as such not accession specific. Nevertheless, it is obvious that from the beginning that the Commission saw their role as one of moving the process of negotiating the acquis forward, because the technical requirements for closing the chapter was fulfilled as they saw it, and it was only a political problem that remained. The Enlargement commissioner even went so far as to set up numerous meetings with the two countries in an effort to reach a bilateral deal that would remove the Piran Bay issue from the negotiations (Vucheva, EU postpones meeting with Slovenia, Croatia, 2009).

There was a clear procedure in this case for the Commission, and its role was well-defined as one monitoring and reporting when the candidate country of Croatia was ready to move forward in negotiations. However, perhaps it is also relevant to wonder who the small state really is in the conflict here. Slovenia might be roughly half the size of their neighbor Croatia, but when it comes to the negotiations, it is clear who the big brother is. They have all the formal power on their side, with their right to veto the opening or closing of new chapters of the acquis for negotiation or even vetoing the accession treaty. While this in itself might not push the Commission to be on the side of Croatia, it must be clear to the EU system that they cannot just steamroll candidate countries because they have all the formal power. Because the candidate countries of today could be the member states of tomorrow, so it might also figure into the proceedings that it is highly likely that they will have to work together with the country in the future.

Was the result sought after by the Commission similar to that of the big states?

As shown, the Commission clearly tried to influence the case, both by statements about what its view was and by trying direct negotiation with the two parties. It has also already been established that the big European states had an agenda with the dispute in previous analysis chapters. Not in how they wanted the actual dispute solved, but where they wanted it resolved; outside the accession negotiations. Their negotiation attempts did not lift the dispute out of the accession talks, but their influence combined with that of the big states must have augmented each other, making it so much more urgent for Slovenia to get a fast result from their veto.

What was the Commissions relationship to the Council in this case?

From the very setup of the EU institutions there are built-in tensions in the relationship between the Commission and the Council. The Commission on the one hand is safeguarding the common European interests and the Council members are protecting the interests of their respective countries. However, the two institutions also work closely together, forming the executive body of the Union, as Prodi puts it: "*the two arms of the executive: the Council as the decision-making body and the Commission as the executive*" (Christiansen, 2002)*. This also means that despite the conflictual nature of the setup between the institutions, the relationship between Commission and Council is largely cooperative* (Christiansen, 2002)*.

So, in relation to this case the relationship can hardly be described as one of great conflict. The Commission wanted to move negotiations forward when all the technical difficulties related to implementing the acquis were cleared up and only political difficulties remained. The only executive not in line with the Commissions view was the Croatian, which is obviously understandable.

This means that the Commissions agenda in this case has been in line with the other EU institutions involved in the case. So while it perhaps cannot be said that the EU institutions was working against Slovenia's position in the case, it can be said that they were working together to remove the dispute from the accession negotiations. This means they were pulling in the same direction in the case, which should serve to increase their influence.

Can some of the conclusion to the dispute be directly attributed to work by the Commission?

It is not possible to attribute any direct causality between the solution to the Piran Bay conflict and the work of the Commission. It ended with a bilateral agreement, but it seems reasonable to assume that the Commission have at least had indirect effect on the solution. The Commission pressuring Slovenia alone might not have been that worrying a prospect for them, but when the EU institutions along with the other member states collectively pressured Slovenia, it is sure to have had an effect. Slovenia have to corporate with the institutions and the countries in the future, and a prolonged conflict with all of them would clearly be detrimental to their national interests, and probably not worth it unless of vital national importance.

Thorhallsson also notes (Thorhallson, Small states in the European Union: A theoretical approach, 2002, s. 60) that large states are generally inflexible on all matters, as most are of significant national interest, while small nations are more flexible on most matters unless of key national interest. The small states in the end need to have corporation in order to achieve their goals, and risking too much on one issue is seen as detrimental to achieving their goals. Therefore, in this case, while Slovenia did withstand substantial pressure and the politicians even put the matter to a national referendum as previously shown, the matter was probably not important enough to expend more political capital on. They achieved the goal of removing texts from the accession negotiations that they felt prejudged the border dispute in favor of Croatia, and prolonging the dispute would only serve to alienate future working partners, including the Commission.

4.3.1 Preliminary Discussion

The Commissions role in accession negotiations is clear; they monitor the progress in the relation to the negotiations on the acquis chapters and submit reports to the Council, which can then be used during negotiations. When candidate countries meet the Copenhagen criteria, they recommend closing of chapters for negotiations and opening of new ones.

Therefore, while the Commission did not have a direct opinion in the dispute, they did have an opinion on how it should be handled or at the least where it should not be handled. They negotiated with Slovenia and Croatia to try to find a bilateral solution, which could lift the problem out of the accession negotiations, to no avail however. This was in line with the big member states and the majority of the Council members. This meant that while the Commission was not working for the Croatian side, they were de facto working against the Slovenian side.

Sometimes the Commission is viewed as a defender of the small states, while this is not exactly true it is a key partner for small states in the EU system. This also means that the small states will probably make some sacrifices to stay on good terms, because they have possible future repercussions in mind. The Commission is hardly vindictive, but the good working relationship can still be damaged by cases like this. In addition, if the EU institutions would be perceived as actively helping a member state that has a purely bilateral dispute with a candidate state, this could easily be perceived as a sort of bullying by the EU. Probably the strongest tool the EU has for shaping policy in other states is the potential for future membership, and to use this to

pressure candidate states into accepting poor deals because of bilateral disputes could severely adversely affect the Unions reputation.

The Commission seems to have had indirect influence in the case, they did not directly facilitate the solution that eventually removed the Piran Bay dispute from accession negotiations, but they were among the choir of states and institutions pressuring Slovenia to remove the dispute from the accession agenda.

5 Discussion

Formally Slovenia got the documents removed from the accession negotiations they felt prejudged the conflict in Croatia's favor. Furthermore, while the agreement was worse than the Drnovšek-Račan agreement from 2001, Slovenia got a point in the arbitration agreement that specified that the tribunal should determine "*Slovenia's junction to the High Sea*" (Slovenian government; Croatian government, 2009). This means a solution has to be found by the tribunal dealing with Slovenia's greatest fear in the dispute; loosing access the open seas. It does not however necessarily entail a direct conduit through national waters to the high seas, but might be a bilateral agreement with Slovenia to pass through a part of their territorial waters uncontested.

The different theories offer different insights to the dispute. The analysis with liberal intergovernmentalism posits significant power with the major European powers. This is also in line with small state theory, which also infers a high likelihood that small states will to some extent be forced to be deferential to the larger powers or fear future retribution. Furthermore, the administrative staff, as shown in small state theory, from Slovenia knows and will have informed their national leaders of the potential future negative repercussions of sticking with their veto for a long time. However, as the move was clearly unpopular with Slovenian voters, evidenced by the very close referendum, they knew it needed to be done, and the referendum provided some protection for the politicians. They could afterwards say they had followed the wishes of the citizens.

The Commissions role helped curtail the potential leverage of the veto. They wished the issue to be resolved bilaterally or via a third-party. Their role was clearly defined within the

institutional setup, but furthermore "*.. borders have the potential to stimulate identity politics and nationalist opposition to the integration project marked by a political discourse that is not of the type sought by the EU*" (Geddes & Taylor, 2013, s. 16). The EU cannot be seen as supporting a member state against a candidate country in a purely bilateral conflict. That could be seen as power abuse and foster further nationalist opposition against the EU. This would in the end ultimately restrain the influence of the EU, defeating the use of power that could potentially be sought by the Commission, to help a member state. Therefore, in this matter the Commission had a clear agenda; get the matter out of the EU and into another forum, so any political fallout from the outcome did not hit the EU.

What is important to notice is how normatively infused and consensus-based the Council is, while still being both a supranational body and an intergovernmental institution. The Slovenian veto seems to have caused some anger though. Given the embedded institutional culture held up with the fact that every state has bilateral relations with all of the other states and with the Council as a whole, this anger may not be so surprising. It is especially plausible that the French felt the agenda of its presidency inappropriately hijacked.

Common interests were disregarded, maybe even instrumentally taken as a hostage. Together with Commission's stance on border disputes, it is somewhat unlikely that Slovenia itself believed that it would be able to mobilize any support for its preferred "European solution".

There are institutional dynamics pulling in, at first glance arguably, different directions. Most of them pointing towards limitations of Slovenian leverage; a few to the possibility of some leverage. It is apparent that the instant Slovenia vetoes negotiations Croatia is dependent upon having the block lifted eventually.

However, nothing of this is really surprising. What on the other hand is of quite some interest is that even in the case of modes of institutional powers allowing some Slovenian leverage, it seems to be labelled with an expiration date, due to other dynamics of power. Particularly given the fact that during accession negotiations member states obviously have only two choices; status quo or policy change. There are no substantial qualitative alternative on the voting agenda. What this develops into then, is a game of being placed outside influence, rather being influencing; and the longer the halt on negotiations lasts the more the blocking state's potential gains will diminish. Therefore, timeline is an important parameter. Juxtaposing with other

member stats' discontent, it seems that timeframe and specific relational context is crucial if any or at least a small state should obtain any real leverage vis-á-vis other member states' interests.

There seems to have been some sort of discrepancy between Slovenia's states reasons for blocking accession negotiations and its reason not to lift the blockage; the French proposal seems to have been able to counter Slovenia's concern on prejudgment. However, it was Slovenia who rejected the resolution. Considering the reason for vetoing, and the final agreement on international arbitration, one could argue that Slovenia did get some leverage. On the other hand, compared to its later preferred solution, the international arbitration, though designed a bit more favorably to Slovenia than Croatia, cannot be taken as a sign of obtained leverage.

In relation to the institutionalist hypothesis Slovenia in the end did avoid having the border prejudged, it can be argued that some leverage was obtained. Concerning compulsory power, nothing was done to forcefully violate the veto. On some other modes of power however it is quite clear that efforts were made to come up with a solution that had as their pivotal purpose to get the accession negotiations back on track, disentangling the border dispute from the integration process. The full, potential weight of leverage from a given veto was never achieved.

In relation to the intergovernmentalist hypothesis Slovenia did end up getting a small amount of leverage, but overall the hypothesis seems sound. Slovenia was forced to rather quickly remove their veto by pressure from both other nations and the EU institutions, and the result reached was not especially favorable. This posits weight with the hypothesis, while an argument in favor for Slovenia was that they did ensure an agreement that will guarantee a judicially binding agreement that will permanently put the dispute to rest.

6 Conclusion

The case has been analyzed through the congruence method and a specific process-tracing method by George and Bennett. These methods does not provide a final causal relationship between the actions, mechanisms and results being analyzed in this case study, but they provide clear pointers as to in what direction the answer lies.

The main quest of the thesis has been to uncover whether or not Slovenia has gotten leverage through the use of the veto against Croatia, to solve a bilateral non-accession related dispute. The answer is both yes and no. Slovenia has been faced with opposition from the major European powers and the Council as a whole, they have had no allies in their fight over the Piran Bay. This curtailed their leverage gained from the veto which, as a purely institutional power, would otherwise seem immense. The second part of the problem formulation related to the Commission also seems clear. The Commission serves to curtail the influence of the member state; they cannot be seen as acting as an agent of a country seeking accession, as this will hurt their future influence and legitimacy. However, while the agreement is not exactly what Slovenia had as their preferred position, they did get some concessions, namely the removal of documents they felt prejudged the conflict and some solution from the arbitration in regards to access to the high seas. Still this is not the strongest argument for increased Slovenian leverage, as their reasons for upholding the veto changed as potential solutions to their initial veto reasons appeared. This indicates that the Slovenians were unsatisfied with the gains from the veto. A point more in favor of Slovenian leverage is that there was a solution found. Without the conflict moving into the setup of the accession negotiations, it seems unlikely there would have been much impetus to solve the conflict, and it might have lasted for many more years before finally seeing a binding arbitration solution with a deadline.

Overall, little seems to have been achieved with the veto, and so little leverage can be said to have been gained by it. Slovenia did get a solution to the Piran Bay dispute, but clearly not their preferred solution.

7 Perspectives

There are two other bilateral conflicts involved in accession negotiations that would be of particular interest to analyze to expand upon the knowledge gained through this report. They are both recent, between a small EU member state and after the adoption of the Copenhagen criteria for negotiating accession to the Union. The two cases have briefly been mentioned previously while deliberating the case selection for this report.

The first is between Cyprus and Turkey. Cyprus is the member state and they have vetoed the negotiation of chapters several times (Gow, 2006). The conflict stems from the Turkish occupation of the northern part of Cyprus since 1974 (Republic of Cyprus, 2010). However, the

conflict is not another border dispute like the Piran Bay dispute. Cyprus might be a small state, but Turkey is a major regional power with more than eighty million citizens (CIA, 2014). Furthermore, Turkey is not the only country to block Turkish accession, but other EU members including France have blocked talks as recently as this year (Rettman, 2014). Therefore, this case can be helpful to expand knowledge about bilateral conflicts between a small EU member state and a candidate country, but the picture is more complex than the Piran Bay, making data extraction harder. Other EU member states have a clear interest in the proceedings, including the leading EU powers, Turkey has not acceded to the Union and the conflict is still ongoing, making clear conclusions harder, but this complexity could also be a benefit as more aspects of small state bilateral conflicts could be uncovered if done correctly.

The other case that could add bigger breadth to the knowledge in this report is the conflict between Greece and Macedonia. Greece has vetoed the opening of negotiations with Macedonia four times since 2005 when the Commission recommended opening negotiations (Gotev, 2012). The conflict primarily relates to the fact that Macedonia is also the name of a Greek province with big historical and cultural significance for Greece (Mavromatidis, 2010, p. 6). The conflict is bilateral and the other EU countries has no stake in the conflict, but accession negotiations have not begun yet, because the Greeks have vetoed from the very beginning. However, the conflict has similarities with the Piran Bay, as it is a conflict between a small member state and a small candidate country, so it could be used as another case to expand upon the knowledge gained in this report.

Furthermore, the congruence method does not prove causality, making it a good research method to use on complex fields. Still this leaves a desire to prove direct causality behind events, to trace and demonstrate the key mechanisms behind the events being analyzed. Strong direct causality is probably not possible to achieve in a field with this many institutions, countries and individual actors in play, but interviews with key actors could help enhance the knowledge gained with their perspective on the proceedings.

Small state leverage in the EU is an interesting field with room for much more research, as most focus tend to concentrate on the major European power, leaving somewhat of a blind spot in regards to the small states. Several scholars do cover these states, but compared to the big state literature it is still relatively underdeveloped.

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