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National Identity Matters: The Limited Impact of EU Political Conditionality in the Western Balkans

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Abstract

Political developments in South Eastern Europe raise serious doubts that the European Union will be able to repeat its success story of democratization via political conditionality as it is widely acknowledged in Central Eastern Europe. This article shows that incentive-based instruments are only suitable for triggering democratic change under certain domestic preconditions in countries characterized by legacies of ethnic conflict. It argues that if national identity contradicts democratic requirements, it will ‘block’ compliance by framing it as inappropriate action. The argument is empirically demonstrated using the example of one of the most problematic issue areas in Croatia, for which the EU has only partially succeeded in bringing about democratic change: the prosecution of war crimes.

Key words
Conditionality; Croatia; democratization; European Union; ICTY; identity; Western Balkan

Introduction

Accession policy in Central Eastern Europe is widely considered as (the) success story of the European Union’s (EU) foreign policy. It is said to have considerably contributed to political transformation processes by promoting democratic consolidation, rule of law, respect for human rights, and protection of minority rights. In order to make these countries comply with its political, democratic accession criteria, the EU heavily drew on strict conditionality. The literature widely acknowledges that conditionality brings about substantial change if expected political costs of compliance with EU requirements do not exceed the benefits of a – credible – membership perspective (e.g., Checkel 2000; Ethier 2003; Grabbe 2005; Schimmelfennig et al. 2006; Vachudova 2005).

Yet, it is questionable whether the EU will be able to repeat the story in South Eastern Europe (SEE), where, again, it made the membership offer conditional on democratic criteria. Recent developments in the remaining candidate countries – Serbia, Albania, Bosnia-Herzegovina, Croatia, and also Turkey – raise doubts about its impact on democratization processes. So far, profound democratic reforms proved to be more than problematic in this region. Even pro-democratic governments have rejected the EU’s policy recommendations.
risking serious economic and political consequences. Interestingly, however, countries such as Croatia do not totally refuse to fulfill accession criteria but rather show inconsistent compliance.

Whereas the literature on democratization by conditionality largely focuses on adaptation costs in order to explain failed attempts of democracy promotion from abroad, we go beyond mere rationalist arguing by bringing a constructivist variable back into focus: national identity. We argue that national identity plays a crucial role as filter by sorting out whether governmental action is to be based on cost-benefit-calculations (‘logic of expected consequences’) or in accordance with socially constructed and accepted identities, rules, and practices (‘logic of appropriateness’) (cf., March and Olsen 1998: 948-54). We contend that explanations of non-compliance in SEE countries focusing on political adaptation costs are short-sighted and need to be complemented by national identity as logically preceding factor. Our argument is empirically demonstrated using one of the most problematic issue areas in Croatia as example: prosecution of war crimes.

In Section I, we develop our argument and conceptualize national identity as necessary condition for successful external democratization through political conditionality. The subsequent section specifies the empirical puzzle and provides empirical evidence for our argument. Section III concludes.

I Political Conditionality and National Identity: The Theoretical Argument

Political Conditionality and Democratic Change

With the implosion of the Soviet Union, at the latest, democracy promotion has entered development strategies of international organizations and individual Western states. Democracy promotion also became a centerpiece of EU foreign policy, where it is heavily based on the instrument of political conditionality. Precisely, conditionality is aimed to induce behavioral adaptation as instrumentally and strategically calculated reaction by the target countries’ government in response to external incentives.2

So far, causal impact mechanisms of conditionality are predominantly footed in rationalist arguing of cost-benefit-calculation. However, rational choice based approaches such as the External Incentives Model (cf., Schimmelfennig et al. 2006) fall short of explaining variance in the effectiveness of this incentive-based instrument between Central and South Eastern Europe. From our point of view, impact studies need to be complemented by constructivist reasoning. We contend that constructivist and rationalist variables are not mutually exclusive, but complementary explanatory factors. This paper is thus anchored in the current trend of bridge building by combining both logics of social action, the ‘logic of

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2 However, it is ‘possible that what starts as behavioral adaptation, may – because of various cognitive and institutional lock-in effects – later be followed by sustained compliance that is strongly suggestive of internalization and preference change’ (Checkel 2005: 809).
appropriateness’ mostly conceptualized by sociological institutionalism and the ‘logic of consequentialism’ theorized by rational choice approaches within one analytical framework. By keeping external factors such as credibility of the external incentive and interdependence largely constant, we are interested in one specific core constructivist variable: national identity. We argue that national identity determines whether conditionality can be effective at all.

National Identity as Filter for Governmental Action

According to constructivist understanding, identities are not (primordially) given, but socially constructed and permanently contested social facts (cf., Brubaker 1996). They are the result of discursive processes in which political actors assign and accept meaning (cf., Risse 2004: 267). These processes are not abstract, specialized discourses, but debates on real and hence risky political decisions with long-term implications (cf., Kantner 2004: 88). National identity is a specific type of social identity, which is based on the self-definition of a collective as ‘nation’ in terms of ‘imagined community’ (Anderson 1991).

In democratization processes national identity generally plays an important role. It can be both a conducive and hindering factor (cf., e.g., Hippler 2004: 18; Kraus 2000: 73; Linz and Stepan 1996: 20; Mansfield and Snyder 2002: 297; Merkel et al. 2003: 568). For instance, in nation-building processes it can have the potential to liberate and empower democratic forces from an autocratic regime. However, it may also undermine democratization when instrumentalized as means to exclusion, homogenization and politicization of ethnic differences. In what way does the factor of national identity influence the effectiveness of political conditionality imposed by an external actor?

National identity is a source of national interest (e.g., Weldes 1996; Wendt 1992). Thus, by defining what is (not) in the national interest of the respective target state, we argue, national identity controls as filter the subjective perception of problems and potential (re-)actions. Importantly, national identity does not directly cause action but prescribes what action is legitimate and appropriate and what is not. This does not mean that concrete individual decisions can be simply explained by pointing to some specific features of national identity. Rather, it is about carving decisive orientations and examining a certain scope of what is considered as appropriate behavior (cf., Wendt 1992: 398; Risse et al. 1999: 157). By

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3 In doing so, we choose a problem-focused approach with a pragmatic understanding of ontology (cf., Checkel 2005: 818).
4 The constructivist concept of collective identity draws on social psychology, particularly social identity and self-categorization theories (cf., e.g., Tajfel 1981; Turner 1987; Abrams and Hogg 1990). For primordialism, see, e.g., Geertz 1996; Cruz, 2000: 279.
5 Communities are imagined because their members hardly know each other on a personal basis.
shaping a normative corridor, national identity constitutes a logically preceding factor, which sets the *marge de manœuvre* for incumbent governments.⁶

More precisely, as regards the impact of external incentives in democratization processes, national identity matters by performing an ‘identity test’. Actions demanded by the EU are separated according to the issue area where they are located. If the issue area is perceived as conflicting to the national identity, EU conditionality triggers a different line of reasoning on the side of the incumbent government than if the issue area is considered as unproblematic for national identity.

Of course, one could argue that instead of constituting an explanatory factor on its own, national identity conditions domestic costs of compliance (cf., Schimmelfennig 2008). Hence, one could raise the objection that compliance with rules contrary to national identity is politically costly if political actors have to fear loss of political power, for instance as a consequence of the split-up of the coalition government or electoral punishment. Eventually, the inversion of the argument that while autocratic regimes have per definition high costs of compliance with democratic norms, democratic, reform-oriented governments always have low adaptation costs is wrong. To the contrary, with the possibility of electoral confirmation and defeat democratic institutions provide alternative sources of costs as unpopular decisions can be sanctioned.⁷ Consequently, in order to constitute costs, infringement of national identity has to be perceived as threat for political survival by the government. Basically, this holds true if the incumbent government uses national identity as an argument in political debates (*ex ante*). Moreover, it needs to be shown that (non-)compliance in fact played a major role in elections or threatened the maintenance of the current government coalition (*ex post*). Otherwise non-compliance can well be the product of governmental considerations in terms of appropriateness rather than consequentialism.

**Political Conditionality and National Identity: Causal Mechanisms**

The above-outlined filter process has implications for the impact of political conditionality as it determines the dominant logic of social action on the basis of the accordance of EU requirements with national identity. As shown in figure 1, cases where EU conditions and their policy implications are not perceived as contradictory to national identity, policy changes and concrete governmental reactions can be well explained by the rationalist causal mechanism. States then only comply with EU democratic criteria if the credible benefits exceed expected political adaptation costs (*compliance*). These costs ‘increase the more that EU conditions negatively affect the security and integrity of the state, the government’s

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⁶ We thus follow John Gerard Ruggie that ‘a core constructivist research concern is what happens *before* the neo-utilitarian model kicks in’ (Ruggie 1998: 867).

⁷ However, studies in Eastern Europe clearly show that elections are predominantly decided for socio-economic reasons, in particular the level of unemployment rates (cf., e.g. Jasiewicz 1998: 186).
domestic power base, and its core political practices for power preservation’ (Schimmelfennig et al. 2005: 31). According to the ‘logic of consequentialism’, if adaptation costs exceed the promised benefit, states thus show no compliance.

Figure 1: National Identity as Complementary Explanatory Factor

To the contrary, for issues, which do not correspond to the nation’s self-definition and thus lie beyond the scope of appropriate behavior, governmental (re-) action cannot be influenced by EU incentives. The government will stick to what is considered appropriate and refuse to follow the EU requirement – independently of the costs this might produce. In line with the ‘logic of appropriateness’, we therefore generally expect political conditionality to have no effects (no compliance). In the long-run, compliance may, however, be the result of profound national identity change.

Eventually, situations of substantial changes in international and domestic politics such as the implosion of the Soviet Union can trigger ‘wide scale domestic […] debates concerning the national identity and the state’s relationship to the wider community’ (Barnett 1999: 10). As regards the effectiveness of political conditionality, identity change can shift the scope of appropriate action for the incumbent government. As illustrated by figure 2, external conditions may then no longer contradict the modified version. Consequently, governmental actions that were earlier considered as being beyond this scope become appropriate. Although the target country’s government continues to base its action on the conditions’ accordance with national identity and political conditionality does still not influence its decision-making process, it finally shows compliance.
Figure 2: Identity Change and the Scope of Appropriate Governmental Action

The process of identity change is, however, not completed overnight. Rather, it entails that the respective state experiences moments of identity conflict. This particularly occurs when hitherto valid definitions of the national identity are no longer accepted due to new historical circumstances and/or when competing identity definitions emerge (Barnett 1999: 10). Nowadays, an interdisciplinary literature widely acknowledges that multiple group identities can co-exist and are not necessarily perceived to be in conflict (cf., e.g., Herrmann and Brewer 2004: 8). This requires that the principles underlying the different identity versions correspond and thus prescribe similar opportunities for appropriate action. To the contrary, if the identity versions are based on mutually exclusive principles, common perception of standards of what is required in terms of 'justice or fairness or some other dimension of morality' (Dworkin 1967: 23; cf., Dworkin 1977: 27) are needed to judge which of the predicted appropriate action is the right one to follow. However, in situations of extensive change being able to trigger the fraction of the previously prevailing identity concept these standards are subject to change, too. Due to the lack of a coherent and distinct scope of appropriate action, the incumbent government might thus behave ambivalent and contradictorily. It will not completely reject compliance with external requirements but search for legitimate behavior satisfying the competing self-conceptions (inconsistent compliance).

To sum up, national identity constitutes a filter which ‘checks’ EU conditionality, or rather the underlying conditions for appropriateness. Depending on their accordance with national identity, governmental (re-)actions can be explained either by the logic of expected

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8 For instance, as regards the relationship between an European identity and the individual national identity a ‘separate’ identity configuration where the different versions of identity are distinct from each other is only one possibility out of three (cf., Herrmann and Brewer 2004: 8). We observe it when the still prevailing ‘old’ definition of national identity is based on underlying principles that are rather nationalist and xenophobic than cosmopolitan (cf., Risse 2004: 251).
consequences or by the logic of appropriateness. Based on the preceding reasoning we formulate the following hypothesis:

*If a state’s national identity (partially) contradicts the conditions linked to the benefit of an external incentive, the state will not or only inconsistently comply with these conditions – independently of the expected adaptation costs.*

II Identity Matters for External Democratization: Empirical Case Study

*New Democracies’ Struggle with National Identity and Political Conditionality: The Croatian Example*

The region of South Eastern Europe exemplarily shows how national identity constrains the impact of external actors’ engagement for democratization. In countries such as Serbia and Croatia the autocratic communist regime was not overthrown by democratic opposition but by a nationalist independence movement. Croatia is a particularly suitable example to illustrate our theoretically elaborated argument. It shows both a strong national identity conflict and since 2000 also favorable initial conditions for the impact of political conditionality.

Exemplarily for all South Eastern European states, Croatia is experiencing processes of identity conflict. Since the democratic change took place in 1999/2000, the country is ‘clearly torn between the allure of European prosperity and the guardianship of newly gained nation-state sovereignty’ (Tull 2003: 132). On the one hand, it still sees itself as heroic, innocent nation that fought a defense war against Serbia. On the other hand, the European Union represents the positively valued ‘in-group’ to which it seeks to belong. Croatia’s national identity is thus characterized by the coexistence of two opposing versions, which open different and contradictory options for appropriate action (cf., Longo 2006: 43).

At the same time, the preconditions for the effectiveness of political conditionality are promising since the death of the ‘father of the nation’ Franjo Tudjman in 2000. A new era of democratization began with the inauguration of a pro-democratic government under Ivica Račan (*Socijaldemokratska partija Hrvatske*, Social Democratic Party; SDP) (Helmerich 2004: 268) and the election of Stjepan Mesić as President of the Republic. Ivo Sanader reformed the old nationalist Tudjman-party HDZ (*Hrvatska Demokratska Zajednica*, Croatian Democratic Union) and won the elections in 2003 and 2007. He continued the reform-oriented political course of his predecessor. Thus, pro-European minded and reform-oriented governments have held office, which have to expect only low adaptation costs. EU association and accession were perceived as veritable reform incentive in the country. The

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EU has offered Croatia a credible membership perspective and consistently used political conditionality (cf., Fierro 2003; Peskin and Boduszyński 2003; Pippan 2004; Schimmelfennig 2008). The conditions were clear from the outset: Croatia needs to comply not only with the ‘classic’ political Copenhagen criteria, but with an enlarged set including two specific requirements, namely respect of the Dayton Peace Accord (1995) and co-operation with the ICTY (European Commission 2004a; cf., Fierro 2003: 164; Kochenov 2004; Smith 2003: 130).

According to pure rationalist models, these political circumstances call for high effectiveness of incentive-based instruments. However, taking the constructivist factor of national identity into account, we anticipate a varying impact depending on the EU requirements’ accordance with national identity.

A case in point for the functioning of national identity as filter is the reform of the media sector. It shows that when the EU’s requirements pass the identity test, thus are not considered as contradicting national identity, the incumbent government acts according to the logic of consequentialism. Consequently, in the field of media reform the EU could indeed significantly influence the government’s decision-making process by using sticks & carrots – and finally trigger change.

Whereas Tudjman used the media as power instrument based on restrictive policy (cf., Field 2000: 137; Grubisa 2002: 38), Račan soon started to eliminate severe obstacles to free and independent media (cf., Zakošek 2004: 715). However, there have been serious concerns in particular about the transformation of the Croatian Radio-Television HRT (Hrvatska radiotelevizija) from a state-owned into a public broadcaster. The government Račan was torn between compliance with EU requirements and acceptance by the Croatian parliament, which refused to pass the law since it limited its influence. Several attempts were needed until in 2003 the final version of the HRT law not only passed the parliament but also met international requirements and largely satisfied the EU (cf., European Commission 2007: 34; European Commission 2007: 11; European Commission 2005: 18). How far internal reforms in the media sector were motivated by EU incentives became obvious when the government adopted a new law on media in 2004, which is different from the HRT law. Just a few weeks before the Commission’s opinion on Croatia’s application for membership should be published, the government engaged in blind activism under Sanader’s personal

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10 The specific criteria are not included in the EU acquis communautaire. Several studies have shown that it does not make a difference for compliance whether rules are also valid for EU member states, or not (cf., Schimmelfennig et al. 2003; Kelley 2004; Schwellnus 2005).
11 Although not addressed as independent category for evaluation, media reform constitutes a political accession criterion in the section on civil and political rights with reference to ‘freedom of expression’. In the progress reports it also appears in the acquis-related section on the ability to assume membership obligations (chapter 10: ‘information society and media’).
12 The European Union is not the only external actor, which supported media reform in Croatia. Revision of media legislation was a central commitment when Croatia became member of the Council of Europe (CoE) in 1996. Together with the Organization for Security and Cooperation in Europe (OSCE), the CoE tried to induce democratic change by means of expert advice and persuasion, though without noteworthy success. The EU inherited their recommendations to a large extent and based its conditionality on their assessments of progress.
supervision in order to integrate all expert recommendations. In short, by regularly criticizing lacking reforms (e.g., European Commission 2004a: 23), requesting more efforts and even setting concrete short-term priorities (e.g., European Commission 2002; European Commission 2004b), the EU succeeded in counterbalancing domestic opposition (and consequent political adaptation costs) and finally achieved significant improvements during the drafting process of both laws.

Interestingly, the few issues that are still problematic in the media case are issues of national identity related to legacies of ethnic conflict. In particular, media independence has remained subject to intervention by the government ‘when journalists raise politically sensitive topics linked to the 1991-1995 conflict’ (Bertelsmann Foundation 2008: 7). This confirms our expectation that whenever the EU’s requirements conflict with national identity, the rationalist causal mechanism is overridden. The following section empirically demonstrates our main argument. Taking cases of war crime prosecution as an example, it reveals how national identity originally caused non-compliance and how processes of identity change enabled the Croatian government to – at least inconsistently – comply with EU criteria.

National Identity and Conditionality in Croatia: The War Crimes Case

Prosecution of people indicted for war crimes is a critical domestic and foreign policy issue in Croatia. The international community considers impartial prosecution of war crimes as ‘litmus test’ for the maturity of Croatia’s democracy and its willingness to respect international humanitarian law.\textsuperscript{13} The crucial aspect is the cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY).\textsuperscript{14} The EU counts full cooperation as democratic accession criteria. Towards Croatia it has consistently followed an ‘ICTY-first’ strategy, i.e. non-compliance with cooperation was a ‘knock-out’ criterion for membership. Yet, compliance with this criterion proved to be particularly difficult. In sum, the governments Račan and Sanader have only very reluctantly undertaken (modest) actions (cf., e.g., Meernik 2008). They even risked the signing of the Stabilization and Association Agreement (SAA) and the opening of EU accession negotiation. However, they also carried out serious steps to satisfy the expectations of the European Union. How can this inconsistent compliance be explained?

As will be empirically shown in the following section, political adaptation costs cannot account for Croatia’s changeable behavior towards the ICTY. They not only remain largely constant, that is rather low, over time. More importantly, expected political costs are not the pivotal factor in the domestic debate on cooperation with the ICTY. Instead, our theoretical

\textsuperscript{13} Eventually, extradition of alleged war criminals demands that ‘parochial, self-serving, nationalist demagoguery’ (Tismaneanu 2002: 82) is left behind and liberal, pluralist democratic values are recognized.

\textsuperscript{14} Such a cooperation requires on part of the nation state investigation of people and their residence, hearing of witnesses and provision of evidence, delivery of documents, arrest of suspects and extradition of indictees to the ICTY (see OEL 2003).
'identity model' can clarify Croatia's ambivalent responses to EU conditionality. Taking the two most crucial phases in the field of war crimes, we show that national identity or rather identity conflict determined the government's action. Whereas in phase 1 (2001-5) national identity of Croatia as innocent, heroic nation still largely prevailed, thus framed extradition of alleged war criminals as inappropriate governmental action, in phase 2 (2005-8) it became obvious that this self-conception is challenged by an identity version of Croatia as candidate for European membership prescribing cooperation with the ICTY as the 'right thing' to do.

Confictive National Identity and Non-Compliance – Phase 1 (2001-5)

Croatia's struggle with prosecution of war crimes may at first sight astonish since one of the earliest official acts of the Račan government was a declaration of cooperation with the ICTY in April 2000, in which it obligated itself to prosecute all war crimes committed in former Yugoslavia (cf., OEI 2003; Pervan 2005: 5; Massari 2005: 266). Since the first indictments 2000/1, however, the Croatian government 'has found it particularly hard to “find” former Army officers' (Roter and Bojinović 2005: 450) and did not extradite indictees like General Janko Bobetko. The crucial case for Croatia's compliance with the ICTY criterion was the claimed extradition of General Ante Gotovina being on the run since 2001. Seconding the Commission's recommendation (European Commission, 2004a: 43), the Council of the EU decided in December 2004 to schedule the beginning of accession talks with Croatia on 17 March 2005 – on condition that the government continues to fully cooperate with the ICTY and takes all necessary steps 'to ensure that the remaining indictee [Ante Gotovina] is located and transferred to The Hague' (Council of the European Union 2005b: 8; cf. Council of the European Union 2005a: 5). Hectic efforts and enhanced diplomatic missions of the Croatian government such as the freezing of Gotovina's accounts were rather useless. To the contrary, the ICTY chief prosecutor Del Ponte concluded in March that these activities demonstrate that hitherto no real efforts were made to capture the General being still protected by an influential network. The European Union consequently decided to postpone the start of accession negotiations. In total, the Croatian government clearly showed non-compliance.

According to the logic of consequentialism, we would expect policy changes and consequent compliance since 2003 at the latest. In the first post-Tudjman years (2000/1), political adaptation costs for impartial prosecution of war crimes were indeed rather high. Račan's maintenance of governmental power was threatened by mass demonstrations and violent

15 Since Bobetko died in April 2003 the problem sorted itself out.
16 The Council's decision is based on a positive report. Del Ponte gave to the Commission in April 2004 after Prime Minister Sanader had demonstrated his willingness to cooperate by transferring two indicted Croatian generals, Mladen Markač and Ivan Čermak, to The Hague.
turmoils leading to several serious governmental crises. Račan managed, however, to
smooth nationalist and veteran associations, so that since 2002 at the latest veto actors no
longer played a central role. During the election campaign, Gotovina was ‘no issue’, as
Foreign Minister Toni Picula confirmed. Even veteran associations were more interested in
social and economic questions. At the end of 2003 with the inauguration of the HDZ
government, political adaptation costs continued to fall considerably. As leader of the former
nationalist party, Prime Minister Sanader did not need to prove the party’s nationalist
credentials. Rather, the fact that the incumbent government was HDZruled had a tempering
effect on hardliners within its own ranks. Thus, in case of compliance, the Croatian
government did not have to expect serious consequences undermining its power base –
neither from the radical nationalistic front nor from social democratic opposition. Compliance
was not perceived as threatening re-election and the maintenance of the current
government. Consequently, expected political costs were not the pivotal factor for the
government’s non-compliance.

Instead, according to our ‘identity model’ we would expect non-compliance when the national
identity contradicts the EU’s requirement and thus frames extradition of war criminals as
being beyond the scope of appropriate governmental action. Clearly, prosecution of alleged
war criminals is highly sensitive for Croatian national identity. The military victory over the
Serbs, the unification of Croatian territory, and the creation of an independent Croat state
(\textit{državotvornost}), which came along with nationalist mobilization to create/maintain internal
homogeneity (cf., Kasapović 2007: 453; Zakošek 2004: 680) are still crucial elements of
Croatian self-conception (e.g., OEI 2003; Peskin and Boduszyński 2003). That the military
operation \textit{Oluja} (‘storm’) and its aftermath were a ‘just and legitimate war’ is even stated in
Consequently, large parts of the population fundamentally decline proceedings against
Croatian militaries arguing that those having fought for independent Croatia could never have
committed war crimes (cf., OEI 2003; Peskin and Boduszyński 2003: 1133; Roter and
Bojinović 2005: 451; Tull 2003). National protest rallies and unrest were justified by claiming
that cooperation with the ICTY means ‘attacking the sovereignty of the Croatian state’,
‘insulting the Croatian identity’, and ‘defaming the holy homeland war’ (e.g., Peskin and
Boduszyński 2003: 1118). The government shared the perception of full cooperation with
The Hague as attacking national identity (cf., Zakošek 2004: 723; Sekulic 2004: 475) – and
thus did not consider the extradition of alleged war criminals as appropriate behavior. To the
contrary, Račan even called ‘the Bobetko indictment “unconstitutional” and an effort to
criminalise the Homeland War’ (Peskin and Boduszyński 2003: 1132; cf., Pervan 2005).
National identity therefore blocked compliance until 2005.

\textsuperscript{18} \textit{Frankfurter Allgemeine Zeitung}: „Zu unflexibel und schlecht informiert"; Der kroatische Präsident Mesic übt
scharfe Kritik am Haager Tribunal", 17.11.2003.
Identity Conflict and Inconsistent Compliance – Phase 2 (2005-8)

The Sanader government reacted to the EU’s March decision by undertaking serious steps to satisfy the expectations of Del Ponte and the EU, in particular by setting up an action plan for ICTY cooperation. In October 2005 Del Ponte confirmed Croatia’s full cooperation. The Council of the European Union subsequently decided on 3 October 2005 to initiate accession talks. At the same time, however, it emphasized that the negotiation framework includes the possibility to suspend the negotiation in case the ICTY should revise its assessment.19 General Gotovina was finally arrested in December 2005 in Spain – according to Del Ponte based on a decisive hint by the Croatian government (compliance).20 The Croatian government, however, continued to risk the suspension of accession talks, in particular when a Croatian court decided to suspend the legal procedure against Branimir Glavaš, an indicted alleged war criminal, with great éclat by the President of the Parliament Vladimir Seks and other high-ranking politicians (non-compliance). The manner Croatian authorities handled the domestic prosecution of Glavaš provoked harsh reactions by the European Commission.21

More recently, in January 2008 the Croatian parliament decided that Glavaš was to be released from detention in the middle of his criminal proceeding. Now, Glavaš is able to pursue his defense in liberty – if defense is still necessary in view of his immunity as Member of Parliament.22 The parliament followed Prime Minister Sanader’s proclamation that Glavaš will be released from detention and resume his work in parliament.23 In sum, compliance with international requirements regarding the prosecution of war criminals proved to be inconsistent.

At first glance, Croatia’s behavior towards the EU’s war crimes criterion may well be based on cost-benefit-calculations. However, costs never played a pivotal role for Sanader during the decision-making process in 2005 (ex ante) nor had Sanader to suffer any political defeat afterwards (ex post). In particular, the extradition of Gotovina finally done in December 2005 did not substantially harm the Croatian government. Although ‘anti-EU sentiments rose dramatically’ in a short-term and about 40.000 people rallied in the defense of Ante Gotovina in Split (cf., Longo 2006: 42), Sanader could even win the right-wing voters for his party, the

22 The parliament decided not to strip Glavaš of immunity from detention, but of immunity from criminal prosecution so that criminal proceedings against him can resume, see BBC Monitoring Europe/HINA News Agency: “Croatian MP charged with war crimes stripped of immunity from prosecution”, 13.01.2008.
HDZ in the subsequent election in November 2007 as he successfully satisfied them of his party’s historical roots. Thus, political costs remained ‘moderate’ as developments ‘did not directly threaten […] Sanader’s] political survival or that of his government’ (Schimmelfennig 2008). Rationalist arguments thus cannot satisfactorily enlighten the inconsistencies in the government’s policy.

In our view, the inconsistent behavior of the Croatian government can be well explained by national identity. The EU’s decision to postpone the start of accession negotiations functioned as a ‘wake-up call’. Sanader understood that the path to Brussels only goes through the Hague, and realized that he could not speculate anymore that the problem would disappear on its own. It became obvious that Croatia’s aspiration of becoming ‘European’ and join the ‘in-group’ EU called for different, non-compatible action than prescribed by its self-conception as heroic innocent nation. Croatia thus faced the difficult situation of identity conflict. A way to fulfill the EU’s requirement without betraying the still prevailing nationalist self-conception has eventually arisen in December 2005 when Gotovina could be arrested in Tenerife, i.e. outside of Croatian territory. Croatian authorities thus did not have to extradite the General. In addition, Prime Minister Sanader declared the Croatian government only cooperated with the ICTY to demonstrate that the military operation Oluja (‘storm’) was no war crime but to confirm the ‘historical truth’ about the ‘homeland war’. Further evidences to this balancing act are the request to prosecute Gotovina in a domestic court in order to prove that Croatia is a European country, and Sanader’s reasoning that Gotovina’s extradition was a service to Croatia since the country has to pass a historical threshold to the European Union. Gotovina’s extradition thus was the result of an ongoing identity conflict and partial identity change, which shifted the scope of appropriate action.

The old prevailing nationalist values, however, still prove to have formative power as the case of Glavaš exemplarily shows. That the parliament votes in favor of the immunity of an alleged war criminal and, thus, seconds his unproven claim of innocence shows that war criminals still seem to be a ‘politically protected species’ in Croatia. The decision not to lift Glavaš’ detention immunity was a purely political decision and even constituted ‘interference

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26 The EU accession and its criterion of cooperation with the ICTY was even a major source of conflict within the HDZ (cf. Longo 2006: 41).
in Croatia’s justice system’. In so doing, the government, again, seriously jeopardized the EU’s democratic membership conditions. Experiencing situations of identity conflict, the Croatian government was torn between two prescriptions of appropriate action, which hitherto only partially overlapped and thus resulted in inconsistent behavior.

Conclusion

This paper aimed at showing theoretically and empirically that national identity significantly influences the effectiveness of external democratization by political conditionality. National identity plays a crucial role by sorting out those issues that are beyond the scope of appropriate governmental action. Taking the example of media reform and prosecution of war crimes, we empirically showed that when a state’s national identity contradicts the conditions linked to the benefit of an external incentive, the state will not or only inconsistently comply with these conditions independently of expected costs of adaptation. In the media case, cost-benefit-calculations tipped the scale and the Croatian government finally complied with EU requirements. In the war crimes case, however, political conditionality could at best only marginally influence governmental behavior. As theoretically expected, national identity blocked compliance. Croatia was not willing to comply until processes of identity conflict and partial identity change modified the scope of appropriate action such that the possibility arose to satisfy the EU condition not to the expense of what was then considered as appropriate.

Yet, what can be concluded with regard to the effectiveness of the EU’s political conditionality as instrument of external democracy promotion? Basically, the article raises serious doubts whether the EU will be able to repeat its success story of democratization via political conditionality in South Eastern Europe. Conditionality as incentives-based instrument is only under certain preconditions suitable for catalyzing substantial change in countries characterized by legacies of ethnic conflict. Political actors may then face the difficult situation that whereas the ‘end goal’, i.e. EU membership, is societally approved, the criteria for membership are disapproved. Of course, the outcome of our study confirms that in cases where conditions correspond to a prevailing national identity, external incentives may well trigger democratization. However, if conditions contradict a nation’s self-conception, states will not or – in case of identity conflict – will only inconsistently comply. Democratic change is then only possible in the course of a profound identity change. Still, the ‘good news is that the ongoing transitions take place simultaneously with the reinvention of Europe, and that the ideal of a united Europe is one of the most contagious and magnetic

30 Candidate Countries’ Barometer data show that the majority of society in (South) Eastern candidate countries supports EU membership and accepts it as rule-setting institution, see <http://ec.europa.eu/public_opinion/cceb_en.htm> (17.03.2008).
models these countries have ever dealt with’ (Tismaneanu 2002: 96). The European perspective seems to be the only viable alternative for silencing the nationalists in the short-run, and optimistically sidelining (if not transforming) them in the long-run.

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