
Disciplining Croatia and Montenegro through the Accession Process

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Summary

The article explores the Croatian and Montenegrin EU accession path as a two-sided disciplining process established through the negotiations. The “success” of the EU’s civilising mission in the two countries is determined through the feedback/dialogue relationship formed between the EU and the candidate country. I analyse two aspects of the accession negotiations: cooperation with the ICTY and the rule of law institutions. In Croatia, the domestic elites’ determination to ensure the membership paired up with the EU’s civilising mission in the Balkans. In Montenegro, the EU membership has not outright represented the mythical return to Europe, hence initially self-civilising was not high on the list of the priorities. Moreover, Montenegro was the success story of the Balkans and the EU initially did not insist on the institutional development. The paper contributes to the wider EU enlargement literature by specifically emphasizing the cultural studies framework and by emphasizing the importance of the overlooked feedback/dialogue characteristics of the accession process.

Keywords: Croatia, Montenegro, European Union, Accession Process, Balkans

Introduction

This article explores the EU accession as a disciplining feedback/dialogue in two Western Balkan countries, Croatia and Montenegro. The argument is two-fold. Firstly, the EU’s subjective assessment of the countries’ institutional quality influences the depth and scope of the civilizing mission. I use the term civilizing as the intention was adaptation of the domestic inferior institutions to those developed for the West, Europe proper. The institutions in question were those defining the rule of

law as governing principle of the Western superiority over states established on the periphery. In the Balkans, which hosted ethnic conflicts on Europe's borders at the end of the 20th century, the civilizing mission also necessitated ensuring peace and stability and curbing aggressive nationalism. The institutions on which I focus are those guaranteeing prosecution of war crimes and corruption control.

Secondly, the civilizing mission was not only imposed to the accession countries from the side of the EU. Instead, accession countries aimed to occupy a preferential position within a negatively perceived identity (of Europe's other) through the process of the EU enlargement. By vigorously reforming institutions perceived as inferior, with the aim of separating from their neighbours and becoming a part of Europe proper, the countries responded to the EU's disciplining requirements by self-civilising. Civilising from the side of the EU and self-civilizing (based on nesting orientalism; Bakić-Hayden, 1995) from the side of the accession countries formed a disciplining feedback/dialogue which will be the focus of the article. The disciplining process mostly has feedback characteristics as the accession countries respond to the civilising mission of the EU, but occasionally the EU or the candidate re-evaluate their position, creating a civilising dialogue. Therefore the disciplining process has characteristics of both a dialogue and a feedback. The article builds on the EU accession and conditionality effectiveness literature, but takes a critical approach through the post-colonial theoretical framework.

Argument and the Aim of the Article

From the perspective of the EU's side of the disciplining feedback/dialogue, I focus on these two aspects: first, how has the EU's assessment of the institutional quality and fulfilment of criteria had a connotation of a "civilizing" mission, and second, how Croatia and Montenegro's designation of being a part of the Balkans informed the EU's approach in the negotiations as compared to the previous rounds of the enlargements.

From the perspective of the accession countries, the research focuses on how accession countries' nesting orientalism (Bakić-Hayden, 1995) defines self-civilizing. In the case of this article, I adopt the term "nesting orientalism" to analyse the accession countries' attempt to escape from the periphery and the backward negative entity by pushing the border of the periphery to those who are less advanced in pursuit of the EU membership. How important is it to push the periphery away and how the EU accession defines country against its neighbours determine the self-civilizing of the EU accession process. I use the term self-civilising as a process in which countries attempt to define themselves as a part of Europe, voluntarily and without critical reflection accepting what is imposed as dominant, superior

and advanced without military or political domination, by attempting to further its progress in the EU enlargement.

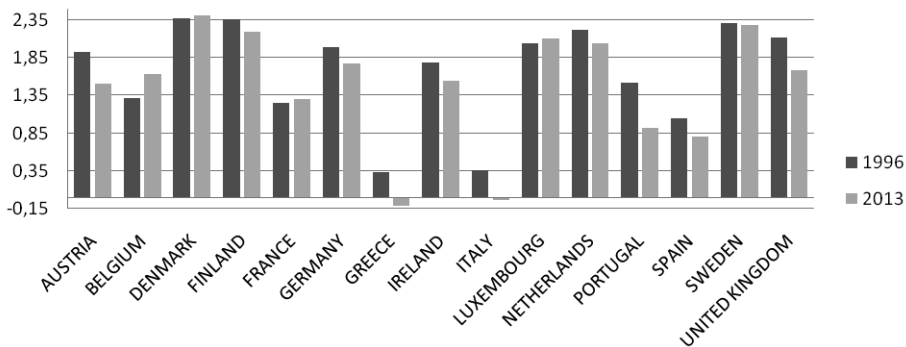
Why are the prosecution of war crimes and corruption control suggested as elements of the civilizing mission? The Balkans was already perceived as unknown, a dark side of the (European) “self” (Todorova, 1996), and recent Yugoslav secession wars added to this perception. The fear that conflicts might spread from Yugoslavia to the territories of the EU and the realization that efficient foreign and security policy was needed, pushed the EU into closer political integration.¹ Aggressive conflict in the immediate neighbourhood served as a strong incentive to add deeper political connections to the existing economic alliance. “Barbaric savagery” (Todorova, 1997: 6) in Yugoslavia enabled the birth of the European Union as it provided a clear differentiation between “us” and “them”, as well as a strong unification incentive. Morley and Robinson suggest: *The demonization of the enemy and the accusations against the Evil Other for their criminality and bestiality were related to the desire to purify our own culture and civilisation. To see the Evil Other as the embodiment of irrationality was to be certain of our own rational cause and motives* (Morley & Robins, 2002: 136). The violent birth of the independent countries enforced the stigma attributed to the savage Balkan region, while the self-image of civilization and superiority supported the Balkans status of Europe’s lowest ranked periphery (Luketić, 2008).

Ethnic conflicts and use of violence in the Balkans were at the foundation of the EU’s self-image of superiority. Dealing with the crimes of war was the initial step in the EU’s civilizing mission. Western Balkan countries needed to convince the EU that their institutions were capable of dealing with the past in a just manner, while the EU simultaneously used the disciplining feedback/dialogue to ensure peace in the region.

Corruption control as the second institutional requirement assessed in this article represents one of the cornerstones of the political requirements formulated in the Copenhagen criteria and has been an important aspect of both Southern and Eastern enlargements. For the countries of the Southern enlargements, institution building aimed at corruption control was incentivised through the use of the EU funds. However, the system has proven as inefficient; hence the EU set institutions capable of keeping corruption at bay as a condition for membership in the Eastern enlargements of 2004 and 2007.

¹ In the period of Yugoslav wars, political ties between the members of the European Community intensified. The Treaty of the European Union was signed in 1992 and the European Community officially became the European Union. It also set the rules for Euro as a single currency, common foreign and security policy, and improved cooperation in home and justice affairs.

Figure 1. Corruption Control Scores across “Old”² Member States, 2.5 as the Best Possible Score (World Bank, 2015)



The fight against corruption is a suitable choice for researching the disciplining process due to the following six reasons. Firstly, corruption represents a common political criterion for all the accession countries, unlike various political issues such as citizens’ rights or border disputes. Therefore, it is possible to assess how the fight against corruption was treated in different waves of the EU enlargement. Secondly, corruption is seen as a sign of underdevelopment, an antonym of the Western concept of rule of law, and is as such at the core of the civilization mission.

Thirdly, it is therefore interesting that corruption among high level political elites remains particularly ingrained in some of the “old” member states such as Italy, Portugal, Spain and Greece, but also in new members lauded for corruption control success such as Slovenia (European Commission, 2014: 6). Differences within the “old guard” exist and some countries are assessed to have more problems than others. However, older members such as Austria, Finland, Germany, Greece, Ireland, Italy, Netherlands, Portugal, Spain, Sweden and United Kingdom have all regressed in corruption control scores between 1996 and 2013 (see Figure 1), suggesting the EU’s transformative potential is, to say the least, doubtful; 79% of EU28 Europeans agree corruption exists in their national institutions and blame politicians and officials in charge of awarding public tenders for problematic political corruption (*ibid.*: 7).

Fourthly, although political corruption is an issue in the member states, the EU fails to deal with it internally. Shallow discussion among the EU members and numerous amendments to the anti-corruption network, as a tool to deal with the corruption systematically on the EU level, imply a lack of political will and reluc-

² In this context, the term “old” member states refers to all of the countries which became EU members before the Eastern enlargement of 2004.

tance for more serious action (European Commission, 2014). Addressing corruption within the EU remains narrow and lags behind international developments, as the action in corruption prevention and the monitoring framework remain ineffective (Szarek-Mason, 2010: 266-268). The EU presumes the role of institution builder in the candidate countries, while it has yet to fully master the art itself.

Fifthly, the fight against corruption offers a space for subjective interpretation as success does not depend solely on the adoption of laws and regulations. In the absence of ironclad indicators it is entirely up to the Commission's judgement to assess whether suitable institutions are in place. Even high level arrests can be subjectively assessed, as the definition of who qualifies as a high level official considerably varies in different contexts. As corruption control is often the last criterion the EU insists on before awarding the membership, considerable space for subjectivity and even manipulation leaves open the possibility of the accession disciplining process.

Sixthly, building anti-corruption institutions ought to be *de facto* a self-sacrifice in the countries where high level political elites are involved in graft. Building institutions to deal with corruption represents self-civilising, either through concessions or theatrics. In the article I use the term concessions and theatrics in the following manner. Concessions factually allow effective prosecution and independent judiciary. Theatrics aim to convince the EU of self-civilising through adoption of various action plans, establishment of anti-corruption agencies and even trials and sentences to "sacrificed" middle level elites, but the top of the ruling class remains beyond questionability. Frequently the two intertwine as parts of a broader strategy. In the following section I explain why Croatia and Montenegro were selected as case studies.

Why Croatia and Montenegro?

We analyse Croatia and Montenegro as the most advanced in terms of the EU accession process in the Western Balkans; Croatia being the first of all Western Balkan countries to enter the EU (in 2013), and Montenegro as the leader of the current EU accession class.

For Croatia, becoming an EU member represented a key strategy to escape from the Balkans as the European periphery, and to push the imaginary European border further away towards the ex-Yugoslav countries which have not progressed as much in the EU talks. The nesting orientalism (Bakić-Hayden, 1995) through the enlargement process was of extreme importance in Croatia to show to the West and to itself that Croatia is ready to "graduate" (Kuus, 2004) from being part of the backward, violent and chaotic Europe's inner *other* (Todorova, 1996) and become part of Europe proper.

The nesting orientalism accompanied Croatian escape from Yugoslavia and continued to be projected throughout the accession. However, nesting orientalism was also imbued by nationalism and followed by ethnic conflicts, which strongly influenced the EU's perception of Croatia and its disciplining process. Such EU's attitude and Croatian desperation to join the EU led to an "all in" strategy which included concessions in the sense of real reforms and theatrics in the sense of efforts amounting to little more than window dressing.

Montenegro gained independence by formally rejecting extreme nationalism, through a democratic referendum and peaceful establishment of a new state. In exchange, Montenegro skipped the civilizing mission element of the war crimes prosecution, had to work considerably less to convince the EU of its reforms and to gain its status of accession pack leader. Success in the negotiations, lack of effective political opposition and a milder form of nesting orientalism led to a decreased readiness to apply the "all in" strategy to win the EU membership.

Montenegro initially relied on a strategy already identified in Croatia; adoption of various regulations, action plans and prosecution of middle level corruption cases designed to convince the EU that the reforms were taking place while prosecution and indictments of high level corruption remained conspicuously absent. The Delegation of the European Commission in Montenegro signaled that real results in the anti-corruption fight were still missing and threatened with a halt in the talks. As a result, Montenegro began to sing a new tune and the leadership decided to prepare their own Sanader.³

The two countries became the best among the EU accession group of the Western Balkans through different, yet slowly converging disciplining processes. The difference is a result of the EU's assessment of the required depth and scope of the civilising mission on the one hand, and the countries' nesting orientalism and self-civilising on the other. The following section provides a brief overview of the existing studies and introduces personal background incentivising the research.

Conditionality Effectiveness Literature Meets Post-colonial Framework

Considering how much has been written on the topic of the EU enlargement, it is surprising how components of the disciplining process received little attention. In this section I outline the conditionality effectiveness and post-colonial framework on the basis of which I build the argument and show how I aim to contribute to the literature. The literature on the EU enlargement has strongly developed the condi-

³ A reference to the process of prosecution and judicial cases against Croatian former prime minister Ivo Sanader, quoted from an article in Monitor titled "Marović arrested: Đukanović's Sanader" (Radulović, 2015)

tionality effectiveness framework, but to understand the disciplining feedback/dialogue relationship based on the EU requirements and candidate country's response, a critical post-colonial approach provides a better framework.

Within conditionality effectiveness literature, the focus of the analysis was placed on the credible prospect of joining the EU, state capacity and compatibility of the domestic politics agenda with the EU's requirements (Haughton, 2007; Noutcheva & Aydin-Düzgüt, 2012; Schimmelfennig & Sedelmeier, 2004; Schimmelfennig, 2008). For the Western Balkan countries it was argued that the EU lacks power and effectiveness regarding democracy promotion through political conditionality (Freyburg & Richter, 2010). However, this literature does not observe the EU's subjective assessment of the quality of the rule of law institutions and the countries' self-positioning role in the feedback/dialogue.

After the accession of the CEE (Central and Eastern European countries: Czech Republic, Hungary, Poland, Slovakia and Slovenia) and Baltic countries (Estonia, Latvia and Lithuania) was finalized, the Western Balkans started to receive more attention. As the cornerstone of the Copenhagen accession criteria, building institutions for democratic governance was strongly emphasized in the Europeanization literature. In particular, research on the Croatian case largely focused on the cooperation with the ICTY (International Criminal Tribunal for the former Yugoslavia) and corruption control.

Research dealt with the gap between corruption perception, prosecution and political will to convince the EU of the efforts made in controlling the corruption (Budak, 2006). Six elements were outlined as having a particularly important effect on the level and type of corruption in Croatia: first, legacy of the socialist self-management; second, war, illegal arms trading and subsequent tycoonisation among war veterans; third, non-transparent privatisation; fourth, creation of a state apparatus that was beyond questionability; fifth, hyper-bureaucratism based on political loyalty; sixth, hyper-normativism, albeit main legal acts regulating and punishing corruption were lacking (Grubiša, 2011). Although the achievements in corruption fight and reasons behind lack of progress were well-defined, corruption control was perceived as purely imposed by the EU and the strategic component of the Croatian response was not fully evaluated.

In terms of war crimes prosecution, three models of compliance with the ICTY have been researched: coercion, self-interest and norms (Lamont, 2010b). Croatian cooperation with the ICTY has been analysed largely as an obstacle to the enlargement (e.g. Roter & Bojinović, 2005), while reasons for linking cooperation with the Court to the accession were explained through rationalist and constructivist approach (Mäki, 2008). Zambelli examined the process of adjusting the identity and policy discourses, particularly focusing on the cooperation with the ICTY and the

changes in the status of Croatia's Others (Zambelli, 2010). Lamont defined the relationship of Croatia to the ICTY as strategic compliance (Lamont, 2010a), and Jović provided the context for understanding the change in Ivo Sanader's policy towards the ICTY (Jović, 2009).

The Montenegrin path to the EU received far less individual research attention and the country was largely analysed as a part of the Western Balkans group. Corruption in Montenegro received significant attention, but has rarely been approached from the perspective of the accession conditionality (Bisogno, Reiterer, Jandl, Favarin & Davis, 2011; Ipsos Puls, 2010; Ratković, 2009). Civil society, researchers and the EU officials in charge of Montenegrin negotiations agree that the fight against corruption remains driven by the accession process (DG Enlargement European Commission, 2014; Rajković, 2014; Rudović, 2011), but the type of relationship with the EU has not been in the focus of research.

War crimes prosecution was not a large obstacle for Montenegrin accession and little attention in general has been afforded to the development of full cooperation with the ICTY. In terms of cooperation with the ICTY, most of the research on Serbia and Montenegro focused on the Serbian part (McMahon & Forsythe, 2008; Spoerria & Freyberg-Inanb, 2008). Besides NGOs and the EU reports which have formally commented on the absence of war crimes prosecution, there is a gap in understanding why the Montenegrin role in the attacks on Dubrovnik was overlooked.

Much effort has been spent so far in understanding the relationship of the EU towards the accession countries and vice versa, including analyses of the so-called disciplining, tutoring and post-colonial characteristics. Nonetheless, the studies have not clearly identified the feedback/dialogue link between the EU's subjective assessment of what is backward and requires the civilizing mission and the accession countries' nesting orientalism influencing the depth of the self-civilising mission. The literature has failed to analyse the shifting feedback/dialogue relationship between the EU and the accession countries.

Post-colonial approach to the EU presumes the EU's display of superiority over the accession countries and offers a suitable framework for the analysis of the disciplining process and the feedback/dialogue it develops between the EU and the accession country. The literature implies that the candidates were "colonized" through acceptance of Western norms of political and economic governance. Post-colonial studies argue that the Eastern countries' centuries-long allegiance to the empires of the Great Nations marked them as peripheries to the Western European centre of power (Obad, 2008). However, the countries of the CEE and the Baltics can be considered as "self-colonizing", as the values and institutions were adopted without resistance characteristic to an alien invasion, but also with uncritical acceptance of the ideology which perceives them as underdeveloped (Kiossev, 1999), where

capitalism and Western democracy offer a promise of better life (Boris Buden, as quoted in Car, 2013).

The EU's governance, where the Union is the source of the decision-making to which candidate countries need to comply, was described as having clear characteristics of a colonial system (Zielonka, 2006). The position of Eastern European countries has been analysed as junior and inferior to Western Europe. Specifically, the Europeanization process was perceived *as a kind of graduation from Eastern Europe to Europe* (Kuus, 2004: 477), and "return to Europe" *as the feeble Eastern Europe making a transition to the West while being coached by the West* (*ibid.*: 476). In the process of enlargement, the EU was not exclusively a political and economic community, but also a tutor and interpreter of what is considered as civilized and advanced (Obad, 2009). On top of the imperial and communist past shared by the Balkan, CEE and Baltic countries, recent war conflicts strengthened the connotation of the Balkans as the uncivilized periphery with which the CEE and the Baltic countries did not have to deal with.

However, the literature has not dealt with the differences in the EU's approach to the countries (originating from the subjective assessment of the need for disciplining) nor with the depth and the scope of the civilizing mission. Feedback to the conditionality (from the side of the accession countries) has been argued to depend on incumbent party orientation (Vachudova, 2008), comparability of domestic agenda and required reforms (Schimmelfennig & Sedelmeier, 2004), and the fear of being left out from the negotiations (Sigér, 2009).

Nesting orientalism in the context of the enlargement was already suggested as *the orientalist assumptions about East-Central Europe persist not simply because they are imposed on the accession countries but also because they are actively used by these countries against their particular East*s (Kuus, 2004: 465). The EU enlargement process empowered the previously stigmatized CEE and Baltic countries into perpetrators motivated to define themselves as European, while attributing the title of the *other* away from themselves towards their perspective peripheries (Lleshaj, 2013: 6). However, the role of the nesting orientalism was not analysed in relation to self-civilizing as a response to the accession requirements, nor was self-civilizing considered in the context of the enlargement process.⁴

The existing literature established a framework for post-colonial approach to the EU accession process, where candidate countries used progress in the talks to delineate themselves from the periphery and in parallel accept the EU's criteria which

⁴ The self-colonization, as Kiossev's term in the literature, was applied to the period up until the beginning of the 20th century, and its application is not considered suitable for the framework to the EU enlargement.

were difficult issues on the domestic political agenda. The article builds on the existing literature by analysing the disciplining character of the EU accession. The disciplining feedback/dialogue was formulated by the EU's assessment of the need for disciplining and accession countries' nesting orientalism and self-civilizing.

As a citizen of Croatia my perception of the accession process was influenced by growing up along the EU talks. During my studies in Zagreb, EU accession was frequently portrayed in the media and by the political actors as a civilizing mission, while the EU become Croatian tutor and superior entity presuming the right to pet, scold and blackmail the small Balkan states. Simultaneously, the EU represented a better place for life and career to which Croatia as a country desired to transition. The transition from periphery to Europe proper and to the prosperity was possible as Croatia perceived itself as better than its Balkan neighbours. The belief that Croatia ought to be able to separate itself from its violent, nationalistic Balkan neighbours and become a member of the EU, when countries such as Hungary, Romania or Bulgaria managed to do so, was deeply ingrained in Croatia. Coming from this background, I attempt to deal in an objective manner with the stereotypes imposed in the literature by the Western scholars which has largely approached the Balkans from the superior point of view (Luketić, 2008).

The following section outlines the steps of the Croatian path towards the EU and the disciplining feedback/dialogue created through the EU's relationship towards Croatia and Croatian response to the war crimes prosecution and corruption control criteria.

Croatia – One Way Ticket from the Balkans, as Much as it Costs

The section analyses civilizing aspects of the EU's mission in Croatian accession, and it is divided in three time periods: early years of independence under HDZ⁵ (1991-2000), Social-democratic coalition governance (2000-2003), and the return of HDZ for a double mandate (2003-2011). I research EU's assessment of the institutional quality and subsequent accession criteria as a part of a disciplining process. From the Croatian side I analyse how nesting orientalism influenced self-civilising through the three phases.

Early Years of Independence and Retrospective Europeanization

The first phase (1991-2000) is largely characterized by the lack of interest from the Croatian side to participate in the self-civilising process. The EU enlargement, as a goal through which a better position within the European hierarchy could be ensured, has not yet become a focal point of Croatian nesting orientalism.

⁵ Croatian Democratic Union (Hrvatska demokratska zajednica).

Croatia became independent in 1992 and dedicated the following decade to ensure territorial sovereignty and strengthen national identity. During this period Croatian elites wanted to break free from Yugoslavia and, by claiming European identity, assume a superior position among its neighbours. Nesting orientalism was accompanied by a rise in nationalism, armed conflict, development of crony capitalism and authoritarianism. On the one hand, the EU perceived Croatia as a country ridden with nationalism and bad quality institutions which were incompatible with the EU's superior self-image. On the other hand, Croatian elites around the first Croatian president Franjo Tuđman saw no need to adapt to the evolving European Union. By becoming independent from Yugoslavia, Croatia already reaffirmed European identity⁶ and ensured its "return to Europe."

Croatia claimed European identity on the basis of the early acceptance of Christianity, orientation to the Catholic Church upon the East-West Schism and inclusion of the Croatian territories in the Austro-Hungarian Empire, which differentiated it from its Eastern ex-Yugoslav neighbours. Fight against the Ottoman Empire and status of the "Antemurale Christianitatis"⁷ (the Bulwark of Christianity) had an important role in the creation of Croatian European identity.⁸

Tuđman and his political supporters were sceptical about the European Union and the process of enlargement which was incompatible with blooming Croatian nationalism (Jović, 2011: 11). National sovereignty was placed above the declared importance of joining the European Union; hence the EU's influence over the domestic policy was insignificant. Breaking the Yugoslav chains and the identification with traditional cultural and political heritage of Europe, common history and

⁶ Tuđman's speeches in 1990 upon formation of the Croatian Parliament and in 1995 upon gaining membership in the Council of Europe are examples in which he emphasized the claim of centuries-long belonging to Mitteleuropa and Mediterranean Europe which could not by any means be undermined by several decades of the political connection with the Balkans (Tuđman, 1996).

⁷ Southern Croatian aristocracy sent a letter in 1494 to the Pope Alexander 6th and to the Emperor Maximilian 1st in which help against Ottoman invaders was sought by referring to Croatia as the Bulwark of Christianity. The same expression was later used by the pope Leo 10th in 1519 when referring to Croatian lands in defence against Ottomans. However, as quoted in Oršolić (2013), Croatian writer Miroslav Krleža said: *That we are "Antemurale Christianitatis", was not said only to us, but to all Catholic national miseries on Danube and Vistula, which perished on the bloody outpost of European interests, while the centre of civilization caroused* (Oršolić, 2013).

⁸ According to Oršolić, the myth in its various versions was re-developed through the centuries by important Croatian politicians such as "the Father of the Homeland", Ante Starčević, Catholic Church, but also by members of the Croatian fascist puppet regime during WWII. Communism suppressed the myth, but it was revived with the conflicts in 1990 and 1991. The self-appointed position of a bulwark between civilized West and barbaric East became even stronger, but also gained a dimension of polarisation between democracy and communism (Oršolić, 2013).

Christianity (Grubiša, 2005: 133-134) ensured the “return to Europe”. The enlargement process was not perceived as an entry ticket to Europe proper, or as an additional measure of separation from the Balkans, therefore the self-civilizing (in terms of uncritically accepting superiority of the EU’s institutions) could not begin.

Bandwagoning and the Enlargement-Driven Nesting Orientalism

Change of leadership and increased lag between Croatia and the CEE and Baltic states in the period of 2000-2003 led to an increase in willingness to engage in the self-civilising. In December 1999 Franjo Tuđman died and his death led to changes in Croatia which would impact the disciplining feedback/dialogue of the EU accession. The parliamentary and presidential elections in 2000 brought democratic changes in the political system and political leadership.

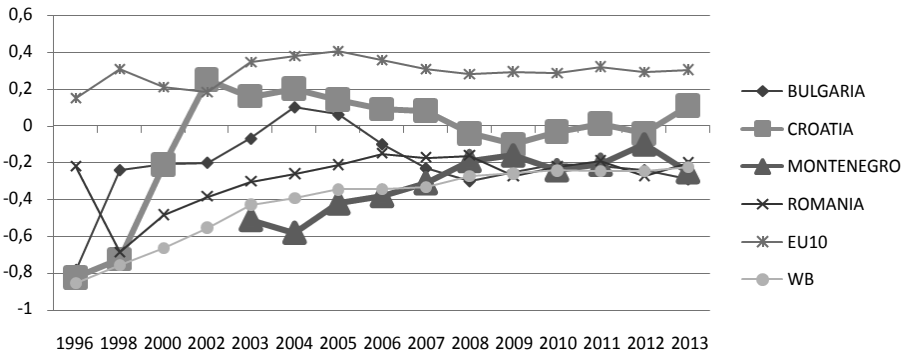
As CEE and Baltic countries progressed in negotiations, and Croatia was left behind, the EU enlargement was perceived as a path to Europe proper and peripheral status was assigned to those left behind. Croatia saw itself as superior to its Western Balkans neighbours and as at least an equal of the CEE and Baltic countries. Nesting orientalism became defined by the EU enlargement and led to a self-civilizing through Europeanization characterized by penetration of the European system of governance in domestic institutions, actors, values and processes (Grubiša, 2005: 133-134). Ivica Račan’s left centre coalition which took control over the government and parliament in the 2000 elections (2000-2003), was aware of Croatian laggard position in the accession process and was willing to initiate necessary reforms to reduce the gap.

The cooperation with the ICTY (or The Hague Tribunal) was the largest challenge for Račan’s cabinet. His government was reluctant, due to the fragility of the parliamentary coalition⁹ and possible status of traitors in still nationalistic Croatia,¹⁰ to comply with the arrest and surrender requests for Croatian war commanders. For the EU, Račan’s hesitance implied dominance of nationalism over impartiality of Western favoured institutions and resulted in the decision to apply a deeper civilising mission in Croatia. Although most of the EU countries initially opposed tying the cooperation with the ICTY with the negotiation process, Croatian continuous

⁹ Both HSLS, Croatian Social Liberal Party (Hrvatska socialno-liberalna stranka), and HSS, Croatian Peasant Party (Hrvatska seljačka stranka), two parties in Račan’s coalition government, suggested non-compliance with the arrest and surrender requests for generals Ante Gotovina and Rahim Ademi. When Račan confirmed a commitment of cooperation with the ICTY, HSLS exited the government.

¹⁰ Croatian war veterans organized in 2001 and 2002 numerous protests supporting the indicted generals. The largest protest was held in Split and encompassed 100,000 people.

Figure 2. Control of Corruption Scores across Western Balkans, CEE and the Baltics (World Development Indicators, 2014)



failure to cooperate with the Tribunal¹¹ or to engage in the norm affirming rhetoric¹² resulted in a deeper civilising mission.

Fight against corruption as the second focus of the EU's civilising mission was initiated during Račan's government. In 2002 the first Anti-Corruption Action Programme was adopted by Račan's government which also founded the Bureau for Combating Corruption and Organized Crime (USKOK)¹³. Overall improvements in the quality of governance led also to increase in ranking in control of corruption (World Bank, 2015), but for the next half a decade USKOK was not fully functional nor was the adopted Action Programme fulfilled. Račan's government had a chance to deal with corruption as it was not the primary beneficiary of speculations in the first decade of the statehood, but had not lasted long enough to convince the EU that its institutions are on a sufficiently high level. Despite ensuring a better ranking than Bulgaria and Romania since the beginning of the 2000s (see Figure 2), political corruption remained an issue in Croatian disciplining process, while Bulgaria and Romania ensured the membership in 2007.

Račan's government attempted to bring Croatia closer to the EU, but was very careful with the progress of extraditions of war heroes, trying not to tarnish the coalition's reputation in front of the electorate. Not knowing how lenient the EU would

¹¹ Račan's government passed the decision to cooperate with the ICTY, but evaded cooperation in terms of accepting the indictment of general Janko Bobetko.

¹² Lamont argued that most of the EU members did not want to press Croatia on the issue of the cooperation with the Tribunal, but would be satisfied if Račan accepted the competency of the ICTY and received the indictments (Lamont, 2010b: 54).

¹³ Ured za suzbijanje korupcije i organiziranog kriminala.

be, the coalition government attempted to progress with the EU talks without fulfilling the sensitive political conditionality.

From the EU's perspective, in this period we can identify new elements of the EU's civilizing mission. Secession wars divided the Western Balkan countries from their post-socialist CEE and Baltic counterparts that had a less bumpy road to Europe. Based on this division the EU devised a specific set of rules for the accession talks which were more rigorous than in the case of previous enlargement rounds. Specifically, in the previous rounds of accession, the EU has not required cooperation with external institutions as a criterion to be fulfilled before the beginning of the negotiations. War crimes prosecution showed that the EU's mission had civilizing elements as the domestic prosecution and judiciary institutions were subjectively assessed as insufficiently developed for the negotiations even to be opened.

Corruption control in this phase led to initial success in building necessary institutions. Although the self-civilising process included concessions rather than theatrics, the progress was deemed insufficient by the EU. As Bulgaria and Romania achieved much less and ensured the membership faster, the treatment of Croatia is identified as part of the civilising mission. In this phase enlargement became part of the nesting orientalism and Croatia began to form the strategy of concessions plus theatrics, particularly in terms of cooperation with the ICTY. The EU's adoption of a stricter civilising mission pushed Croatia in the next phase to adopt self-civilising reforms and to offer more concessions.

All In Strategy – Moving All Chips in the Pot

In the period 2003-2011 the EU continued the civilising mission of the same depth. However, Croatia was fully focused on escaping the Balkans through the EU enlargement process, and political elites adopted self-civilising measures and contributed to the disciplining feedback/dialogue process. The strategy of self-civilising included concessions in the cases where the other element, theatrics, was not successful.

Parliamentary elections in 2003 brought reformed HDZ under the leadership of Ivo Sanader back to power. HDZ ensured two mandates during which accession to the EU remained the main goal of the Croatian foreign policy. The nesting orientalism of the enlargement process and the subsequent self-civilizing strengthened between 2003 and 2011. Prolonged stay in Europe's antechamber incentivised the elites to invest all in on the EU membership for the fear Croatia will have to wait for its Western Balkans neighbours to become a member. As it was self-evident that Croatia could not catch up with the historical enlargement of 2004, the goal moved towards the Bulgarian and Romanian accession in 2007.

From the side of the Union, as democracy in Croatia was consolidated when reformed HDZ took control in 2003, there was little fear that Croatia would take

a turn towards autocracy and destabilize the region. However, the aggressive nationalism still needed to be dealt with and ensuring prosecution of the war crimes through cooperation with the ICTY was the tool the EU used to civilise Croatia. Despite improvements during Račan's government, corruption remained a worrying factor from the perspective of the EU's superior institutions.

The government of Ivo Sanader (2003-2007) had a much stronger majority in the parliament than the coalition government of Ivica Račan. Despite the obvious mismatch between its rhetoric and the EU's political criteria, HDZ's government offered concessions and obediently cooperated with the ICTY and managed to spin off the cooperation in extraditing military commanders without compromising its reputation with the electorate.¹⁴ In its attempt to ensure fast beginning of the negotiations HDZ ensured delivery of generals Mladen Markač and Ivan Čermak to the ICTY. This was assessed as insufficient as the EU, after Račan's attempts to evade cooperation, was determined to force full cooperation with the ICTY. After the official negotiations were deferred, Sanader's government cooperated with the foreign intelligence agencies and provided key information that led to the arrest of general Ante Gotovina, a symbol of unjust prosecution of the military operation that regained control over Croatian territory. However, an even starker example of self-civilizing was the anti-corruption fight. Unlike the cooperation with the ICTY, which HDZ pulled off without jeopardizing its domination, concessions in the fight against corruption required reforms that would be costly for HDZ.

During Sanader's reign, progress in corruption control was achieved in three main phases. Firstly, stricter and better defined legislation in the areas of electoral campaign and party funding, undue influence, conflict of interest and supervision of state owned companies was adopted. Secondly, USKOK received more funding, hired more personnel and improved its capacities. Thirdly, in 2005 a new head of USKOK, Dinko Cvitan, was appointed. Cvitan was considered an independent and unbiased professional who ensured functionality of the prosecution unit by hiring prosecutors with specific competencies and proved the ability to withstand pressures of the fight against corruption (Kuris, 2012).

Increased financial autonomy of USKOK, improved staff capacities in asset-tracing and surveillance methods, and institutionalized cooperation between USKOK, police and court operations snowballed into visible results, such as success

¹⁴ The government pursued the EU agenda through cooperation with the ICTY but attempted to justify sensitive concessions by reminding that Croatian Parliament under majority of the coalition government approved in 2000 the ICTY's authority over military actions Flash and Storm, as well as suggesting that their cooperation with the ICTY is consistent with HDZ's effort to defend the Croatian role in the conflict. Moreover, HDZ had close ties with the associations of war veterans which prevented public protests (Lamont, 2010b: 47).

in actions Maestro and Index (*ibid.*). Despite the success in these actions, ruling elites were still above questioning and the EU remained unconvinced that Croatia managed to build institutions of sufficient quality.

Surprise resignation of the Prime Minister Sanader in July 2009 remained unexplained, but his prosecution and criminal charges for corruption offered some evidence of the results of Croatian self-civilizing mission. Secondary sources suggested that years of data collection and Sanader's leave from the position of the prime minister enabled USKOK to indict him and other members of the ruling party and his cabinet for corruption and undue influence in several affairs such as sales of state owned oil company and party funding.

The EU's civilizing and Croatian self-civilizing mission provide an explanation how the most powerful person in Croatia was indicted. Vladimir Šeks, one of the most prominent members of HDZ, said that Ivo Sanader tried to sack the state attorney before his arrest. However, at that point his successor Jadranka Kosor and HDZ's membership behind her were pressured to stay aside as the investigations became *an unstoppable process* (as quoted in Kuris, 2012). As Austria and other regional countries had evidence of Sanader's graft activities beyond Croatian borders, Sanader and the party membership behind him were sacrificed to convince the EU of the quality of Croatian institutions. Although Sanader's arrest and trials comprised both elements of theatrics and concessions, it persuaded the EU that impunity was not ensured even for the highest officials and that good quality institutions were built in Croatia.

However, why was the EU's conditionality regarding anti-corruption so effective that political elites neglected the threat it posed to their own political survival? As Croatian leadership uniformly supported the EU membership, a feedback effect has strengthened the EU's pressure on fight against corruption applied through negotiations. Since its foundation in 1992 Croatia claimed to belong to Europe based on its cultural and religious identity. Escaping from the Balkan periphery and becoming part of the EU proper were the most important goals, strongly determining domestic and foreign affairs. For Croatia, the enlargement process provided a possibility to separate itself from the negativity of the Balkans, the connotation of violence, but also to take a better place in the European hierarchy.

Therefore, political elites were determined to ensure membership in the EU as fast as possible by committing to the reforms which brought easily measurable results. The urgency of becoming part of the EU and separating itself formally from the Western Balkans was also incentivised by the perceived exclusion after the historic enlargement in 2004 and the laggards' accession in 2007. Croatia was excluded from this historic moment, but also the gap between Croatia and the CEE and Balkan neighbours was widening. These two factors pushed Croatian elites to

engage in concessions which would otherwise be considered too dangerous for political survival. The following section analyses Montenegrin accession and feedback/dialogue relationship.

Montenegro: Conceding to All, but Doing It Our Way

Montenegrin position of leader of the Western Balkans accession class was a product of the EU's positive (albeit subjective) assessment of nationalism rejection, newly developed self-awareness and the resulting wish to leave the Balkans behind. War crimes have not represented a problem for the Montenegrin state in the negotiations as Montenegro openly abandoned Serbian aggressive nationalism; before becoming an independent state, the authorities cooperated with the ICTY, extradited two of its citizens and initiated reconciliation with its neighbours and between its citizens' different ethnicities. In the region where radical nationalism was widespread and posed a serious threat to political stability despite years of international interventions, the EU assessed this was enough and has not pressed further the issue of cooperation with the ICTY. Moreover, the EU was ready to overlook rampant political corruption to ensure alliance with Montenegrin elites which promoted peaceful coexistence in the still violent Balkans.

Paralleling the Croatian chapter, I apply the same structure in analysing the feedback/dialogue relationship between the EU and Montenegro during the accession talks. From the side of the EU, I focus on the subjectivity of the EU assessment of the institution-building progress and on the civilizing elements of the negotiations in the areas of war crimes prosecution and corruption control. From the Montenegrin side of the feedback/dialogue process, I research nesting orientalism and how it influenced Montenegrin response to the EU disciplining.

The Art of Choosing the Winning Side

Montenegro was the only country among fellow Yugoslav successor states where incumbent communist party won and maintained power throughout the whole transition period. On the tide of the protests for economic improvements at the end of the 1980s, new leaders of the communist party, Momir Bulatović, Svetozar Marović and Milo Đukanović, effortlessly won the first democratic elections. DPS,¹⁵ as the successor of the communist party, was founded two months before the first elections, but the party officially changed its name half a year after the electoral victory. As one of the poorer Yugoslav republics that greatly benefited from Yugoslav common budget, Montenegro also from the economic perspective had limited motivation to renege on Yugoslav identity. Unlike in Croatia, where the "return to Europe" meant

¹⁵ Democratic Party of Socialists (Demokratska partija socijalista).

parting ways with Yugoslavia, in Montenegro Europe was in this phase still not identified as a desirable goal. Political leadership headed by Momir Bulatović initially endorsed a union and close relations with Serbia under the leadership of Slobodan Milošević. Montenegro used the nationalist rhetoric of “Let’s attack before they attack us”¹⁶ and asserted its own territorial claims over the south of Croatia.

A new tide was coming when Milo Đukanović won DPS party elections and took control over the party in 1997. His policy was oriented towards distancing Montenegro from Milošević, while Bulatović advocated unity with Serbia. Hybrid regime literature argued that transition to democracy occurred as DPS split in two factions, led by Đukanović and Bulatović respectively, who fought in the subsequent presidential elections (Vuković, 2014). Đukanović won the elections and distanced Montenegro from the radical nationalist politics of Slobodan Milošević. The choice earned him a strong support from the West; nearing Montenegro to the Western liberal democracies also meant weakening Serbian aggressive nationalism. To that end the international community strongly rooted for Đukanović.¹⁷

In 2000 Milo Đukanović, as president of Montenegro, formally apologized to Croatian president Stipe Mesić for the pain and material damage inflicted by the Montenegrin citizens during the war, especially emphasizing the attack on Dubrovnik. His politics of estrangement from Serbia, proven through electoral duels with Bulatović, and opening of the borders to Serbian dissidents and Kosovo refugees at the end of the 1990s established his role of a Balkan politician whom the West would prefer over the advocates of aggressive nationalism.

In the years to come, DPS and its leader Milo Đukanović had a significant role in facilitating the referendum for independence in 2006, in which a narrow majority of 55.5% (55% being the EU mandated threshold) voted in favour of Montenegrin independent state. Parting of the ways for Serbia and Montenegro cemented Đukanović’s position as one of the favourite ex-Yugoslav politicians, as the EU interpreted it as Montenegrin decision to choose European future without reaching for nationalism and violence which followed the creation of the other Western Balkan states.

¹⁶ Among Montenegrins, the attack on Dubrovnik was justified as preventive action. False reports announced military preparations of about 30,000 Croatian fascists, *ustaše*, which supposedly planned to attack Montenegrin Boka Kotorska bay.

¹⁷ In the first round of the presidential elections Bulatović won and was considered a safe winner in the second round of the elections. However, under unclear circumstances Đukanović won in the second round with only 5500 votes more. Bulatović initially refused to accept the results of the elections. In the aftermath of the elections, violent protests were initiated in the north of Montenegro where Bulatović had a strong support and have spread to the capital Podgorica. In his memoirs, Bulatović claimed to have conceded to acknowledge the results of the elections due to pressures of the foreign diplomats, which advocated Đukanović as the candidate who would weaken Serbian influence on the Balkans (Bulatović, 2004).

The EU's desperation for good news in the region helped Montenegrin transformation into a poster child of the Western Balkans. Lack of political issues as obstacles to the accession talks and the elite's ability to ensure peaceful coexistence in a multi-ethnic society sped up the pace of the overall negotiations. From the side of the EU, the civilizing mission that Croatia had to face in terms of dealing with war crimes was not required in Montenegro. The ICTY issued indictments for two Montenegrin military officers and both were apprehended to the Tribunal without any public reaction while Montenegro was still a part of the state union with Serbia. While Montenegro participated in bombarding Dubrovnik, prosecution of the commanding war crimes was not a condition either for signing the Stabilisation and Accession Agreement (SAA)¹⁸ or for opening the formal negotiations with the EU. So far merely three final judgements on war crimes in Yugoslav wars have been brought in Montenegro and none concerned commanding responsibility. EU progress report for 2014 suggested that no serious efforts to tackle impunity have been demonstrated in Montenegro (DG Enlargement European Commission, 2014), but cooperation with the ICTY or domestic prosecution of war crimes were not a condition for progress in negotiations.

Montenegrin appeal as the poster child of the EU negotiations was based on political leaderships' decisions to steer away from Milošević's politics and gradually turn to the European future. The EU initially assessed that Montenegro deviated sufficiently from Serbian nationalism so as not to require deep disciplining, which led to a milder civilising mission. Đukanović's positioning against the Serbian regime ensured support of the West, but also convinced the international community to basically close their eyes to speculations and frauds DPS employed to stay in power. Nesting orientalism in Montenegro skipped the phase of Yugoslav chain breaking at the beginning of the 1990s which was so decisive for Croatian self-civilizing. After DPS party split in 1997, nesting orientalism developed with the idea of independence from Serbia; it was considered that separation from Serbia would improve Montenegrin position in the European hierarchy. The idea of leaving the Balkans through the EU accession became prominent for the first time in the campaign for the parliamentary elections in 1998 when DPS and SDP¹⁹ formed a political coalition "European Montenegro".

Montenegrin accession lacked emphasis on the "return to Europe", but membership became a tool for exiting the Balkan periphery and for assuming a better

¹⁸ As a distinctive policy framework developed for the Western Balkan countries, SAA is directly linked to the EU's commitment to the Western Balkans membership prospects. The overall Stabilisation and Accession Process includes a number of political obligations on human rights, democracy, rule of law and full cooperation with the ICTY.

¹⁹ The Social Democratic Party of Montenegro (Socijaldemokratska partija Crne Gore).

hierarchical position among the neighbours. Prime Minister of Montenegro, and the leader of DPS, was quoted saying that *Montenegro as a leader of the region cannot allow itself to continue to roam the Balkan wastelands* (Balkans Al Jazeera, 2012). Political elites also readily affirmed Montenegrin willingness to assist less advanced countries in their accession efforts (CDM, 2014; Kodex, 2014), already assuming a higher position in the European hierarchy and the role of a tutor. This change of heart was also paralleled by economic growth and highest per capita foreign direct investments in the region. Unlike communist Montenegro which belonged to the camp of the poor Yugoslav republics, Montenegrin now saw Serbia as an economic weight and compared itself to more prosperous CEE countries.

The combination of different treatment from the side of the EU and different perception of the EU enlargement from the side of Montenegro formed an altered feedback/dialogue relationship. Lack of pressure from the side of the EU regarding the prosecution of war crimes and lack of incentives from the side of Montenegro led to a less streamlined civilizing mission in comparison to Croatia. As Montenegro started perceiving its path to Europe as a chance to improve its position within the region, it became more pliable to the EU's disciplining mechanisms.

The EU signed SAA with Montenegro in October 2007 and the candidate status was approved in December 2010. Although perceived as a relative laggard in the race to the EU accession, the absence of sensitive political issues the accession of the other countries was laden with (Gotev, 2013), ensured remarkable progress. The negotiations began in June 2012. Largest incompatibilities have been outlined in the control of corruption, prosecution of crimes, independence of judiciary and environmental regulation (DG Enlargement European Commission, 2014). By this time Montenegro has eagerly started to adapt its legislation and has initiated the reforms primarily in the areas which did not tackle the partitocratic character of the regime.

Montenegrin strategy for the reforms required by the EU has been visible in the implementation of suggested cooperation with NGOs. While the government enthusiastically ensured places for NGOs in the working groups, real cooperation has not materialized except in the cases when such an arrangement suited the government (USAID, 2012). Despite proclaimed dedication to liberal democracy, freedom of media was consistently contested as journalists working on the cases of corruption and organized crime often faced physical threats, attacks and one case of murder (Ponoš, 2014).²⁰ Removal of administrative barriers (World Economic

²⁰ Some of the examples include death of owner and editor-in-chief of the newspapers *Dan* Duško Jovanović in 2004, attack on *Vijesti* director Željko Ivanović in 2007, bombing of *Vijesti* journalist Tufik Softić's house and several bomb attacks on *Vijesti* cars in 2011, attack on *Vijesti* journalist Olivera Lakić during her work on uncovering corruption affairs in 2012, and bomb attack on *Vijesti* editor Mihailo Jovović's office in 2013.

Forum, 2015) outlined its readiness to tackle requirements where progress was easy to measure and which did not put ruling political elites in danger.

As Montenegro seemed only too eager to accept EU regulations stipulated in the negotiation chapters, the issue of corruption and organized crime remained the most often quoted obstacle to the Montenegrin EU accession by the European Commission. Political corruption was considered widespread and the highest political and economic elites were enmeshed in the corruption knot (Galbraith Lipton, 2006). DPS controlled the political scene in Montenegro and resources were pooled into the hands of a group which continuously became stronger and had fewer incentives to engage in the fight against corruption which would lead to its demise.

After the establishment of the independent Montenegrin state, issues concerning Montenegrin nationalism arose, e.g. the use of Montenegrin language as the official language of the state broadcaster in 2010 and the introduction of Montenegrin language grammar to the schools. Both occasions resulted in criticism of supposed promotion of an artificial language. Serbian parties have opposed the adoption of the electoral law until a compromise solution was found. The accepted compromise was a class taught in schools called “Montenegrin-Serbian, Bosnian, Croatian language and literature”. However, according to Vanja Čalović, head of NGO MANS, identity and ethnicity and the issues of the Montenegrin church, language and national symbolism were used to draw attention from organized crime, corruption and misdeeds in the privatization process (Vanja Čalović as quoted in Morrison, 2009: 228).²¹

The EU delegation in Montenegro regularly criticized the government for the failure to combat corruption, especially among high level political elites. However, the EU has simultaneously ignored reports of organized crime and corruption and has not “punished” Montenegro by slowing down or suspending its negotiations. At the end of 2013 five new chapters, including chapters 23 and 24 defining the EU’s rule of law requirements, have been opened. As a consequence, a mixed message was sent to Montenegro that it is possible to progress in the negotiations while faking internalization of the fight against crime and corruption. Montenegro has

²¹ “The main problems in Montenegro are organized crime and corruption. These issues of ethnicity and identity are frequently used to cover real problems, as they have been in the past 17 years since the introduction of multi-party elections. However, following the referendum we thought the government would no longer be able to hide behind these issues. Instead they would have to address social issues, dirty privatization, economic issues, corruption and organized crime. But still they are talking about whether we are Serbs or Montenegrins, about the Montenegrin language, the Montenegrin church and so forth. This situation is excellent for the government because it means that they do not address the most important problems and are, by extension, not responsible for their real decisions. They just become the ‘winners’ who gave us an independent Montenegro.”

adopted the theatrics strategy identifiable in postponing the selection of the state prosecutor for almost a year in 2014 and failing to investigate the “Tape recording” affair,²² while simultaneously suggesting an overly ambitious corruption action plan (CDM, 2015) and orchestrating corruption prosecution cases aimed to convince the EU of introduced reforms.

The case of corruption connected to the construction of the tourist resort Zavala and sales of the land in Košljun hill illustrated the latter. In the Zavala case, DPS’ political leadership of Budva municipality ensured privileges to Russian-Montenegrin²³ investors during 2007 by allowing construction in the green, recreational area with no construction permit, which led to the loss of valuable municipality land and loss of money from the budget (MANS, 2011). Highly positioned DPS members, such as former Budva mayor Rajko Kuljača and the vice president of the municipality assembly Dragan Marović, brother of Svetozar Marović, were apprehended and received several years of prison sentences. In the Košljun case, new Budva mayor Lazar Radenović and two of his accomplices used insider information for a land sales deal which led to a loss of more than EUR 10 million to the municipal budget.

Critical media and NGOs have attested numerous similar affairs which have not received any attention from the state prosecutor (e.g. Milovac & Mrdović, 2012), suggesting that “Zavala” and “Košljun” represented two cases in which DPS’ mid-level political elites were sacrificed to make Montenegrin anti-corruption mission believable. MANS and the critical media openly stated that the affairs were handled, controlled and managed from the top of the DPS party (OCCRP/CIN, 2012; e.g., SEEBiz, 2011; *Vijesti*, 2014). Montenegrin chief negotiator with the EU has presented the case as a proof that Montenegro was prosecuting high-level political corruption. However, the Commission has not accepted the manoeuvre as convincing evidence that high-level corruption is prosecuted, hence further improvements were required.

Although Montenegro started using the EU enlargement as a strategy to escape from the Balkans and to obtain a better position among its neighbours, the despair of Croatian “return to Europe” was initially missing. Moreover, in the initial

²² Media outlet *Dan* reported the so-called “Tape recording” or “Snimak” affair where recordings from DPS inner party meetings suggested the incumbent party was trying to secure jobs for party loyalists, close a trade union led by the opposition Democratic Front and buy votes for the subsequent elections (Freedom House, 2014)

²³ Initially, Montenegrin company Zavala invest, founded by Moninvest, in the co-ownership of Svetozar Marović (then vice-president of DPS) was a partner with the Russian Mirax in the project. Svetozar Marović withdrew from the company, and the company later sold its share to Mirax (MANS, 2011).

period of the accession process Montenegro was successful in convincing the EU of its openness to changes and peaceful co-existence in a multi-ethnic community. Therefore, the civilising mission was milder and in return Montenegrin self-civilising in problematic issues was dominated by theatrics over concessions. Although instability in the Western Balkans incentivised the EU to allow Montenegrin sclerotic progress, former Enlargement and Neighbourhood Policy Commissioner Štefan Füle (2000-2014) linked the progress of the negotiations to the rule of law related reforms, potentially indicating the EU was about to put more pressure on Montenegrin disciplining. The 2014 Commission report directly requesting real reforms suggested that the current theatrics strategy would open the prospect for putting a brake on Montenegrin negotiations (Menke, 2014).

Since August 2015, special prosecutor Milivoj Katnić (appointed in June 2015) requested the arrest of thirteen individuals (including DPS Budva leadership and Svetozar Marović's daughter and brother) charged with affairs Jaz Plateau and TQ Plaza. Special prosecution gave the arrest orders due to reasonable doubts that the suspects have abused official positions and executed the crimes in an organized manner. The prosecutor has suggested that the suspects were members of a criminal group with the goal of acquiring illegal power and profit and that the activities of the criminal group were planned for the longer time period and through specific rules with precisely defined roles and assignments (Đukanović, 2015). Further arrests for the Prijedor land deal have included Svetozar Marović's son, godfather and aunt. Finally, in December 2015 the special prosecutor arrested Svetozar Marović, as the head of the organized criminal group suspected for the loss of EUR 10 million to the municipal budget (N1info, 2015).

In the affairs Zavala and Košljun only mid-level political elites were arrested and suspected for crimes. The case of the so-called organized criminal group Budva potentially announced a change as Svetozar Marović, of the leading members of DPS, had the reputation of an untouchable. As the case has not yet received its judicial epilogue, it is difficult to draw final conclusions at this moment. However, critical media have immediately suggested that criminal prosecution of the Budva group should not be too surprising. The period in which the EU was willing to ensure a privileged position and overlook some of the more "idiosyncratic" characteristics of Montenegro's reform process (Morrison, 2009) came to an end as the EU's civilizing mission of fighting corruption as the world's greatest evil must be completed before the accession.

Radulović suggested that prosecution of the group around Marović belongs to the already seen theatrics strategy aimed at satisfying the EU's hunger for anti-corruption results. In a country where NGOs regularly report cases of land use speculation and electoral frauds to the prosecution bodies, supported with an abundance

of evidence, it can be seen as symptomatic that three largest cases dealt with Budva municipality and Marović's group. RTCG's²⁴ journalist Mirko Rašković single-handedly unearthed for the investigative TV show "Mehanizam: Obećana zemlja"²⁵ one of the affairs for which Budva organized criminal group is being prosecuted. Conveniently, to the EU's more aggressive disciplining feedback, Montenegro responded with a case that was already laid out in front of the prosecution.

In the following section I outline, based on existing CEE, Baltic and Croatian experience, what can be expected from the post-accession in terms of corruption control.

Quo Vadis: the Post-accession

The post-accession period brought a reversal in the anti-corruption field in most of the new EU members (Batory, 2010; Tomini, 2015: 154). Lack of pressure and sanction mechanisms for misbehaving political elites led to a rolling back of progress in the control of corruption. However, if the institutions were not internalized and were a result of theatrics, chances of the rolling back of progress increased.

In the case of Croatia, USKOK's authority and strengthened capacities acquired in the period of the accession talks could provide an obstacle for reversal of the achieved progress. The rollback of progress in the anti-corruption area in the CEE and the Baltics can be explained by the change in the funding schemes for NGOs, the EU's most important tool for anti-corruption fight in the CEE and the Baltic states (Derderyan, 2010). As progress in Croatia relied on the top to bottom approach and less on the pressures of NGOs and the media, the chances for reversals could be lower. The recent ruling of the Constitutional court, which returned Sanader's trial to the County court due to the unconstitutional elements of the previous trial, suggests that the independence of the judiciary still needs to be further analysed. The following section describes how the accession process differed in the CEE and the Baltic countries in comparison with the Western Balkans.

Disciplining the Western Balkans

Although countries of the Eastern enlargement went through a similar process of civilising where the EU has frowned on their inferior institutions and required multiple concessions before the membership was granted, the overall disciplining process for the Western Balkans was wider in scope and deeper in breadth. As a direct response to the ethnic conflicts, which further alienated the EU from the Balkans

²⁴ Radio i Televizija Crne Gore (Radio and Television of Montenegro).

²⁵ "Mechanism: Promised Land".

as its wild and barbaric periphery, institutions in the Western Balkan countries were not trusted. Before starting the negotiations, the component of war crimes prosecution and cooperation with the ICTY had to be fulfilled, which broadened the scope of the civilising mission in the Western Balkans.

Corruption fight requirement, important across all rounds of the enlargement, showed how the EU took a much stricter attitude towards Croatia and the Western Balkan countries than towards the countries of the earlier Eastern enlargement such as Czech Republic, Poland and Slovakia, where the EU also perceived corruption to be a serious problem (Grubiša, 2011). Although corruption indices suggested corruption control was on a similar level in the Western Balkans (average) as in Romania and Bulgaria, while Croatia and Montenegro to an extent had even better scores, accession negotiations with the two countries progressed with fewer interruptions than with Croatia as the fastest among the Western Balkan group.

Figure 2 (see page 55) showed that already in 2000 Croatia received a better score on control of corruption indicators devised by the World Bank than Romania and Bulgaria (World Development Indicators, 2014). Moreover, during the entire period, but especially at the end of 2003 (end of Račan's coalition government) the indicator suggested control of corruption in Croatia was on a similar level as in Slovakia, Czech Republic, Poland, Latvia and Lithuania. Moreover, Bulgaria and Romania since the 2007 enlargement receive a score that is remarkably similar to the Western Balkan average and Montenegro individually. However, the Western Balkan average was significantly lower than the average of the CEE and Baltic countries (EU10), explaining why the EU considered a deeper civilising mission was required.

While CEE and Baltic countries proved more successful in building new institutions, the results of Bulgaria and Romania were less impressive. Literature suggested that Romanian and Bulgarian accession was a political decision and that the accession carrot did not provide sufficient incentives to root out corruption (Rapački & Próchnia, 2009). It was obvious the two countries were not ready, but the EU did not want to renege on the promise after deferring the membership to 2007. Moreover, it was considered better to have the two countries under control and the best way was to have them in the Union (*ibid.*). The EU was concerned not to break its promise on Bulgarian and Romanian accession date, but had no difficulties postponing the start of the EU talks in the Western Balkans. While corruption in Romania and Bulgaria was on a higher level than in Croatia and on a similar level like in the Western Balkans, the EU perceived the Western Balkans as the *dark side within* (Todorova, 1997) and hence as a difficult case where stricter disciplining should be applied.

Tentative Conclusions: Transitioning between Periphery and Europe through Disciplining Feedback/Dialogue

The article discussed the disciplining feedback/dialogue between the EU accession countries Croatia and Montenegro and the EU. We analysed how the EU's subjective assessment of the country's institutions and accession country's nesting orientalism in terms of corruption control and war crimes prosecution affected the disciplining feedback/dialogue relationship. Croatia and Montenegro are the most successful Western Balkan countries, but have reached this position through a different disciplining process.

Croatian nesting orientalism, combined with nationalism, led the EU to force a tough civilising mission. Croatia, eager to escape the Balkans, saw the EU enlargement process as a chance to take a better position within the European hierarchy and did all it took to convince the EU of its rule of law institutions. The feedback included real concessions though the final evidence of Croatian progress, prosecution of the former Prime Minister Ivo Sanader, has dubious elements of theatrics.

Montenegrin nesting orientalism occurred upon rejection of Serbian nationalism at the end of the 1990s. Milo Đukanović's turn towards the EU and his victory over pro-union oriented Bulatović ensured him a privileged treatment and resulted in a favourable assessment of the need for a civilising mission in Montenegro.

Mild disciplining and the EU's willingness to look the other way while DPS ensured its domination through controversial means, led to slacking in terms of corruption control. For a prolonged period self-civilising failed to include areas which might jeopardize the ruling elites and included mostly theatrics. However, the EU signaled it would halt the negotiations if Montenegro failed to offer concessions in self-civilising corruption control. Assessing that progress in accession would not be possible without "a large sacrifice on the altar of the anti-corruption fight, an excellent choice imposed itself" (Radulović, 2015).

The article suggests that the civilising mission in the Western Balkans is wider and deeper in comparison to measures applied in the 2004 and 2007 enlargements. I argue that EU's assessment of inferior institutions led to a more encompassing disciplining process, while Western Balkan countries' desperation to change their position within the entity of Europe's *other* led Croatia and Montenegro to outstanding self-civilizing acts.

The argument advocated in the article is that the EU's attitude towards Western Balkan countries was one of building institutions, as the existing ones were seen as unfit for the EU's civilization standards. Jeremy Pope said that *combating corruption is not an end in itself; it is not a blinkered crusade to right all the wrongs of the world*. However, in the case of the Western Balkan countries, the approach of the

EU was exactly such. The EU approaches its Western Balkans periphery from an elevated position (Melegh, 2006) and seeks to reform it by dealing with the barbaric savagery of the Yugoslav wars through war crimes prosecution requirement and by building good governance through anti-corruption institutions.

Finally, the article aimed to contribute to the literature by outlining the transitional elements of the EU enlargement as accession countries in the negotiations attempt to leave the spaces of the periphery and stop being Europe's *other*, by becoming part of Europe proper. Not only is the accession to the EU a transition process for the candidate countries, but also for the European Union, which continuously re-builds its identity by accepting new members.

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