

Christian Menz

Explaining Croatia's (non) compliance with EU conditionality on ICTY cooperation

Do external incentives make the difference?



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List of Acronyms

AFP	Agence France-Presse
BBC	British Broadcasting Corporation
BCHR	Belgrade Centre for Human Rights
BTI	Bertelsmann Transformation Index
CARDS	Community Assistance for Reconstruction, Development and Stabilization
CEE	Central and Eastern Europe
CFSP	Common Foreign and Security Policy
CNN	Cable News Network
DC	Democratic Center
DS	Democratic Party (<i>Demokratska Stranka</i>)
EBRD	European Bank for Reconstruction and Development
EIM	External Incentives Model
ENP	European Neighborhood Policy
EU	European Union
FRY	Federal Republic of Yugoslavia
FYROM	The Former Yugoslav Republic of Macedonia
GAERC	General Affairs and External Relations Council
HDSSB	Croatian Democratic Council of Slavonia and Baranya (<i>Hrvatski Demokratski Sabor Slavonije i Baranje</i>)
HDZ	Croatian Democratic Union (<i>Hrvatske Demokratska Zajednica</i>)
HND	Independent Croatian Democrats (<i>Hrvatski Nezavisni Demokrati</i>)
HNS	Croatian People's Party (<i>Hrvatska narodna stranka</i>)
HSLs	Croatian Social Liberal Party (<i>Hrvatska Socijalno-Liberalna Stranka</i>)
HSP	Croatian Party of Rights (<i>Hrvatska Stranka Prava</i>)
HSS	Croatian Peasant Party (<i>Hrvatska Seljačka Stranka</i>)
HSU	Croatian Party of Pensioners (<i>Hrvatska Stranka Umirovljenika</i>)
ICC	International Criminal Court
ICG	International Crisis Group
IDS	Istrian Democratic Assembly (<i>Istarski Demokratski Sabor</i>)
ICTY	International Criminal Tribunal for the former Yugoslavia
IMF	International Monetary Fund
IPA	Instrument for Pre-Accession
IR	International Relations
ISPA	Instrument for Structural Policies for Pre-Accession
KNS	Coalition of People's Agreement
LDP	Liberal Democratic Party (<i>Liberalno Demokratska Partija</i>)
LS	Liberal Party (<i>Liberalna Stranka</i>)
NATO	North Atlantic Treaty Organization
NYT	The New York Times
OSCE	Organization for Security and Co-operation in Europe
PfP	Partnership for Peace
PHARE	Poland and Hungary: Aid for Restructuring of the Economies
RA	Regional Approach
RFE/RL	Radio Free Europe / Radio Liberty
SAA	Stabilization and Association Agreement
SAP	Stabilization and Association Process
SAPARD	Special Accession Programme for Agriculture and Rural Development
SDP	Social Democratic Party of Croatia (<i>Socijaldemokratska Partija Hrvatske</i>)
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Program
UNSC	United Nations Security Council
US	United States
USA	United States of America
WB	Western Balkans

1. Introduction

For the positive experience with tying progress in negotiations with progress in reform in Central and Eastern Europe (CEE) the European Union (EU) made its membership offer to the Western Balkans (WB) countries conditional on specific democratic principles, most notably (full) cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and respect for the Dayton Peace Accord.¹ Yet, although EU membership is regarded as highly attractive both for political elites and the general public in the region, the erratic record of compliance with ICTY-related EU conditionality raises questions about the EU's ability to provide for 'rule transfer' and 'norm diffusion' in the current enlargement round and poses a puzzle to scholars of international relations and EU enlargement alike.

As I will demonstrate for the case of Croatia, both the Račan (2000-2003) and Sanader governments (since 2003) have seen many ups and downs of ICTY cooperation. The core question this study addresses is: What factors explain variation in Croatia's compliance with ICTY-related EU conditionality? The investigation period sets in with the democratic turn in 2000 and ends in December 2005, when the last remaining indictee left for The Hague. To provide for a systematic and theoretically informed analysis, the study will be oriented by the hypotheses and variables of the rationalist 'external incentives model' (EIM) (Schimmelfennig/Sedelmeier 2004; 2005a). The EIM has been labeled the "most refined theoretical approach" with the "strongest explanatory power" regarding EU 'rule transfer' to third countries (Trauner 2009: 776-777).² Schimmelfennig has already applied the EIM to the enlargement round in the WB, stating the model's "continuing relevance" based on his findings that high and credible EU incentives as well as domestic adoption costs would still be the most important factors concerning compliance with EU conditionality (Schimmelfennig 2008: 918, 932-933). However, in his inquiries compliance with ICTY-related conditionality has been given limited attention only on a few pages as a (small) part of broader analyses (Schimmelfennig et al. 2006: 78-96; Schimmelfennig 2008). Moreover, in recent examinations it has been doubted whether the EIM as a rationalist model would be an adequate framework for the explanation of (non)compliance with ICTY conditionality (Freyburg/Richter 2010; Rajkovic 2007). Nonetheless, these studies – even though they refer to the EIM – build on research designs different from that of the EIM. Apart from that, there have been numerous examinations of ICTY cooperation of the concerned WB target states,

¹ Western Balkans is the official EU term for the countries of former Yugoslavia minus Slovenia, yet including Albania.

² Third country means any country that is not a member state of the European Union.

but for the most part they have not been theoretically informed and thus remained descriptive. For these reasons, the EIM will be taken as the overall framework for analysis.³

The theoretical part of this paper starts with a short general overview of the literature on external factors of democratization and their impact on the domestic level. Subsequently, the external governance approach will be outlined as an adequate concept to detect the mechanisms underlying EU policy transfer and norm diffusion to third countries. Moreover, the logics of rationalist and constructivist theoretical reasoning will be pointed out in order to illustrate the underlying assumptions of the EIM. Thereafter, the current state of empirical knowledge on (non)compliance with EU conditionality will be discussed and existing research gaps identified. The empirical section is guided by the assumptions of the EIM and uses process-tracing to identify crucial factors that could explain Croatia's inconsistent pattern of compliance with ICTY conditionality. In the conclusion, the main findings will be examined against the background of recent research on compliance with ICTY conditionality that at least partly rejects rationalist assumptions preferring constructivist reasoning instead.

2. Theoretical foundations and current state of research

2.1 Theory and development of hypotheses

2.1.1 The role of external factors in democratization research

Having turned more or less a blind eye to it before, in the beginning of the 1990s scholars in the field of democratization research started to take into account external factors (cf. Grugel 2005). However, “the international dimension of democracy promotion nonetheless remains at best understudied and poorly understood” (Schraeder 2003: 22). There is a lack of systematic, theory-driven research about the interaction and interdependence of internal and external factors as well as about under which conditions external actors are able to influence domestic reforms and ‘transfer’ their rules (cf. Magen/Morlino 2009: 11-12). The limited number of thorough empirical and theoretical studies on internal-external linkages of democracy promotion can partly be ascribed to the rather isolated disciplines of international relations (IR), comparative politics, institutionalism and international law which resulted in “largely separate, independent and self-contained spheres of inquiry” (Magen/Morlino 2009: 11). While IR scholars have often neglected the domestic scene, political comparativists have tended to fade out the role of external actors and ideas (cf. Flockhart 2005b: 2-10; Moravcsik

³ Nonetheless, my goal is not to falsify the empirical validity of the EIM, since “contrary to naïve Falsificationism, no experiment, experimental report, observation statement or well-corroborated low-level falsifying hypothesis alone can lead to falsification” (Lakatos 1978: 35).

1993: 5-17; Whitehead 2004: 139-141; Yilmaz 2002; however see Cooley 2003; Levitsky/Lucan 2006). Concerning the latter, as a sub-discipline of comparative politics, the transition literature provided valuable input to the understanding of domestic democratization processes. It elaborated on crucial systemic factors for processes of liberalization, institutionalization and consolidation, such as the party system or the constitution (e.g. Birch 2003; von Beyme 2001; Bunce 2003; Elgie/Zielonka 2001). Moreover, important insights were provided on the political economy of negotiation processes between incumbent elites and reformers during regime change (e.g. Haggard/Kaufmann 1997; Przeworski 1991) and the significance of 'state-building' and 'nation-building' as a precondition for democratic consolidation (e.g. Linz/Stepan 1996). Regarding the links between the domestic and the international scene important contributions have been made within the IR discipline. The 'second-image reversed' theory⁴ (Gourevitch 1978) from IR research has provided a highly valuable framework to study how systemic factors of the international system influence political outcomes at the level of nation states (cf. Pevehouse 2005: 4). Putnam (1988) finally combined the international and domestic scene in his 'two-level approach' which assumes that domestic actors have to calculate costs and benefits at different "playing fields" with different "win sets" both in international negotiations and in domestic politics. Nonetheless, the literature on external democracy promotion predominantly takes the point of view of those countries actively engaged in anchoring democracy abroad – their motives, instruments and strategies – rather than looking at the experiences and effects in the target states or the internal-external linkages of democracy promotion (cf. Magen/Morlino 2009: 12).

The recent eastern enlargement of the EU as a natural experiment enabled researchers to investigate the links between the domestic and international sphere in more detail. Yet although eastern enlargement has been subject to countless analyses, for to the most part they remained descriptive or methodologically weak (cf. Schimmelfennig/Sedelmeier 2005d: 4). Nonetheless, increasingly sophisticated book-length research projects helped to identify crucial variables which influence processes of EU 'rule transfer' to third states, be it via enlargement (Grabbe 2006; Kelley 2004a; Linden 2002; Schimmelfennig 2003; Schimmelfennig/Sedelmeier 2005a; Schimmelfennig et al. 2006; Vachudova 2005), in the context of pre-accession negotiations (Blockmans 2007; Richter 2009b) or via the European

⁴ The abstract concept of the 'second-image-reversed' theory goes back to the 'three images' theory by Waltz (1959) who elaborated on the determinants of war. He distinguished between a first level of individual statesmen ("first image"), a second level of individual nation states ("second image") and a third international or "systemic" level (systemic causal factors, that is the "third image"). While Waltz elaborated on each of the three different causal mechanisms, the third image built the backbone of his argumentation. Gourevitch (1978), on the other hand, did not focus on domestic causes and international effects ("second image"), but instead on international causes and domestic effects ("second image reversed").