

The EU's Paternalistic Approach to the Integration of the Western Balkans – Border Disputes as a New Conditionality: Case of Prevlaka

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Abstract: *In February 2018, the European Union (EU) announced the Strategy for the Western Balkans' European integration that introduced a new momentum in the conditionality policy, which has the potential to decisively impact the pace and success of enlargement process. That addition to the conditionality policy concerns requirement to settle any open border issues prior to accession to the EU. Thus, this paper is assessing how border disputes could impact the integration processes of countries of the region in the light of the new conditionality. In addition, it will discuss one particular open border dispute in the Western Balkans involving the most advanced candidate country in the accession process (Montenegro) and the youngest member country (Croatia) over the Prevlaka peninsula.*

Keywords: *European Union, Western Balkans, Conditionality Policy, Border Disputes, Montenegro, Croatia, Prevlaka*

Introduction

In the region where relations between countries, communities and people are overwhelmed with ethnic and nationalist tensions, burdens from the ferocious conflict in the last decade of the 20th century, social and economic stagnation and deprivation, political clientelism and cronyism, widespread corruption and organized crime, popular discourse of political elites of the Western Balkans have only one distinct similarity and common position: declarative objective of Europeanization of the society and subsequent integration in the European Union (EU). In addition to the political elites' perspective, the same could be applied to the public opinion in the region that is ideologically polarized between Western, Eastern or even Oriental value system and model of society, however various longitudinal analysis indicates that firm majority supports the integration to the EU. Moreover, the European and Euro-Atlantic integration processes in the region contain a geopolitical dimension due to strategic political, economic or ideological interests of global powers, such as the United States, Russia, Turkey, China or Gulf states. On the basis of profoundly turbulent history of the Western Balkans³ and complex economic, social, ethnic and religious setting, external actors are exploiting the fertile ground for

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² This article was submitted to RJE editors on 18 March 2019.

³ Interesting remark was given by Winston Churchill, who stated that the Balkans produces more history than they can consume.

projecting their specific interests related to the region, which is further being reflected on the subject matter that concerns this paper – the process of integration to the EU.

Contemporary scholarly literature concerning the region of Western Balkans consists of vast researches in the domain of European integration. Many are questioning the EU's policies towards the region that was particularly in previous years characterized by ambivalence, inconsistency and with no clear vision how to address number of open disputes and achieve tangible progress in terms of accession to the organization. One can argue that the change in geopolitical landscape impelled the EU to more decisively cope with profoundly complex regional issues. However, one can argue that the EU's approach is still genuinely bureaucratic and monolithic, while Brussels' administration does not take into consideration specific historical development and contemporary ethno-nationalistic composition that permeates societies of the Western Balkans, which was, among others, confirmed most recently by the results of Macedonia's referendum.

The tectonic dissolution of the former Yugoslavia as a by-product created many border disputes that are profoundly difficult to settle. In addition, political elites often instrumentalise open border issues in the function of internal political aims and/or reinforcing national cohesion. Even though present border disputes in the Western Balkans are burdened with the diverse historical heritage, the EU in its Strategy for the region since February 2018 introduced the condition that borders have to be defined prior to becoming the full-fledged member of the organization. However, this new element has the potential to tighten already fragile relations among the countries, as well as to - subsequently - further prolong the accession of new member states. Hence, in addition to necessary substantial progress in terms of rule of law, fight against corruption and organized crime, and functional market economy, the requirement to settle open border disputes takes the position at the forefront of the process of European integrations of the Western Balkans.

Following the new EU's Strategy for the Western Balkans, the contemporary literature on the region and the European integration process has to particularly shed light on the nature of ongoing border disputes in order to anticipate future of the enlargement process. Having in mind that Montenegro is the front-runner in the region in terms of pace of integration process⁴ and most likely the one to be the next member state of the EU, its example on resolving open border dispute will be exceptionally valuable in understanding the nature of this new EU's conditionality. Therefore, it is of the utmost importance to comprehend the dispute over the Prevlaka peninsula between a member state and a candidate for membership – Croatia and Montenegro. In this paper I will not address the international law dimension of the dispute, which is certainly an important element of future process of resolving, rather I will discuss this issue from the International Relations perspective.

Thus, this paper is focused on disclosing the EU's position towards the border disputes in the context of enlargement policy, the relation between two countries concerning the activities towards nowadays status quo and the role of international

4 On 10 December 2018 Montenegro opened new negotiating chapter bringing to total of 32 opened chapters, while three are provisionally closed. Other countries in the region are significantly lagging behind, thus Serbia opened 16 negotiating chapters and two are provisionally closed, while Macedonia and Albania, as candidate countries, did not commence with negotiating process. Bosnia and Herzegovina and Kosovo do not have a candidate status yet.

community in the border dispute. In addition, I will briefly compare the case of Prevlaka with the border dispute over Piran between Croatia and Slovenia, particularly with respect to the stance and reactions of the EU in order to identify and underline differences between the two cases concerning the EU's position. Hence, the primary objective of this paper is to understand the new EU's conditionality in the context of border dispute over Prevlaka, as well as to attempt to indicate the most viable route towards settling the issue, which could serve as a lighthouse for other open border dispute in the Western Balkans.

Resolving border disputes as a new concept of the EU conditionality

In the scholarly literature on the EU integration, the term "Europeanization" has been foremost used to describe change in the internal affairs of member and non-member states. Gradually, the concept of "conditionality" was introduced to determine the impact of the EU, particularly within the scope of analysis of the integration processes of the Central and East European countries (Schimmelfennig and Sedelmeier 2005). In order to operationalize the analysis, conditionality has to be deconstructed and defined. Hence, the EU's conditionality represents a policy according to which states fulfill required conditions with an aim of acquiring certain external incentives from the EU – in the context of the enlargement it is often understood in terms of financial assistance, advancement in the integration process or membership (Schimmelfennig 2008; Trauner 2009). Furthermore, a policy of conditionality is at the core of the EU's policy towards states that aspire to become members of the organization (Sasse 2008).

Schimmelfennig and Sedelmeier (2004) argue that the governance model could also be used to understand the EU's external policy, particularly in the domain of conditionality policy (Friis and Murphy 1999). On the basis of instruments of the EU's external policy, states aspiring to become members of the EU conducted a widespread restructuring of domestic institutions and public policies, while pursuing standards on democracy, human rights and peaceful conflict management (Schimmelfennig 2008). An important segment of the conditionality policy represents "institutionalization" process, i.e. transposition of EU norms – *acquis communautaire* - into domestic legal system, restructuring institutions and modification of political practices, in line with the EU requirements (Schimmelfennig and Sedelmeier 2004).

In addition to the Thessaloniki Summit in 2003, when the EU expressed unequivocal support to the European perspective of the Western Balkan countries (EU-Western Balkans Summit 2003), none Brussels' decisions was expected with such enthusiasm and uncertainty as the announcement of the EU strategy for the region, titled "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans." And the results were fairly similar as expected: region acquired a limited enthusiasm and considerable uncertainty regarding the enlargement process. Enthusiasm is being established on a fact that for the first time some EU official document contains a provisional time frame for concluding the accession process by stating that Montenegro and Serbia have a chance to becoming full-fledged member states of the EU by 2025. On the other hand, uncertainty is being spread through the region due to introduced additional elements of the already noticeably criticized EU conditionality policy, which was often a segment of the discourse of conservative and nationalistic political elites when they were condemning Brussels' administration for rigorously and bureaucratically

taking away the European perspective for their citizens.

The EU Strategy from February 2018 defined a new momentum in the European integration of the Western Balkans that could decisively impact the pace of accession process. Namely, following is stated: “The EU’s enlargement policy must continue to export stability. Therefore the EU cannot and will not import bilateral disputes. They must be solved as a matter of urgency by the responsible parties” (European Commission 2018). Thus, it is plainly indicated that the enlargement policy is in Brussels unequivocally associated with settling the open border disputes in the region. Hence, the conditionality policy encompassed an element of relations between countries in the Western Balkans that is profoundly burdened with the troubled legacy of the region. Moreover, one can argue that this new element of the conditionality policy strengthens the position of conservative and nationalist forces of the Western Balkans’ societies and has the striking potential to prolong the accession to the EU which would produce further deepening of the existing ethno-nationalistic trenches and fuel already fragile state of relations.

In the second part of the Strategy it has been written that “all countries must unequivocally commit, in both word and deed, to overcoming the legacy of the past, by achieving reconciliation and solving open issues well before their accession to the EU, in particular border disputes” (European Commission 2018). Again the EU’s approach towards open regional issues confirmed profound paternalistic and bureaucratic approach and genuine misreading of mere nature of border disputes and the complex ethno-nationalistic state of relations between and within countries. Two arguments have to be introduced in order to comprehend the decision to include resolving border disputes in the already complex enlargement web. First of them corresponds to broader internal problems within the EU and apparent division among the member states regarding the vision of enlargement. Thus, one could argue that introducing exceptionally complicated matter, such as border disputes, are as a condition in the already demanding agenda of European integrations in the function of the EU’s internal political agenda. Hence, authors of the conditionality policies bought certain time for the decision-makers in the EU and member states to search for the consensus regarding the future EU enlargement since current status is characterized by a considerable division among member states. First bloc, mainly consisting of Central and Eastern European countries, vigorously advocates a prompt accession of the candidate countries on the basis of geopolitical reasoning, while group of ‘old’ member states, primarily France, Netherlands and Germany, are raising concerns with reference to good governance, rule of law, organized crime and wide-spread corruption. Moreover, French President Emmanuel Macron outspokenly indicates that the EU has to foremost conduct internal reforms in order to achieve necessary level of preparedness to accept new member states (Peel 2018).

Another argument for introducing border disputes as a new element of conditionality policy towards the Western Balkans’ countries lies in Brussels’ negative experience with ongoing border dispute between its two member states – Slovenia and Croatia – that nowadays generates significant difficulties for the EU’s administration. Namely, Croatia joined the EU in 2013 despite the open border issue with neighbouring Slovenia and five years later relations between two EU member states are more strained than ever before. Furthermore, President of the European Commission Jean-Claude Juncker stated on the Munich Security Conference in 2018 that “there are many border

disputes in the Western Balkans and they must be resolved before we can go a step further”, while criticizing why border dispute between Slovenia and Croatia was not addressed and resolved before they became members of the European club (Shalal and Escritt 2018). Hence, current Brussels’ administration will not import another Western Balkans’ border dispute, thus based on the stick and carrot approach the EU is demanding from the candidate countries to resolve open border issues in return for membership card (after all other conditions are fulfilled as well). Thus, this paper will attempt to make a contribution in terms of understanding one of ongoing open border disputes in the Western Balkans concerning the most advanced country in the integration process – Montenegro – and the country that joined the EU in the last enlargement round – Croatia. The empirical evidence will be streamlined by the historical research method and comparative analysis of two border disputes in the region of Western Balkans.

Among scholarly literature on the EU’s policies, it has been broadly emphasized that a credible EU membership perspective is indispensable for countries aspiring to become member states, in order to conduct substantial envisaged reforms (Schimmelfennig 2008). However, additional requirements in terms of resolving regional border disputes, which are heavily burdened with ethno-nationalistic tensions, historical circumstances and legal complexity, could diminish the credibility of the conditionality policy and, ipso facto, impact the effectiveness of other reforms in line with the EU’s *acquis communautaire*.

Western Balkans’ border disputes – case of Prevlaka

The dissolution of the Socialist Federal Republic of Yugoslavia left many open border issues among the successor states that have been often further instrumentalized for internal political needs, strengthening tribalism and fuelling ethno-nationalistic sentiments. Concerning Prevlaka issue, in order to coherently follow evolution of the dispute, at the very beginning one has to acknowledge that legal subjects in the dispute changed during the time. Namely, Croatia was from the beginning one party in the dispute, while at first the Federal Republic of Yugoslavia had a legal capacity as the other party, than in 2002 the State Union of Serbia and Montenegro took its place, while finally Montenegro became the party of the dispute after the proclamation of independence in 2006.

Prevlaka peninsula, or as it was used to be called Cape Ostro, is located in the southern Adriatic at the entrance of the Bay of Kotor, with an area of 5.24 kilometres, 2.5 kilometres length and 460 meters width, and for the most part is not inhabited. However, this small peninsula is of pivotal importance for both Montenegro and Croatia since it controls the entrance to the Bay of Kotor, which is also the reason why it is known as the Boka doorstep. As a narrow and elongated land barrier, Prevlaka closes the west side of the entrance to the bay and secures a protection from invasion by high waves from the open sea of Adriatic.

Geography has determined and history confirmed Prevlaka’s military and defensive role, due to its exceptional strategic position, on first place as a hinterland for Dubrovnik, Konavle and Boka (Mazalin and Faričić 2013). As it was indicated, control over the entrance to the Bay of Kotor generates an essential value of the peninsula, since it provides direct look to the Strait of Otranto. Austro-Hungarian authorities in 19th

century have recognized the irreplaceable strategic position of this peninsula, thus on suggestion of general Lazar Mamula (after whom the island Mamula later was named) they had built a fortress on the Punta d'Ostro, along with the adjoining fortress on an island of Mamula in order to military control and oversee the area (Mazalin and Faričić 2013).

Figure 1. Map of Prevlaka peninsula (Geospatial Information Section 1999).



Based on the map by The Cartographic Section of the United Nations, No. 4306 / April 1999 (McKay)

It is important to underline that the Kingdom of Serbs, Croats and Slovenes treated Prevlaka as its common interest and it was not specified by internal delineation within the framework of the Anti-Fascist Council for the National Liberation of Yugoslavia (AVNOJ), even though at the beginning the peninsula was part of Zeta banovina, which was one of the nine provinces of the country between 1929 and 1941 (Šahović 2002). Afterwards, in the Socialist Federal Republic of Yugoslavia, Prevlaka peninsula was under special regime of Yugoslav People's Army (JNA) who was entitle to monitor the entrance in the Bay of Kotor, while the access to the peninsula was forbidden because of the coastal artillery installations (Šahović 2002). Moreover, during the development of the military program, additional nationalization of land was executed and it served for building the underground catacombs, which mere purpose is still the topic of different historical interpretations. However, neither Montenegro, nor Croatia had withdrawn its administrative line on this particular area during the process of creation of federative Yugoslavia, which provided a basis for the border dispute this paper is discussing. In order to underline the importance of that omission one should bear in mind that the Badinter Commission in one of the opinions defined that administrative lines between former Yugoslav republics are to be recognized as interstate borders (Radan 1997).

The fragmentation of Yugoslavia has launched a geostrategic competition

between the Federal Republic of Yugoslavia and the Republic of Croatia, which, on the one hand, was formulated through the border dispute over Prevlaka within the dominant discourse that this territory represents a threat for security. The border issue emerged on the day Croatia proclaimed its independence, which led to the act of aggression of JNA that closed and destroyed Debeli Brijeg (border crossing) in the area of Prevlaka (Marijan 2001). The reason why JNA was so firm not to allow Croatian effective control over the peninsula dominantly builds on the mentioned argument that from the end of 1950s Prevlaka was under their special regime. Moreover, Prevlaka was strategically important point for military actions on Konavle.

The Montenegrin authorities appealed for formal initiative for demarcation of the existing territorial border with Croatia in order to determine delimitation on the sea. However, the settlement of border disputes was transferred to the international community. The Badinter Arbitration Committee acknowledged *uti possidetis* principle as a ground for future delimitations, thus following four principles were declared:

- All external borders must be respected;
- The former boundaries cannot be changed, except in the case of a joint agreement;
- The former boundaries become international borders protected by international law;
- Boundaries that are revised violently will not be legally respected (Perazić 1996).

Evolution of the border dispute

The bilateral issue under scrutiny had a significant international component particularly during the last decade of the 20th century. Having in mind the intensity and ferocity of the conflicts at the territory of the former Yugoslavia, the international community timely undertook actions concerning the Prevlaka issue, thus the so-called Vance plan was designed to exercise a ceasefire and to demilitarize parts of Croatia (including Prevlaka) that were under control of the Croatian Serbs and JNA. In addition, the peace plan provided a basis for the return of refugees and established conditions for further negotiations for permanent political settlement of the conflict. In accordance with the Vance plan and under the firm pressure of the international community, Presidents of the two states, Franjo Tuđman and Dobrica Ćosić, signed the Joint Declaration on 30 September 1992 and agreed to withdraw JNA from Prevlaka until 20 October 1992 (United Nations 2000).

Furthermore, the United Nations (UN) adopted its first Resolution on this matter in October 1991 and authorized the United Nations Protection Force (UNPROFOR) to assume responsibility for monitoring the demilitarization of the Prevlaka peninsula on the foundations of the Chapter VII of the UN Charter (Krstićević 1998). After the UNPROFOR concluded the mandate, the Security Council gave authorities to the United Nations Confidence Restoration Operation in Croatia (UNCRO) with the Resolution 981, dated on 31 March 1995. The UNCRO was entrusted to monitor the envisaged demilitarization of the Prevlaka peninsula (Marnika 1998). However, the UNCRO finished the mission in January 1996, but the Secretary-General recommended to the Security Council to continue with monitoring of the demilitarization of Prevlaka. Thus, the Resolution 1038 established the United Nations Mission of Observers in Prevlaka (UNMPO) and 28 involved observers were assigned to continue monitoring the

demilitarization of the Prevlaka peninsula for a period of three months (Neysmith 1998). As indicated in the following figure, the demilitarized territory on the borders of both states was divided into yellow and blue zones. In the yellow zone no military forces were allowed and control was exercised by the police forces of Montenegro and Croatia, while in the blue zone only UN observers were permitted to enter.

Figure 2. Map of the demilitarized zone in Prevlaka (Arnaut 2013).



However, despite the commitment and actions of the international community, a vital precondition for the peaceful settlement of the Prevlaka issue was enshrined in the Agreement on Normalization of Relations between two states, which was signed on 23 August 1996 and according to which both countries committed to resolve the dispute through negotiations in the spirit of the Charter of the United Nations and good-neighbourly relations (Agreement on Normalization of Relations between the Federal Republic of Yugoslavia and the Republic of Croatia 1996). However, interpretations of the nature of subject matter in the dispute differs, therefore Croatia insisted that the Prevlaka issue concerns security matters, while Yugoslavia perceived it as a question of territorial division. While the border dispute over Prevlaka continued to burden relations between two countries, in 1998 Croatia had submitted to Yugoslavia draft of the Agreement on temporary solutions in this area. The text of the Agreement included following: demarcation of the existing international territorial border; temporary opening of border crossing Debeli brijeg and Konfin; delimitation of border on sea; asymmetric demilitarization in the proportion of 1:2.5 in favour of Yugoslavia in the period of 5 years

and confirmation of current state by the Joint commission (Permanent Mission of the Republic of Croatia to the United Nations 1999). On the other side, Yugoslavia's proposal included delimitation of border on sea; Prevlaka is to be used only in for peaceful purposes with the possibility for permanent demilitarization; temporary border crossing will be established on the line Herceg Novi – Sutorina – Dubrovnik, while the specific regime of border crossing will be established for parties in dispute (Permanent Mission of the Republic of Croatia to the United Nations 1999).

Lacks of political will of Belgrade's administration to conduct negotiations in *bona fides* (rejecting the prepared documentation from the opposite party, postponing the meetings, etc.) was the reason why Yugoslavia was being criticized for slowing down the negotiation process. One has to keep in mind specific political situation in Yugoslavia in that period, which also had impacted the border dispute over Prevlaka. Namely, year of 1997 was a breaking point in relations between authorities in Podgorica and Belgrade when, following the break-up in the ruling Democratic Party of Socialists, presidential elections were held that year between pro-Milosevic candidate Momir Bulatović and Milo Đukanović. After the controversial elections, Đukanović was elected for President and authorities in Podgorica gradually began to distance from Belgrade's foreign policy. That was also evident in the border dispute with Croatia when Montenegrin authorities boycotted two final rounds of negotiations, because of disagreement with the position of Milošević who constantly opposed to the proposal to open borders between Montenegro and Croatia. Furthermore, Montenegro opened the border crossing Debeli Brijeg in November 1998 for the Roman Catholic All Saints holiday, while administration in Belgrade was vocal that unilateral activities will only hamper the negotiation process (Thompson 2014).

After the removal of Milošević in 2000, the negotiations were in better condition, thus a process of consultations between two parties led to the creation of the Joint Interstate Diplomatic Commission in December 2001, which was tasked to develop a common agenda for resolving the Prevlaka dispute (United Nations Mission of Observers in Prevlaka 2002). During the next year the Commission and its sub-commission met on regular basis and by April 2002 they had reached an agreement to inform the President of the Security Council that they are negotiating in an atmosphere of mutual confidence and respect, which provided a basis for the establishment of comprehensive cross-border regime (United Nations Mission of Observers in Prevlaka 2002).

A pivotal moment for the current state of border dispute over Prevlaka occurred on 10 December 2002 when two parties reached and signed the Protocol on the Interim Regime along the Southern Border between the Two States, with which the UNMOP's mandate ended (Protocol on the Interim Regime along the Southern border between Two States 2002). Concerning the land boundary, the Protocol defined that Croatia shall temporarily exercise jurisdiction over land areas southwest of Konfin, while other party will have jurisdiction over land areas north of Konfin (Protocol on the Interim Regime along the Southern border between Two State 2002, article 4). In addition, the Protocol envisaged complete demilitarization within five kilometres on the Croatian side and three kilometres on the Montenegrin side, along with issues such demining, cross-border movement, the customs regime applicable, search and rescue at sea, marine ecology and cooperation in tourism (Schofield *et al.* 2013).

Concerning the maritime jurisdiction and delimitation envisaged by the Protocol, different solutions are proposed within and outside the Bay. Hence, the Protocol defined a zone west of the straight line that stretches from Konfin to a point three cables away from Cape Ostro on the line connecting Cape Ostro and Cape Veslo where joint police units may patrol, while no military vessels are allowed to enter (Protocol on the Interim Regime along the Southern border between Two State 2002, article 5). In addition to the defined zone, the Protocol determined that naval vessels of Montenegro may not conduct exercises, demonstrate force, take on board or dispatch aircraft, stop or anchor, and its submarines must navigate on the surface and always show their flag, while Croatian naval vessels cannot even enter the area (Protocol on the Interim Regime along the Southern border between Two State 2002, article 15). Moreover, it is important to note that the Protocol between states defined a temporary delimitation of the territorial sea beginning from the three point cables away from Cape Ostro on the Cape Ostro - cape Veslo line and continues in a straight line for 12 nautical miles along the azimuth of 206 degrees to the High Sea (Protocol on the Interim Regime along the Southern border between Two State 2002, article 16). Thus, the Protocol established a temporary regime along the southern border that nowadays function as a de facto border line until the final conclusion and agreement is adopted by both states. On the basis of achieved progress, the Security Council authorized the UNMOP to continue monitoring the demilitarization of the peninsula for a final period of two months until 15 December 2002. Thus, in the final report concerning the UNMOP's work and activities, the Secretary-General welcomed the Interim protocol and noted that the parties sufficiently improved their bilateral relations so that an international monitoring mechanism was no longer required, demilitarization was not in question, and there was no risk of renewed hostilities (United Nations Mission of Observers in Prevlaka 2002). In the academic and broader community there is a consensus that the signed Protocol reduced tensions in the area that is strategically significant to both parties, thus it has prevented potential hostilities and until nowadays operates without



Figure 3. Map of Prevlaka Peninsula regulated under the Protocol of the Interim Regime along the Southern Border (Embassy of the Republic of Croatia to the Republic of France 2002).

major breaches or incidents in the disputed area.

Even though disputes in the Western Balkans are overwhelmed with ethno-religious tensions and historical burdens from atrocious conflicts in the 1990s, the example of open border question between Montenegro and Croatia demonstrates that regional border disputes contain an economic component as well. In addition to issues of fisheries and customs and fiscal policy concerning border dispute over Prevlaka, particular intention should be on one highly lucrative business - concessions for exploring oil and gas resources. Namely, few years back resolving of Prevlaka issue was unexpectedly swiftly returned and placed high on the agenda of political elites of both countries due to the expressed interest of potential investors to explore the existence of energy resources under the sea. Furthermore, in 2014 and 2015 the Prime Minister of Croatia criticized Montenegrin authorities for exploring oil and gas in the area that Croatia considers to be part of their territory, while the Montenegrin Government accused Croatia for breaching the 2002 Protocol since they have determined the tender for concession for maritime blocks in order to explore the energy potentials in the disputed area of 1.800 square kilometres that Zagreb claim as their continental shelf (Radio Free Europe 2014). Hence, since both states are eager to valorise potential oil and gas resources, this bilateral economic issue can further tighten and complicate the settlement of border dispute, while it could also represent a major obstacle for Montenegro's European integration.

Dispute over the Prevlaka peninsula gradually developed from the security domain - the dominant paradigm in the 1990s - to the economic in terms of energy potentials in the area, while nowadays it acquired a new European integration discourse. Hence, settlement of the border issue with Croatia became a necessary condition for Montenegro as a candidate country and it could significantly impact the pace of accession process. The mentioned EU Strategy for the Western Balkans state that "where border disputes are not resolved bilaterally, parties should submit them unconditionally to binding, final international arbitration, the rulings of which should be fully applied and respected by both parties before accession and taken into account in preparation of Accession Treaties" (European Commission 2018). In 2008 Montenegrin and Croatian Prime Ministers, Milo Đukanović and Ivo Sanader, announced that the border dispute over Prevlaka will be addressed before the International Court of Justice in Hague (Deutsche Welle 2008), however ten years later there is a standstill and no concrete actions have been undertaken. Furthermore, as indicated in the cited passage from the EU Strategy, if bilateral agreement is not concluded and ratified, rulings of the international arbitration should be applied before the moment of accession. That would mean that Montenegro and Croatia should conclude an agreement to refer the border dispute to the International Court of Justice, Permanent Court of Arbitration or some other instrument of international arbitration, finalize the proceedings, ratify and include the ruling in the domestic law system. Taking into consideration political, legal and technical complexity of every border dispute, along with specific attributes of this border issue in terms of historical burden and economic interest one can legitimately argue that this issue will be the most demanding to resolve on the European integration path of Montenegro.

Evolution of the EU conditionality – comparing Prevlaka and Piran border disputes

In order to further develop and elaborate an argument that the EU included settlement of border disputes as a new momentum in the 'flagship' conditionality policy, it should be considered how the EU addressed this issue in previous enlargement rounds. In that view the last EU enlargement is the most suitable for the comparison due to the fact that the most recent enlargement experience contains the highest level of similarity with the ongoing negotiations processes in terms of EU's requirements. Furthermore, the context of common history and the fact that both border disputes emerged at the moment of dissolution of former Yugoslavia make Prevlaka and Piran cases that are significant for comparative analysis. At the focus will be to discuss the border dispute between Croatia and Slovenia over Piran bay in the context of the European integrations, as well as to state significant differences in the EU conditionality policy concerning accession processes of Croatia and Montenegro.

The border dispute over Piran Bay acquired an international dimension during the process of Croatian accession negotiations in 2008 and 2009 when Slovenia, an EU member country, threatened to block Croatia to join the EU due to unresolved border issue. Namely, Slovenia raised concrete reservations on eleven chapters in Croatian negotiating process, since it was perceived as a prejudice to the definition of the border between two countries (Bickl 2017). Certainly, this bilateral dispute was not addressed on an equal footing, since Slovenia was in position to exercise powers as a member state and to promote their national interests by coercing Croatia to accept certain conditions in order to join the European club. It is important to underline in the context of the current EU conditionality discussed in this paper that the European Commission's progress report on Slovenia in 2000 recognized a settlement over the common State border as an outstanding issue (European Commission 2000). However, Slovenia managed to successfully finalize the negotiation process and become the EU member state without the final agreement over the open border issue with neighbouring Croatia.

The EU undertook a concrete and proactive approach and mediated in the border dispute between Slovenia and Croatia, which also represents a significant difference comparing to the current state of affairs concerning Prevlaka issue. Namely, Olli Rehn, the European Commissioner for Enlargement at that time, assumed the responsibility of a mediator in January 2009 with a mission to overcome and resolve potentially new frozen conflict in the Balkans. Thus, European Commissioner Rehn was conducting a shuttle diplomacy and often travelling from one capital to another in order to negotiate terms that could be accepted and respected by both parties. In addition, a Senior Experts Group was established to assist in drafting conditions acceptable by both states, while two proposals – Rehn I and Rehn II – were tabled in April and June 2009 respectively (Bickl 2017). Moreover, during the Swedish Presidency of the Council of the EU a great progress was achieved, thus in the remarkable diplomatic practice Slovenia and Croatia signed the Arbitration Agreement in Stockholm in November 2009 and the ceremony was attended by the Swedish Prime Minister Fredrik Reinfeldt. The Agreement envisaged that the border dispute would be resolved before the Permanent Court of Arbitration. After domestic ratification procedures, the Agreement was submitted to the UN Secretary General as a depositor in May 2011, while Croatia signed the Treaty of Accession

to the EU in December 2011. With the Arbitration Agreement Slovenian blocking of the accession of Croatia was avoided, however the dispute was still a major burden for relations between the two states. The final Arbitration Award was adopted in June 2017, however the Croatian side rejects to implement it due to the wiretapping scandal that was revealed in 2015 that disclosed telephone conversation and problematic consultations between the Slovenian member of the arbitration tribunal and the country's agent (The Slovenia Times 2018). Hence, Croatian representatives perceive the arbitration process as contaminated and categorically refuse to negotiate implementation of the Arbitration Award, while Slovenia in July 2018 filed a lawsuit to the EU's Court of Justice against Croatia over accusations of breaching the European and international law by refusing to respect and apply the final Arbitration Award (Total Slovenia News 2018). The present-day result is a standstill in negotiations with no tangible solutions of the border dispute on the horizon that evolved in the internal problem of the EU.

Certain significant parallels should be elaborated concerning border disputes over Prevlaka and Piran in the context of the EU negotiating and accession process. Foremost, as previously underlined, it is important to note that the EU, until nowadays, has not undertaken any mediating activities concerning border dispute between Montenegro and Croatia, thus all their involvement remained in the domain of declarative proclamations and without any concrete plans to address this issue. However, one could argue that the EU's proactive role should be welcomed and even expected, particularly since parties of the border dispute over Prevlaka are the EU member state and a candidate country aspiring to achieve full-fledged membership, as it was in the discussed case concerning Piran. Moreover, positive outcomes and efficient settlement of the border dispute could be achieved if the EU would decide to exercise its soft power, primarily due to the fact that parties of the dispute are not at the same starting level, since Croatia, as the EU member country, has the potential to block Montenegro's accession route towards the EU. With that Zagreb could coerce Podgorica to choose between two national interests – protection of the sovereign territory and membership in the EU. Thus, the EU's timely and comprehensive soft-power policy in terms of mediation between two countries would be foremost valuable to alleviate Croatia's evident superior power in the negotiations on the basis of the EU membership. In addition, the EU should follow the same principle applied in the previous enlargement circle when Brussels assumed an active role and significantly contributed to determining the framework and road map for Croatian accession to the EU.

Further, a striking difference between the European integrations of Montenegro and Croatia gravitates in terms of the EU's stance towards the relation between open border issue and accession process. Hence, with the comparison of two cases it could be noted that the Brussels administration significantly advanced and tightened its conditionality policy regarding the settlement of border issues. It should be particularly underlined that the EU adopted a decision to support Croatia's accession process and accept it as a new member state despite the fact that Zagreb and Ljubljana did not come with the final border agreement. The sufficient condition was to reach an agreement with which both parties committed to advance with the border dispute before the Arbitral Tribunal that will be empowered to impose a final decision concerning this bilateral border issue. Meanwhile, the EU's conditionality policy progressed and now Montenegro confronts with *condition*

sine qua non to have defined borders before becoming a full-fledged member state. That position is indicated in the mentioned EU Strategy by stating that rulings of binding international arbitration should be fully applied and respected by both parties before the moment of accession (European Commission 2018). Certainly the EU learned a lesson from the open border issue between Slovenia and Croatia and for all further enlargement rounds acquired a stance that it will not import any additional bilateral border disputes. Hence, one could draw a conclusion that the EU's conditionality and criteria for border disputes in previous enlargement rounds were not rigid and stringent as in present explicit requirements that candidate countries have to fulfil. Thus, the EU unequivocally and deliberately raised the bar of the conditionality policy primarily because of the major internal ruptures and disagreements about the future of the enlargement policy.

Conclusion

The aim of this paper was to disclose and discuss the new momentum in the EU's conditionality policy indicated in the Strategy for the Western Balkans that candidate countries have to resolve any open border disputes prior to accession to the European club. Despite the broad literature on European integration process of the countries in the region, contemporary scholars and professionals have not been sufficiently focused on how border disputes in the region impact the enlargement process. Border disputes are even more relevant in the context of the new conditionality policy. Thus, conducting such analysis could represent a necessary segment in understanding the complex mosaic of European integration in the Western Balkans.

This paper attempted to make a contribution in terms of deconstructing the new EU conditionality and grasping the reasoning behind it. Two motives are pivotal for shifting the EU's perspective and including a requirement to settle and define borders before joining the organization: prolonging the negotiation process due to internal disagreement among member states regarding the future of enlargement policy (1) and negative experience with the border dispute over Piran bay between Slovenia and Croatia (2).

Further objective of this paper was to consider and elaborate on one of the open border disputes in the Western Balkans concerning the candidate country that is a front-runner in the negotiation process. Hence, observing the relation between Montenegro's progress in the accession process and border dispute with Croatia is vital for assessing new elements of the Brussels' conditionality policy. In addition, it was important to make a parallel with the EU's approach towards the border dispute over Piran bay and its impact on Croatia's accession process. Meanwhile, the EU's conditionality concerning border disputes evolved and for Montenegro and other candidate countries it will not be sufficient to reach an agreement to present the issue before international courts or arbitration, rather they have to have defined borders lines prior to the accession. In order to keep the indicated perspective of new enlargement round in 2025, representatives of the European Commission should swiftly engage and start with mediation between Montenegrin and Croatian authorities. In that vein, the EU should exercise its soft power and recall the pledge of two states to resolve the border disputes before the International Court of Justice or instruments of international arbitration. Hence, a prompt proactive and comprehensive approach of the Commission should be applied, since two states are not

capable to bilaterally reach an agreement and resolve the open border issue. Furthermore, a model of bypassing potential Zagreb's blocking of Montenegro's membership and eventual hampering of the settlement process could be enshrined in linking this issue with Croatia's accession to the Schengen area.

As a concluding deliberation one should bear in mind two particularities that could be deduced from the EU's stance towards the border disputes in the Western Balkans. Foremost, with the paternalistic, bureaucratic, technical and monolithic approach concerning the historically and ethno-nationally burdened border disputes the EU confirmed that it genuinely do not understand the political, socio-economic, ethnic, religious and cultural complexity that permeate relations between and within countries of the region. If the situation was different and if we would take "what if" exercise, one could argue that the EU would not link Europeanisation, democratization and emancipation of the region, progress on the European integrations agenda and socio-economic benefits of the EU membership with historically rooted border disputes that are further contaminated and instrumentalised by nationalistic and conservative political elites in the Western Balkans. Secondly, there is a lack of understanding within the EU what would mean for the region if the European perspective is removed from the table. As indicated at the beginning, the support for the European integration and subsequent accession to the EU is the only common denominator for all countries and majority of people in the region. Despite that, the EU is prolonging the negotiating processes by introducing new demands and perhaps not realistic conditions that has to be fulfilled prior to the momentum of accession. With that, nationalistic and conservative forces in the Western Balkans are gaining momentum and introducing a discourse of tribalism that divide communities in ever-tightening ethnic and religious cages. The end result could be further deterioration of already fragile relations within the region that can substantially slow down or even halt the well-needed democratization and emancipation, significantly impact the pace of European integrations and distance it from core European values and beliefs, and – perhaps most importantly – to withhold it in the whirlpool of ethnic, nationalistic and religious anxiety.

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