Study Group Information

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Regional Co-operation and Reconciliation
in the Aftermath
of the ICTY Verdicts:
Continuation or Stalemate?

26th Workshop of the PfP Consortium Study Group
"Regional Stability in South East Europe"

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This volume of the
Study Group Information Series
is dedicated to

**Major-General
Johann Pucher**

Security Policy Director of the
Austrian Ministry of Defence
2008 – 2013

Foreword

Ernst M. Felberbauer and Predrag Jureković

The 26th workshop of the Study Group Regional Stability in South East Europe (RSSEE) was convened from 02 to 04 May 2013 at Château Rothschild, Reichenau/Austria. Under the overarching title of "*Regional Co-operation and Reconciliation in the Aftermath of the ICTY Verdicts: Continuation or Stalemate?*", 46 experts from the South East European region, the International Community and major stakeholder nations met under the umbrella of the PfP Consortium of Defence Academies and Security Studies Institutes and the Austrian Ministry of Defence and Sports, represented through its National Defence Academy and the Directorate General for Security Policy.

Transitional Justice (TJ) according to the definition of the International Center for Transitional Justice "refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms." Most of the factors which are involved in peace-building processes regard TJ as an important condition for reconciling former war/conflict parties and for starting a new chapter in the mutual relations. In the context of the processes of conflict transformation in South East Europe, the International Criminal Tribunal for the former Yugoslavia (ICTY) has intended to play a relevant role in bringing justice and compensation to the victims of the previous wars.

This aim has been challenged by the numerous critics of the ICTY, in particular in Serbia. They have accused the tribunal for its sentences which would have been influenced rather by political than legal factors. Further, the criminal tribunal in The Hague has been blamed to practice "selective justice". Contrary opinions stress the fact that the re-establishment of regional co-operation would be much more difficult if

the ones who were most responsible for war crimes on the political and military side wouldn't be called to account. In particular in Bosnia and Herzegovina the detention of war criminals has enabled the return of expellees. Many victims and families of victims – but not all of them – achieved moral compensation for sustained torture through the verdicts of the ICTY. Finally, the regional prosecution of war criminals for the advocacies of the ICTY has been a direct consequence of the existence of the UN tribunal.

Several verdicts of the ICTY which were decided in late 2012 and early 2013, in particular in the cases of Gotovina/Markač, Haradinaj and Perišić, led to new controversies in the region about the past wars, the issue of justice and the conditions for regional reconciliation. Although there have not been tremendous repercussions of the recent ICTY verdicts on regional stabilisation so far, the question arose whether sustained regional cooperation is possible without overcoming the legacy of the past wars. It is obvious that from the angle of "ordinary citizens" in South East Europe the issue of implementing EU conditions and generally their attitude towards EU and NATO integration policies is strongly influenced by and linked to the progress in regional relations and reconciliation. Both – Euro-Atlantic integration processes as well as regional relations – still go through turbulent and sometimes regressive phases in South East Europe.

In order to enhance regional cooperation and to deal in a constructive manner with the still unfinished processes of state- and institution-building in Bosnia-Herzegovina and Kosovo, the unstable security situation in the northern part of Kosovo and the fragile interethnic relations in Southern Serbia and Macedonia a positive attitude in the region towards peace-building and stabilisation is necessary. Otherwise nationalistic setbacks could put into question some of the positive steps the region has already achieved.

The following key questions constituted the framework of discussion and debate during the workshop and thus also structure the contributions from the four panels in the following pages:

- In which extent do the ICTY's controversially perceived verdicts impact regional cooperation and bilateral relations?

- It is obvious that the ICTY decisions are not perceived as bringing justice to all SEE nations affected by war crimes. Which regional measures could then contribute to that goal?

- In which extent are the EU and NATO integration and stabilisation policies affected by the setbacks in the process of reconciliation? Is there a growing gap in the region in regard to the credibility of these "Europeanization" policies due to the ICTY verdicts?

- Which measures could stop negative trends in regard to reconciliation? What is the role of politicians and the civil society?

- Could the lack of trust in "European values" become a problem as far as EU and NATO integration is concerned?

- Beyond the problems connected to ICTY and reconciliation, what are the latest developments regarding the regional challenges in state-building, negotiations and integration processes?

Part I and II of this book deal with the repercussions of the ICTY verdicts on the reconciliation processes and the implementation of the concept of TJ. Further, the concrete impacts of the reconciliation issue on regional cooperation and the "Europeanization" agenda are analyzed. In part III and IV outstanding experts focus on the recent political developments in different South East European countries and areas in the context of regional peace-building. Their recommendations are summarized at the end of the publication.

The editors would like to express their thanks to all authors who contributed papers to this volume of the Study Group Information. They are pleased to present the valued readers the analyses and recommendations from the Reichenau meeting and would appreciate if this Study Group

Information could contribute to generate positive ideas for supporting the still challenging processes of peace-building in South East Europe.

Ernst M. Felberbauer
Predrag Jureković

Opening Remarks

Erich Csitkovits

Your Excellencies,
Ladies and Gentlemen,
Dear friends of the PfP Consortium Study Group „Regional Stability in South East Europe"

It is a great pleasure for me to officially open the 26th workshop of the Study Group "Regional Stability in South East Europe". Today and tomorrow, experts and study group members will again assess the main challenges in the peace processes and will provide recommendations to international stakeholders.

This is already the 15th time the Study Group uses the beautiful facilities of Chateau Rothschild for its meetings. This not only underlines the dedication of your work as experts on the region, but also to the importance of South East Europe to the Republic of Austria and its Ministry of Defence.

In a joint effort the speakers and discussants will try to make concrete proposals how to handle risks and how to strengthen peace in South East Europe. The study group meetings on the peace and stabilisation processes in the Western Balkans in the fourteen years of its organisation have developed very successfully.

I am optimistic that also this event will contribute substantially to regional peace-building. Your deep-rooted and comprehensive expertise about the sensitive and complex challenges in South East European transition processes will make sure that my expectation is met. I am already looking forward to receiving the outcome to this meeting: the short Policy Recommendations as well as the comprehensive Study Group Information.

Speaking in political terms, South East Europe, and in particular the Western Balkans, remains a very important region for Austria in regard to its neighbourhood policy and in respect to its priorities in EU's Common Foreign and Security Policy.

Austria still has strong political, cultural and economic interests to support the Western Balkans transition from a post-war-area to a prosperous, co-operative and peaceful region, which will be integrated in the EU. In this regard, we welcome the close accession of Croatia and support also the integration of the other countries in the region into the EU.

The engagement of our government regarding South East Europe will remain substantial despite the big financial, economic and social problems inside the EU which affect also Austria. Apart from Austria's engagement in peace-support operations and political missions in Bosnia and Herzegovina as well as Kosovo the Austrian Ministry of Defence wants to strengthen the academic exchange of views on the developments in South East Europe.

For that reason, staff members of the National Defence Academy and the Bureau for Security Policy since 1999 contribute substantially to the organisational and conceptual preparation of the workshops of the study group "Regional Stability in South East Europe". The positive feedback from the PfP Consortium stakeholder nations – among them the United States, Germany, Canada, Switzerland, Austrian and NATO – which regards this study group as a highly productive one for NATO and the EU as well as for the region, prove that the personal and financial efforts are a good investment. The study group regularly publishes its results and produces policy papers, as well as runs a big network, which has been generated through its activities.

I am sure that also this time the interaction between researchers, representatives from NGOs, Governmental Organisations and people dealing in particular with security issues will guarantee fruitful discussions and will lead to common recommendations which will be useful for the regional peace-building community.

It is not my intention to go into the details of the topic of this year's Reichenau workshop, having in mind that after my opening address you will start immediately to discuss in depth the main challenges in the regional stabilisation processes.

But allow me to say some general words about the topic that has been chosen for this year's Reichenau event:

Reconciliation and regional cooperation are the key words of the title of this seminar. Bridging the gap between these two terms perhaps represent the most important and most difficult challenge still to be met in the regional peace processes. Just through showing empathy for all victims of the past wars, through giving moral and material compensation to their families and through bringing war criminals to the courts a new and more positive chapter in regional relations can be opened.

This should be based upon common interests and confidence. The EU and other international institutions can provide valuable support in this regard, but certainly more important for achieving this goal is the will of the affected societies in South East Europe to deal themselves in a constructive way with the negative legacies of the past wars.

Austria itself in the last decades has passed through difficult phases in regard to its neighbourhood relations as a consequence of its involvement in the two world wars and the existence of the iron curtain during the communist phase in Eastern Europe. The Austrian experience since the end of the Second World War has shown that improving neighbourhood relations is a long lasting and very demanding process which requires the good will of both sides. Regardless of how difficult such processes can be there is no alternative to building confidence and improving bilateral relations.

A good example for this thesis is the position of the mainly German speaking territory of South Tyrol that belongs to the Italian state. Due to the good intentions of both involved countries, Austria and Italy, this area in the last four decades has transformed from a former security hot spot to a prosperous region. Having this positive experience in mind it

seems to be reasonable that also in your region today's "critical areas" could substantially improve, on condition that the responsible politicians and other important social actors are ready to act for the good of their citizens. The pleasing steps which were recently taken in the dialogue between Belgrade and Prishtina demonstrate that generally speaking positive changes are possible, if the involved actors seriously work on them.

The agenda which you will deal with during this workshop is certainly of great importance for enhancing regional cooperation. I wish you all the best for having interesting and substantive presentations and discussions which will lead to common recommendations. Beside the academic and analytical part I hope that you will enjoy your stay here in the castle of Reichenau.

It is my outstanding pleasure as Commandant of the Austrian National Defence Academy to thank you once more for coming to Reichenau and for contributing to the success of the Study Group.

I wish you all the best for the next two days, interesting and intensive – yet productive – debates.

PART I

THE FRAGILITY OF JUSTICE AND RECONCILIATION: REPERCUSSIONS OF THE ICTY VERDICTS

Perspectives for Transitional Justice and Reconciliation[1]

Jelena Subotić

My intent in this essay is not to provide a legal analysis of the merits of the recent ICTY verdicts, as excellent analyses have already been produced.[2] Instead, I want to critically analyze the political fallout from the acquittals and in doing so put forward three principal arguments. First, in the absence of broader transitional justice framework in the former Yugoslavia, the ICTY has become the principal instrument of both retributive and restorative justice, which places undue burdens on a an institution with a narrow and technical mandate.

Second, the ICTY has in no small part brought this unrealistic expectation onto itself by legitimizing its work to hostile domestic publics as a path to reconciliation and creation of a historical transcript – promises a court is not equipped to either make or keep. Third, the human rights community in the region has long relied on the ICTY to be its "force multiplier" in building transitional justice efforts. This has further conflated the role of the international court with home-grown transitional justice campaigns and has made the political challenges for local efforts much more daunting. Analyzing the political implications of the two specific ICTY verdicts, I make an additional claim about the contradictions of the ICTY as a procedural place of justice and an institutional foundation for reconciliation.

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[1] A longer version of this article, entitled "Legitimacy, Scope, and Conflicting Claims on the ICTY: In the Aftermath of Gotovina, Haradinaj and Perišić," will be published in the *Journal of Human Rights* in 2014.

[2] Bogdan Ivanišević, "Hague Failed to Justify Gotovina Acquittal," *Balkan Insight*(2012), http://www.balkaninsight.com/en/article/hague-failed-to-justify-gotovina-acquittal; Marko Milanović, "The Gotovina Omnishambles," *Peščanik*(2012), http://pescanik.net/2012/11/the-gotovina-omnishambles/; Eric Gordy, "Hague Verdicts Allow Commanders to Evade Justice," *Balkan Insight*(2013), http://www.balkaninsight.com/en/article/hague-verdicts-allow-commanders-to-evade-justice.

The acquittal blowback

It is hard to overstate the depth of emotion with which the *Gotovina, Haradinaj* and *Perišić* verdicts were met in Serbia, Croatia, Kosovo, and Bosnia. The contrasting public reactions to the acquittals across the region point to the remarkable incompatibility of public narratives about the war of the 1990s and indicate a cognitive impossibility that any ICTY verdict – a conviction or an acquittal – would be able to change the public memory of the violence.

In Serbia, the public memory of the events of August 1995 is of a mass exodus of the entire Croatian Serb minority (around 200,000 people), who were intimidated and threatened to leave their homes under heavy bombardment of their cities by the Croatian army. That the Croatian leadership knew and ordered this deportation is a broadly shared public belief and persistently promoted official state message, as is the understanding that the purpose of the Croatian offensive was to eliminate the Serb minority and create an ethnically homogeneous Croatia. This particular interpretative memory of Operation Storm has been critically important for the Serbian postwar state narrative construction because it provides an alternative history of the 1990s war, one where Serbs are victims and not perpetrators of atrocities. The ICTY indictment of Croatian Army leadership for "joint criminal enterprise" to commit crimes against humanity against Croatian Serbs in 1995 legitimized and institutionalized this narrative.

It also allowed Serbian political actors across the political spectrum to use the Gotovina case as an exercise in "crime equality" – if there is Srebrenica, there is also Operation Storm. This false equivalence became the founding bloc of Serbian understanding of what "reconciliation" entails – the acknowledgment of responsibility for crimes of *all sides*, as the only path to Serbian acknowledgment of its own culpability for mass atrocity. This mechanism of using atrocity by others to deflect atrocity by your own group is exactly the kind of government effort Stanley

Cohen named "advantageous comparison," a form of implicatory denial of atrocity.[3]

From within this hegemonic Serbian state narrative, the *Gotovina* verdict was fundamentally unacceptable because it effectively changed the entire Serbian construct of the Operation Storm and delegitimized Serbian claim to victimhood at the hand of the Croats. This narrative background explains the incredibly strong reaction the ICTY verdict had in Serbia. A few days after the verdict was issued, the Serbian government organized a public protest in Belgrade, attended by the Prime Minister, Speaker of the Parliament and a number of ministers. Prime Minister Dačić said that the ICTY verdict was a "slap in the face" to Serbia and that the ICTY had committed "suicide in the eyes of Serbs."

Serbian President Tomislav Nikolić went even further in a statement, saying, "Croatians know that the crime that was committed in [Operation] Storm was atrocious, that it will nag them as long as they live, but they are celebrating that no one has been punished for it."[4] The president also announced the end of efforts at reconciliation, "After all this we cannot have the same relationships with our neighbours. If some wanted to get us fighting again, they found the perfect way."[5]

In Bosnia, Milorad Dodik, the president of the Bosnian Serb entity, the Serb Republic, accused the ICTY of "having blood on their hands," and demanded from the international community to "give Serbs an explana-

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[3]   Stanley Cohen, "Government responses to human rights reports: Claims, denials, and counterclaims." *Human Rights Quarterly* 18, no. 3 (1996): 517-543; Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering* (Cambridge, Eng.: Polity, 2001).

[4]   Tim Judah, "Old wounds, new grievances," *The Economist*(2012), http://www.economist.com/blogs/easternapproaches/2012/11/croatian-serbian-relations.

[5]   B92, 'Čas da svi Srbi izađu iz Haga', http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=11&dd=29&nav_category=11&nav_id=664558   (accessed   7 January).

tion for this bestial legal violence."[6] Serbian deputy PM in charge of EU integration predicted the verdicts will have an impact on the ongoing Serbia's EU integration talks: "The process of reconciliation and cooperation in the region will slow down after this verdict." Pro-European politicians were especially worried. The acquittals have "reawakened nationalistic passions" and "will not contribute to reconciliation and improving relations in the region," said the president of the Serbian Parliamentary Committee for European Integration.[7]

Reaction in Croatia was predictably quite the opposite. Croatian newspaper *Jutarnji list* plastered its website with the headline "Croatia is Innocent" as the acquittal was announced. Tens of thousands of people gathered on the main square in Zagreb and other cities to celebrate, and Prime Minister Zoran Milanović dispatched two ministers on a government plane to The Hague to accompany the generals home. The main reason for jubilation was the legal rationale behind the acquittal and the way in which it was interpreted in Croatia. As Croatians saw it, the ICTY has confirmed, once and for all, that Croatia did not become an independent state on the heels of ethnic cleansing of its minorities, and that whatever attacks by Croatian army on majority Serbian cities occurred, were within the legal parameters of defence against armed Serb rebels and broader Serbian aggression. The ICTY verdict, therefore, decriminalized the establishment of the independent Croatia. Croatian president Ivo Josipović, however, did acknowledge, as he has done in the past, that war crimes did occur in the aftermath of Operation Storm and pledged that Croatia "had to do everything to prosecute those crimes."[8]

The public tone in Serbia was similar after the *Haradinaj* verdict. "The tribunal was founded outside of international law in order to put the Ser-

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[6]   B92, 'Dodik: Hag pere krvave ruke', http://www.b92.net/info/vesti/index.php?
      yyyy=2012&mm=11&dd=29&nav_category=64&nav_id=664559 (accessed 7
      January).

[7]   L. Valtner, "Presuda usporava evropske integracije", *Danas*, 19 November 2012.

[8]   Boris Pavelić, "Gotovina Calls Croatian Serbs to Return," *Balkan Insight*(2012),
      http://www.balkaninsight.com/en/article/josipovic-serbian-reactions-not-
      important.

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bian people on trial. The aim is to achieve certain goals that are well known to the Serbian public," Serbian President Nikolić said, so well known, apparently, that he did not elaborate on what they were. Other Serbian officials made similar statements. Serbian Justice Minister said that the ICTY "spat in the face of the Serbian victims."[9]

Serbia also threatened to stop cooperating with the ICTY all together, and Vuk Jeremić, Serbia's former foreign minister and the sitting president of the United Nations General Assembly scheduled a debate at the UN about the very existence, operation, and funding of *ad hoc* tribunals. While the sitting president of the UNGA scheduling a debate about an issue in his/her own country is a serious breach of protocol and outside the president's regular mandate, it is certainly plausible that at least in part the motivation to discredit the *ad hoc* courts internationally had not as much to do with the content of the *Gotovina* and *Haradinaj* verdicts themselves, but is a pre-emptive move to delegitimize future *Karadžić* and *Mladić* verdicts, especially if they further determine Serbian responsibility for genocide in Srebrenica.

Reactions in Kosovo, clearly, were polar opposite. On the news of Haradinaj's acquittal, Kosovo's Prime Minister Hashim Thaci said, "This verdict is the most powerful proof that the Kosovo Liberation Army fought a just war for freedom."[10] Hundreds of people gathered in pouring rain at Pristina's main square to await the verdict on a big television screen. As the judge read out the acquittal, large cheers and celebratory gunshots reverberated across town.

The response to the *Perišić* case was possibly even more politically consequential because the acquittal de facto separated the actions and responsibilities of the Serbia-controlled Yugoslav Army from the Bosnian Serb forces, an issue of great importance to the post-Milošević Serbian state. His acquittal is also historically significant because it means that

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[9]   Marija Ristić, "Hague Ruling "Spat in Serbia's Face" Says Belgrade," *Balkan Insight*(2012), http://www.balkaninsight.com/en/article/hague-ruling-spat-in-serbia-s-face-says-belgrade.

[10]   Edona Peci, "Hague Tribunal Acquits Kosovo's Haradinaj," *Balkan Insight*(2012), http://www.balkaninsight.com/en/article/hague-acquits-kosovo-s-haradinaj.

no official from Serbia has yet been convicted by the ICTY of crimes against non-Serbs committed in Bosnia. Perišić flew home from the Hague on a Serbian government provided jet and addressed the public in Belgrade saying, among else, "With our country's best sons on the frontlines I defended the honour, dignity, and lives of our citizens."[11] Serbian Prime Minister Dačić welcomed the acquittal because it "negated the accusations of Yugoslav Army aggression against Croatia and Bosnia."[12] Many Serbian politicians talked about a "balance" Perišić's acquittal brought after the acquittals of Gotovina and Haradinaj, while Bosniac victims despaired about the injustice of the decision, which further eroded the credibility of the ICTY as the institution designed to acknowledge victims' suffering.[13]

And so it went. The ICTY verdicts in three separate cases were interpreted in the public discourse of the region as responsible for ending reconciliation, strengthening nationalism, delegitimizing ongoing trials in front of domestic courts, impeding EU integration, confirming the historical destiny of the people of Croatia and Kosovo who fought for liberty and independence, while also absolving the Serbian state of crimes in Bosnia. These interpretations are not only mutually incompatible; they also present the tribunal with quite a lot of responsibility to bear. In the next section, I put forward three arguments for why the tribunal ended up endowed with these mystical powers and what are the consequences of these pressures on the ICTY for the process of transitional justice in the region.

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[11] B92, 'Perišić: Presuda doprinos za Srbiju,' http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=03&dd=01&nav_categ ory=64&nav_id=691229 (accessed 10 May).

[12] B92, 'Dačić: Konačno dobra vest iz Haga,' http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=02&dd=28&nav_categ ory=64&nav_id=691065 (accessed 10 May).

[13] BIRN, "Bosnia Ethnically Split Over Perisic's Acquittal," *Balkan Insight*(2013), http://www.balkaninsight.com/en/article/mixed-reaction-s-about-perisic-s-acquittal-in-bosnia; Refik Hodžić, "Accepting a Difficult Truth: ICTY is Not Our Court," *Balkan Insight*(2013), http://www.balkaninsight.com/en/article/accepting-a-difficult-truth-icty-is-not-our-court.

The mismatch of scope and mandate

The ICTY was established in the midst of the wars in Croatia and Bosnia in 1993, as the UN Security Council's response to the continuing mass atrocities in the region. According to UNSC Resolution 827, the Security Council has determined the violence in Croatia and Bosnia to constitute a threat to international peace and security, and a continued violation of international humanitarian law. The Security Council decided to establish an *ad hoc* tribunal to address these concerns by punishing individual perpetrators of crimes against humanity. The Resolution does not mention any broader social or political responsibility of the tribunal other than that its operations would "contribute to the restoration and maintenance of peace". How a tribunal is to contribute to peace was, however, left unspecified.

Even without specification, this idea that the ICTY would provide a much broader benefit to the region other than just administer justice to a select few defendants, has very quickly taken root among scholars and human rights advocates. Transitional justice scholars began to see ICTY as an essential ingredient of peace building in the former Yugoslavia, an institution that would instil human rights values into the "popular consciousness." The scope of what the ICTY could provide soon started to expand from peace building and value creation, to achieving "reconciliation." However, there has never been a strong theoretical case made for the exact mechanism of socio-political change that would clearly explain how we could get from A (individual trial) to B (peace) to C (reconciliation). In fact, empirical studies that have tried to measure whether the ICTY has produced reconciliation have come up with negligible effects, if any, simply because operationalizing and measuring a concept as fluid as "reconciliation" is very difficult to do with the current social scientific toolkit.

A larger concern with the overreliance on the ICTY as the principal mechanism of transitional justice in the Western Balkans is the exclusive focus on individual criminal accountability as the main mechanism of justice. Here, the problem is that the legitimate function of a war crimes court – to provide retributive justice for serious crimes – has over time

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expanded to become the main mechanism of transitional justice, and not only retributive, but also restorative, even reparative justice.

The responsibility for this ICTY "capture" of the transitional justice space does not lie primarily with the court, however. It is in large part a consequence of the fact that former Yugoslav states have been incredibly reluctant and very late in adopting any domestic transitional justice mechanisms. Even when finally adopted, domestic transitional justice efforts have been largely either controlled or ignored by the state, making them ineffective, delegitimized, or perceived as irrelevant by the public. In such hostile domestic environments, the ICTY was, for the vast majority of the population, the *only* mechanism of transitional justice they recognized. This was further compounded by the actions of international actors, such as the European Union or the United States, which focused almost exclusively on state cooperation with the ICTY as a condition for international benefits, and ignored other local transitional justice needs and actors.

The situation with domestic war crimes trials is a case in point. After much international prodding, incentivizing, and financing, Serbia established its War Crimes Chamber to prosecute lower level perpetrators, but the WCC has completed only a few dozen cases and has faced tremendous hostility and obstruction from Serbian security apparatus and the Supreme Court. Since opening in 2002, the WCC has indicted 152 individuals for war crimes, 64 of whom have been convicted.[14] While domestic prosecution is a critical mechanism of post-conflict justice and holding trials at home is a clear sign of transitional justice progress, the highly politicized environment in which the WCC has operated has opened its proceedings to significant and sustained human rights critique. The most serious issue is with the prosecutorial choice of whom to indict. The defendants have almost all been direct, low-ranked perpetrators, not mid- or high-rank officers, and most were members of the Serbian wartime paramilitary troops and not the Yugoslav Army, even when the evidence of Army involvement was brought up during the tri-

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[14]   Information up to date by April 2013, available from the War Crimes Chamber website at http://www.tuzilastvorz.org.rs/html_trz/predmeti_lat.htm.

als themselves. Serbian human rights groups have also criticized the WCC prosecutor for bowing to political pressure and indicting ethnic Albanians for alleged crimes against Kosovo Serbs, on inadequate evidence, and in the run up to Serbian general elections.[15] The domestic trials have also been criticized for inadequate witness protection, lenient sentencing, and unprofessional conduct by defence attorneys, and poor media outreach.

However flawed the trials are, the media coverage of them in the Serbian media has been even poorer. The reports on domestic trials are sparse, incomplete, and largely dependent on whether the case is of crimes by or of Serbs, with the latter receiving significantly more attention. There is almost no coverage of the victims, with news stories focusing exclusively and often quite sensationally, on the perpetrators. The great hope at the inception of the WCC in 2003 was that it would continue the work of the ICTY at the local level and provide a much needed local context to ICTY proceedings that felt distant and far removed from the local public. It has been a disappointment to watch the politicization of the court and the lack of domestic interest in its work.

In Bosnia, the international community set up a hybrid tribunal, which is slowly working through its cases. Since its establishment in 2005, the Bosnian War Crimes Court has convicted 88 individuals of war crimes, crimes against humanity, genocide, and other serious violations of international humanitarian law by the end of 2011, the last year aggregate data are available.[16] The principal problem facing the Court is its huge caseload of some 600 remaining cases that still need processing, many of which have been transferred to the Bosnian court from the ICTY. The exact mechanism of case transfer to lower district and municipal courts has been vague and has significantly slowed down the processing of cases. The court has been facing significant financial problems, as it depends largely on the Bosnian state budget, already stretched by multi-

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[15]   Humanitarian Law Center, "Report on War Crimes Trials in Serbia in 2012," Belgrade, HLC, 2013.
[16]   Humanitarian Law Center, "Transitional Justice in Post-Yugoslav Countries: Report for 2010 - 2011," Belgrade, HLC, 2013.

ple priorities. Further problem is the constitutional straightjacket of the Bosnian federation, which allows the Bosnian Serb entity, Republika Srpska, to largely conduct trials using its own standards and has consequently prosecuted significantly fewer alleged perpetrators than the rest of the country.

In the aftermath of the three winter 2012/13 acquittals, an additional concern from the perspective of transitional justice is finding responsibility for grave human rights abuses committed both by Croatian troops and the KLA fighters. As Amnesty International pointed out in the immediate aftermath of the *Haradinaj* verdict, Kosovo domestic courts have been completely unwilling to prosecute perpetrators for any of the roughly 800 abductions and murders of non-Albanian population during 1998-1999. This, indeed, is the travesty of transitional justice, not the acquittal of a former prime minister in a poorly constructed and prosecuted case at the ICTY.[17]

Croatian transitional justice NGO Documenta has made the similar argument in the aftermath of the *Gotovina* acquittal, appealing to the Croatian domestic courts to take up cases of direct perpetrators of crimes against humanity in Croatia, and pursue them rigorously, even if the principal ICTY architecture of the "joint criminal enterprise" has collapsed.[18] In a promising sign that the Croatian judiciary has finally become ready to deal with Croatian war crimes, a landmark ruling by a district court in Knin in January 2013, for the first time ruled that the state of Croatia was responsible for the murder of two elderly Serb civilians in the aftermath of operation "Storm" in 1995 and ordered that the victims' families be financially compensated.[19]

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[17] Amnesty International, 'Kosovo: If they are not guilty, who committed the war crimes?,' http://www.amnesty.org/en/news/kosovo-if-they-are-not-guilty-who-committed-war-crimes-2012-11-29 (accessed 5 December).

[18] Documenta, 'Statement on the occassion of non-appealable judgment to generals Gotovina and Markač,' Documenta, http://www.documenta.hr/en/statement-on-the-occassion-of-non-appealable-judgment-to-generals-gotovina-and-marka%C4%8D.html (accessed 5 December 2012).

[19] Boris Pavelić, "Croatian Court: State Responsible for Serbs' Murder," *Balkan Insight*(2013), http://www.balkaninsight.com/en/article/croatian-court-procclaims-state-responsible-for-killed-serbs.

From a broader framework of transitional justice, however, more significant is the complete lack of work in restorative and reparative justice. Efforts at forming truth commissions in Serbia and Bosnia have failed, and Croatia never even debated establishing one. There are no memorialisation projects acknowledging crimes committed against the "other" ethnic group, no official state apologies, no reparations or restitution.[20] There has been no serious education reform that would include thoughtful and respectful teaching about crimes of the past. Transitional justice advocates in the region have been quite active in promoting a variety of appropriate models, but they have been mostly shunned by state officials and have remained on the margins of public discourse.

The ongoing ambitious and comprehensive RECOM project,[21] which advocates for the establishment of a regional commission to deal with legacies of violence, has faced much stonewalling from political actors and is yet to receive an official state endorsement from any of the countries in the region, other than Montenegro. Since 2004, RECOM has held dozens of conferences, multiple workshops and hearings, and collected half a million signatures demanding that states in the region officially recognize the commission and put its recommendation into state practice. RECOM recognized that what the region needs is change in public remembrance practices, education policies, and enforcement of transitional justice mechanisms – all changes that need to come from state agencies in order to be implemented. Without official adoption of RECOM recommendations by regional governments, however, RECOM's worthwhile efforts will remain in the parallel sphere of civil society and human rights groups. They will remain aspirational, not operational.

It is because of this weakness of the general transitional justice framework that the ICTY has become the principal mechanism of justice, an institution endowed with superpowers above and beyond what it is actually designed and equipped to do.

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[20] Personal apologies by Croatian president Josipović are notable, as are apology attempts (not full apologies for wartime behavior, but apologies for specific crimes) by former presidents of Montenegro and Serbia.

[21] Detailed information about RECOM is available at the initiative's website portal http://www.zarekom.org.

There is also a specific mismatch between ICTY's ever increasing scope expectations and its mandate to prosecute individual perpetrators. In fact, the focus on the individual as opposed to the group was initially used as a strong argument in favour of establishing the court, as individualizing guilt would remove the burden of "collective guilt" from entire societies and states. That individual perpetrators and those who ordered the atrocities should be held accountable is beyond debate. But what the focus on individual criminal accountability misses is that it can eclipse larger social transformations that post conflict societies need. Individual trials can easily be used by the state to shield itself from larger claims of state responsibility for mass atrocity, deflecting the accountability to a select few individuals, and therefore foreclosing the possibility of broader official state apologies or reparations to victims. In the absence of other official transitional justice efforts, the ICTY became *the* transitional justice mechanism, and the continuing serious obstacles to reconciliation in the region became, as a consequence, ICTY's liability.

The paradox of ICTY's legitimacy outreach

While the undue burdens placed on the ICTY as the principal carrier of the transitional justice project in the region are the result of lack of credible domestic justice efforts, in many ways the ICTY has brought these massive expectations onto itself. Faced with incredible political and popular hostility in most of the countries under its jurisdiction and growing hostility in previously favourable states like Bosnia and Kosovo as the ICTY began indicted their own citizens, the ICTY created its Outreach Program in 1999 to counter damaging government information from Serbia and Croatia, aimed at discrediting the work of the tribunal. The ICTY outreach program included activities such as organizing visits to the ICTY for students, political advisors, officials and military officers, media outreach, conferences and seminars on the Tribunal's work, "Voice of the Victims" section on the ICTY website, training for judges, prosecutors, and reporters.

As human rights activists have pointed out, however, *everything* the court does is outreach – all convictions, acquittals, testimonies, evi-

dence, verdicts – all constitute the court's communication with the outside world and, presumably, with victims of these horrific crimes. It is not clear that the tribunal quite understood its outreach efforts in this comprehensive way, and it made no sustained effort to explain, in detail, to victims on the ground, how certain decisions were made, why sentences were lowered, why certain people were acquitted. From the perspective of the ICTY, however, the Outreach program was supposed to directly serve the purposes of reconciliation.

On the path toward reconciliation, the ICTY has presented itself also as a historian of sort. The argument here is that establishing a historical transcript, a credible record of what happened, to whom, and why, is necessary to bring about reconciliation. The role of the ICTY as a historian was clear from the very first ICTY verdict in *Tadić*, which included a comprehensive "account of the origins of the conflict in the Balkans and it detailed the systematic policy of persecution of Bosnian Muslims by Serb political and military authorities in Bosnia."[22]

The problem with the ICTY taking on the role of historians is, first, in the concept of evidence. The evidence that the ICTY, and any other court, uses to determine facts are used to establish the accountability of a specific individual, accused of a specific crime. This simple fact has been completely lost in the hysterical reaction in the region to the acquittals of Gotovina, Haradinaj and their alleged co-conspirators. The ICTY has found that these individuals were not responsible for specific crimes, not that no crimes had ever occurred. This is important for these individual cases – and determination of defendants' guilt or innocence – but this does not render a definitive historical judgment about mass atrocity, legacies of violence, causes of conflict, or state or social responsibility for crimes. This is in the purview of other disciplines, institutions, using other methods and theoretical approaches. It is precisely this confusion about the ICTY as a historical arbiter that has led even progressive historians in the former Yugoslavia to despair over the "wrong history" that

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[22] Richard A. Wilson, "Judging history: The historical record of the International Criminal Tribunal for the former Yugoslavia." *Human Rights Quarterly* 27, no. 3 (2005): 908-942.

the recent ICTY verdicts produced. So, ICTY's efforts to gain legitimacy by promising to offer unimpeachable historical transcripts have further delegitimized it in the eyes of even its strongest regional backers because it simply could not produce only "good history." It was not designed to and should not have promised to deliver something it was not equipped to create.

Furthermore, in its effort to stress its contribution to reconciliation, the tribunal did not quite understand how "reconciliation" is understood at the local level. For the ICTY, as for most transitional justice institutions, "reconciliation" is understood as co-existence, acknowledgment of others' suffering, correcting for past wrongs. As indicated earlier in the essay, at the local level, especially among political actors, "reconciliation" came to mean equalizing of responsibility for past crimes – if all sides were found accountable for past wrongs, then all sides could move on and "reconcile." So, when Serbian politicians talked about "reconciliation," what they were looking for from the ICTY was acknowledgment of crimes by Croats, Bosniacs, and Albanians against Serbs, which would then compensate for the embarrassment of accepting crimes by Serbs against non-Serbs. This is what Serbian students had in mind when they carried signs "No justice, no reconciliation." Reconciliation, in other words, was a currency, an exchange mechanism in the process of acknowledging past crimes. It was not understood as an end in itself, as a public good. It was a means to an end. This is why virtually all Serbian politicians in the aftermath of *Gotovina* and *Haradinaj* agonized that this is the "end of reconciliation." What they meant was – this is the end of our efforts to acknowledge our own crimes. We don't even have to try any more.

ICTY as civil society force multiplier

All the countries of the former Yugoslavia have developed significant human rights organizations that have worked tirelessly to promote transitional justice in their respective states, but also to work collaboratively in regional justice efforts, such as the RECOM campaign, mentioned above. The work of the human rights community has been especially significant precisely because of the relentless hostility of state officials

toward the ICTY, and toward other international efforts to engage in transitional justice processes. In this environment, human rights groups often acted as "interpreters" of ICTY trials to hostile domestic audiences, and also directly aided in ICTY investigations.[23] And while the ICTY relied and used local human rights groups to help with outreach efforts and with actual investigations, the human rights community itself also relied on the ICTY to be its "force multiplier" in building transitional justice efforts. Human rights groups would routinely evoke ICTY decisions to start discussions about responsibility for crimes, or would present evidence collected at ICTY trials and advocate for further prosecutions of perpetrators in front of domestic courts. For example, the ICTY Krstić case which determined, for the first time, that genocide took place in Srebrenica, was frequently used by Serbian human rights NGOs as definitive rebuttal to the continuing cycles of genocide denial in Serbian politics and society. Human rights groups, therefore, relied on the ICTY to be the official, unimpeachable arbiter of the past, as they could not rely on any local institution to provide that role.

While strategically understandable, this reliance on the ICTY further conflated the role of the tribunal with homegrown transitional justice campaigns and made the political challenges for local efforts much more daunting. In the aftermath of Gotovina, Haradinaj and Perišić, human rights groups in Serbia and Croatia found themselves in particularly precarious public position, trying to defend acquittals after spending years advocating for arrests and punishment of these same defendants. This was an especially difficult task for Serbian human rights groups who found themselves agreeing with the government and virtually every public figure in Serbia in expressing disappointment with ICTY's acquittals of Gotovina and Haradinaj. By allying themselves so closely with the ICTY and implicitly trusting ICTY's judgment, the reality of the post-Gotovina ICTY was a disorienting one. This perhaps explains something of a distancing of domestic human rights groups from the ICTY and the

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23   Perhaps the most well known instance of this investigative cooperation is the discovery by the Serbian Humanitarian Law Fund of the videotape showing the acts of killing in Srebrenica and delivery to the ICTY to use in the case against Slobodan Milošević.

increasing criticism of ICTY practices, staffing, and even expertise – criticisms that would have been unimaginable to hear from local transitional justice advocates just a few months back.

More practically, the vicious political fallout and heightened nationalist rhetoric that followed the acquittals makes it that much more difficult for local human rights groups to continue to advocate for cooperation with the ICTY and, more importantly, for broader transitional justice efforts. The ICTY verdicts have provided governments in the region with a shield of either triumphalism or rejectionism and intransigence. It is equally difficult to see how human rights groups get any traction to continue investigating crimes in front of Croatian and Kosovar courts, as it is for Serbian human rights groups to continue advocating for acknowledging Serbian responsibility for mass atrocity. In Croatia and Kosovo, the public narrative has shifted to vindication, in Serbia to another cycle of victimization – both sides of the equally inhospitable political coin.

Conclusion

In the aftermath of the two high profile ICTY acquittals, the transitional justice project in the Western Balkans finds itself in a precarious position. The overreliance on the ICTY as the principal arbiter of the past and distributor of justice has led to a number of unintended consequences, most acutely the foreclosing of other, broader transitional justice efforts. The ICTY sucked the air out of the larger transitional justice field, in part because its budget so grotesquely dwarfed the available funding for domestic courts and non-retributive transitional justice measures. It also took most of the attention – domestic as well as international - from other justice efforts, because it prosecuted the most visible, high profile perpetrators, but also because it promised to provide a "first draft of history" that reconciliation was to build on.

This is not to say that in the absence of the ICTY homegrown transitional justice efforts in the former Yugoslavia would have flourished. In fact, the evidence indicates that, without any sustained international pressure, domestic governments would have avoided reckoning with the past in any meaningful way. However, it is reasonable to argue that

those same international pressures only extended to state cooperation with the ICTY, even when that cooperation was mostly superficial, strained, or minimal. State cooperation with the ICTY became the measurement of state commitment to transitional justice, and this relieved the pressure on governments to embark on serious redressing of crimes of the past.

These expectations placed on the ICTY by international actors, local governments, human rights communities, and the tribunal itself, were unrealistic, inappropriate, and arguably even damaging for the future of the transitional justice project in the region, even while the important legal work of the court remains tremendously valuable. As the International Criminal Tribunal for Rwanda winds down its operations, it will be necessary to evaluate its effects on broader transitional justice there, in the light of the complicated legacy of the ICTY. If nothing else, we should seriously re-evaluate the inherent contradictions of international tribunals as procedural sites of justice and institutional foundations for reconciliation. More important, we should apply these cautionary tales from the ICTY to the International Criminal Court and look at ways to strengthen other, non-ICC related activities in post-conflict states that take a much broader view of responsibility of states and societies, and not just a few high ranking officials. Transitional justice legacy would be richer for it.

Perspectives for Normalization in Croatia and other Post-Yugoslav Countries in the Aftermath of ICTY Verdicts

Vesna Teršelič

Introduction

Widespread public and expert reactions have followed recent and some earlier ICTY verdicts. In particular I would like to mention three verdicts in which in my opinion the ICTY Appeals Chamber narrowed the understanding of command and individual responsibility for war crimes.

The first verdict is from December 2010 upon the extraordinary legal remedy, when the Appeals Chamber of the ICTY reviewed the judgment against Veselin Šljivančanin, major in the JNA, on the basis of only one witness statement, and freed him from criminal responsibility for aiding and abetting the murder of 194 prisoners of war from the Vukovar hospital in 1991, significantly diminishing previous imprisonment from 17 to ten years. The second is the verdict in the case of Gotovina at al. in which accused commanders of Croatian Army and Special Police have been acquitted and the third is the verdict in the case of Momčilo Perišić, former chief of the General Staff of the Yugoslav Army (VJ) from in which he was acquitted as well.

In Croatia there was hardly any verdict more expected than the one in the case of Gotovina at al. The Croatian society is still facing an ongoing memory struggle given the complex character of the war. The destruction of Vukovar and the ethnic cleansing of about one third of Croatian territory and war crimes committed by members of Serbian forces with the support of the Yugoslav Army in the year 1991 mostly against Croats are well known, but crimes committed by members of Croatian Forces mostly against ethnic Serbs, in particular during and after two military actions in May and August 1995, remain less visible. Where many public figures strives to prove that war was defensive, liberating,

just and legitimate it remains hard to publicly declare that it also had some characteristics of a civil war.

Facts on the number of victims are still disputed. Concerning the number of victims of war crimes during and in the aftermath of the Military Operation Storm the Croatian Helsinki Committee for Human Rights (CHC) recorded 677 civilian victims and about 20 000 destroyed buildings (burned down, destroyed or entirely damaged) in the area which was liberated by military action. Unlike the CHC records, the State Attorney's Office of the Republic of Croatia (DORH) is in possession of information concerning 214 killed persons, out of which 167 were killed as victims of war crime and 47 as victims of murder. When explaining these substantially different figures, DORH stated that very often no distinction is made between murder victims and war crime victims – in respect of which there is no criminal liability for their killing/death by the warring sides.

Concerning criminal proceedings in Croatia the families of victims are disappointed. Not a single person has been convicted for the war crimes committed during and after Operation Storm, so far. There are/were 3 criminal proceedings before Croatian courts against 10 persons for war crimes committed during and after Operation Storm. Proceedings are ongoing for the killing of six elderly Serb civilians in Grubori during Operation Storm, which was also mentioned in an indictment and first level verdict at the ICTY. Proceedings are ongoing for the killing an elderly couple of Serb ethnicity in Prokljan and one prisoner of war in Mandići. In 2001, an investigation was carried out because of the killing of three civilians in Laškovci and Dobropoljci. However, the prosecution dropped charges against him due to the lack of evidence. In this context there have been calls from human rights organisations for more prosecutions of those responsible for war crimes.

Local reactions to and significance of the acquittals

The acquittal of Gotovina and Markač triggered euphoria among the vast majority of the public in Croatia. Claims of the ICTY being "anti-Croatian" were replaced with statements that with the acquittal of the

Croatian generals "the Homeland War has finally ended" and that "Croatia is innocent". The complex reality of war in which a defensive war was mixed with elements of a civil war has been painted in simplified black and white colours attaining all evil to one side only. Euphoric Croats waved national flags and held up photos of the generals along with banners reading "Pride of Croatia" while patriotic songs blasted from speakers (Boris Pavelić in Balkan Insight).

The Human rights organisation Documenta has issued a statement emphasizing "the need to bear in mind families of victims and not let the crimes committed during the operation 'Storm' remain a tragedy without an epilogue.

During military action 'Storm', hundreds of civilians were killed, thousands of houses and other objects were burnt down, while almost half of the refugees are still waiting for their return from the areas they had to leave (according to the UNHCR data, 132.922 persons have returned to Croatia, out of which 48 percent returned for good, while the rest only occasionally visit their former homes). Regardless of the verdict brought by the Appeals Chamber in the case against Gotovina and Markač, families of victims have a moral right to expect that perpetrators are to be held responsible for their tragedies and tragedies of many others, no matter whose side they were on during the war and no matter in whose names the crimes were committed.

According to the information gathered by different international organizations, after Croatian army actions in the former Sectors West, North and South in the summer of 1995, some 200.000 Croatian citizens of Serbian nationality escaped to Bosnia and Herzegovina and to the then Federal Republic of Yugoslavia (Serbia and Montenegro).

We would like to remind, once again, the Croatian authorities and the public of some known crimes which have never been prosecuted, such as the killings of civilians in Golubić, Gošić, Varivode and Mokro Polje in the Knin area, the attack on the refugees' convoy between Glina and Dvor and the death of a large number of civilians, murders in Komić in the Korenica area, etc. Some of these crimes had been processed, but a

court ruling returned the process to its beginning, while a trial for crimes committed in Grubori is taking place in Zagreb.

Once again, we want to stress out that a moment has come for the Croatian judiciary to take over full responsibility for the prosecution of the committed war crimes and for the Croatian government to secure reparations to civilian war victims".

Although President Ivo Josipović and Prime Minister Zoran Milanović expressed their enthusiasm in respect of the acquittal, they both pointed out in their first public addresses that there were crimes which were committed during and after Operation Storm and that the Croatian judiciary should prosecute the perpetrators.

The acquittal of the Croatian generals stirred up quite the opposite reactions in Serbia leaving the victims deeply frustrated and causing them to feel injustice because no one was punished for the crimes, which is understandable. However, the leading politicians were appalled by the news of the acquittal of Gotovina and Markač. Their assessment was that ICTY was a political and an "anti-Serbian" court. They criticised the Croatian authorities and they reduced the cooperation between Serbia and the ICTY to a technical minimum.[1]

Zoran Pusić, President of Civic Committee for Human Rights, has pointed out: "At the moment, Croatia should call for an initiative to calm down the situation, redress the wrongdoings and give equal attention to all war crimes. The Serbian side feels damaged by what they perceive as a fundamental injustice – not so much with the acquittal of Gotovina and Markač itself but much more with the implications arising from the judgment. The judgment implies that crimes against Serb victims were insignificant and that farmers left their homes, property and livestock and embarked on years of refugee life out of spite almost. It is easy to

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[1]   *Documenta* – Centre for Dealing with the Past, Centre for Peace, Nonviolence and Human Rights – Osijek, Civic Committee for Human Rights: Annual Report on War Crimes Trials Monitoring 2012

act smart and superior now saying that the main problem lies with the Serbs and Serbian politicians not being able to face the truth about Serbia being the aggressor. But let's just imagine for a moment the scope of bitter and irrational reactions that would have emerged from the Croatian public and the politicians had the Appeals Chamber's fine majority tilted the balance towards the other side.

This is not an important football match where one team won on penalties or got awarded a dubious penalty. This is the moment when the choice of actions to a large degree might determine the future relations in the region, especially between Croats and Serbs (for the most individuals that are still not seeing these relations as private matter). I hope it is not too much to expect from both Croatian and Serbian politicians to show a higher level of rationalism than that demonstrated by football fans. I hope they will show rationality and empathy that have always been lacking in this region. In this case, when one has to keep in mind that the world is sometimes much more complex than it seems, these two values have been most clearly shown by Gotovina himself."

Perspectives for compensation procedures

Concerning compensation to the families of those killed some hope for justice is linked with a recent court decision. At the Municipal Court in Knin, a judgment was passed on 23 January 2013 according to which the Republic of Croatia must pay damages of 540,000.00 KN to Jovan Berić and his sisters Branka Kovač and Nevenka Stipišić, whose parents Radivoje Berić and Marija Berić were killed in the village of Varivode at the end of September 1995, more than 45 days after the completion of the Military Operation "Storm".

Initially, the courts in Knin and Šibenik rejected the claims for restitution which were lodged by the plaintiffs in 2006. However, in January 2012, the Supreme Court of the Republic of Croatia quashed the judgements passed by the lower instance courts and remanded the case for retrial. In the explanation of the Supreme Court's ruling, it was stated that the father and mother of the plaintiffs had been killed by firearm shots in the courtyard of their family home, that another 9 elderly per-

sons of Serb ethnicity had been killed in the village on the same day that the plaintiffs' parents had been killed, that the case represented a terrorist act with the aim of causing fear, terror and insecurity among civilians, for which act the Republic of Croatia was held accountable and that the obligation of paying the damage restitution did exist regardless of the fact of whether the perpetrator of the crime himself had been convicted or not.

Following the verdict passed by the Knin Municipal Court, which, on 23 January 2013, sustained the restitution claim submitted by Jovan Berić, Branka Kovač and Nevenka Stipišić due to the death (killing) of their parents in the village of Varivode on 28 September 1995, another restitution claim has been sustained.[2]

A joint law suit against the Republic of Croatia was filed before the Zagreb Municipal Court as early as in 2005 by Todor Berić, Živko Berić and Drinka Berić, children of the killed Marko Berić, and by Boško Berić, son of the killed Jovo Berić and Milka Berić. On 29 January 2013, the Zagreb Municipal Court sustained the restitution claim and adjudged Todor Berić, Živko Berić and Drinka Berić damages in the amount of 220,000.00 KN each, while Boško Berić, whose both parents had been killed in Varivode, was adjudged the amount of 440,000.00 KN.

Another three court proceedings for restitution of non-material damage due to the killing of close family members in Varivode are still pending at the Zagreb Municipal Court.

The courts have finally recognised the accountability of the Republic of Croatia for non-punishment of perpetrators of the cruel killings in Varivode. These judgements has brought, at least, a partial satisfaction

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[2] *Documenta* – Centre for Dealing with the Past, Centre for Peace, Nonviolence and Human Rights – Osijek, Civic Committee for Human Rights: Bi-Weekly Report on War Crimes Trials Monitoring, Osijek, Zagreb, January 25 2013.

to family members of those killed, and it has had the effect of helping to restore citizens' trust in the Croatian judicial system.[3]

Implications for the future in terms of dealing with the past

Despite the fact that the State Attorney's Office of the Republic of Croatia and the Serbian Office of the War Crimes Prosecutor have requested from the ICTY its documentation in the case of Gotovina et al., it is feared that, due to inefficiency in prosecution of these crimes thus far but also due the weakening of international political pressure because of the accession of the Republic of Croatia in the European Union, that the Croatian judiciary will not prosecute the war crimes committed during and after Operation Storm to any significant degree. It is surprising also that ICTY has not yet transferred documentation to prosecutors from Croatia and Serbia.

It is necessary to shed light on circumstances of all committed war crimes and the importance of punishing the perpetrators. In the Data base of the State Attorney's Office of the Republic of Croatia the total of 490 crimes have been registered. By 30 September 2012, the State Attorney's Office of the Republic of Croatia collected the information on perpetrators of 316 crimes, while the perpetrators of 174 crimes were unknown. However, only 112 crimes (22.86%) have been completely resolved.

Thinking beyond this justice gap we can also say that there is a need for more than retributive justice through the verdicts of domestic and international courts. Victims and their families expect acknowledgment of their suffering and new generations have the right to learn history based on facts. There has been hardly any progress concerning either material or symbolic reparations for civilian war crimes victims and survivors. In Varivode stands one of the few monuments to Serb civilian victims in Croatia which was erected in 2010 in presence of the President of Croa-

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[3]   *Documenta* – Centre for Dealing with the Past, Centre for Peace, Nonviolence and Human Rights – Osijek, Civic Committee for Human Rights: Bi-Weekly Report on War Crimes Trials Monitoring, Osijek, Zagreb, February 15 2013

tia, Ivo Josipović. One must then ask of dealing with the past whether more monuments follow and whether the Ministry of Justice will start to look at an inclusive reparations policy which would involve all civilian war crimes victims.

An important role might be played by the initiative for RECOM, which began in 2006 as an effort of a handful of human rights organizations, and is now driven forward by Regional Coalition with more than 1.600 members from all post-Yugoslav countries, namely Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Slovenia. If established, RECOM might complement the work of the Hague Tribunal, and national courts that prosecute war crimes in order to sensitize the public and national governments on the need for justice for victims and need for regional post-conflict fact-finding and truth-telling. In the year 2011, the coalition has submitted the proposed Statute of RECOM to the Presidents and Governments of all post-Yugoslav countries. Some have supported it and others remained silent for a while, until the most recent developments. In March 2013, Ivo Josipović, offered to host the meeting of representatives of presidents/presidency of of Bosnia-Herzegovina in Zagreb. It is to be hoped that after reaching an understanding between the Prime Ministers of Kosovo and Serbia and the apology of the President of the Republic of Serbia for the genocide committed in Srebrenica, a date for a meeting will be determined soon. Still, the remaining challenges require wise vision and determined political leadership. Peace and stability in the region should be firmly grounded on the principles of human rights and the rule of law.

While political will for establishing RECOM might gradually evolve in post-Yugoslav countries, it is essential to continue basic research on the facts about the fate of all war crimes victims. Prospects to further normalize and ensure preconditions for social and economical development in post-Yugoslav countries seem to be largely dependent on the collaboration of civil society, political leaders, media, as well as of judiciary, in tackling the issue of dealing with the past.

Acronyms

CHC   Croatian Helsinki Committee for Human Rights

DORH   State Attorney's Office of the Republic of Croatia

ICTY   International Criminal Tribunal for War Crimes in Former Yugoslavia

RECOM   Regional Commission for Establishing of Facts about all War Crimes committed in former Yugoslavia in period 1991-2001

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A Troubled Relationship: The ICTY and Post-Conflict Reconciliation

Nena Tromp

It will be argued in this article that the relationship between Retributive Justice as delivered by the ICTY and its impact on reconciliation processes has yet to be properly researched according to a novel methodology that would allow for comparison of different courts and different post-conflict states and societies.

First, the Mandate of the ICTY will be examined. Although the UN's founding documents of the ICTY mention justice for victims, punishment of perpetrators and restoration and maintenance of peace as the mandates of the ICTY,[1] in a discussion surrounding its constitution the deterrence of crimes globally as well as of mass atrocities in the Balkans was considered; establishment of the truth about the conflict and reconciliation were mentioned in terms of a broader mandate.

Second, the term Reconciliation requires examination. The term is the subject of several very different definitions. Every definition is somewhat open ended and imprecise - just as there are no two exactly identical models or definitions of 'federation' or 'Transitional Justice' or 'ideology'. All such terms, when adopted in research of a specific issue or a casus, are altered or expanded from how they might have first appeared. In public discourse on reconciliation every participant involved might apply a different understanding and interpretation of reconciliation.

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[1] See UN SC Resolutions 808 of 22 February 1993 and UN SC Resolution 827 of 25 May 1993.

Scholarly debate on reconciliation

Before considering the relationship between the work of the ICTY and the process of reconciliation, it will be useful to introduce a theoretical framework of the term Reconciliation. In scholarly literature, Reconciliation is often identified as a pre-requisite for a stable peace and, thus, an essential part of peace building processes after settlement of a conflict.[2]

Is it possible to achieve a stable peace without reconciliation?

It should not be assumed that the end of every conflict will be followed by reconciliation. Some scholars argue that there are in history many examples of civil, intra-state and inter-state conflicts that ended without subsequent reconciliation processes but where former enemies were still able to live side-by-side in relative peace. One explanation for this is that in earlier times most wars around the world ended with a victor and a defeated party, which, having lost the military conflict, had no choice but to accept the terms of the peace.[3] The history of Europe, however, shows that the dictate of a victor might – but did not necessarily – lead to a stable or lasting peace. Useful examples for comparison are provided by both 'World Wars'. The treatment of Germany by the victorious states after the First World War, included a heavy reparation package that was imposed on Germany. This impoverished and humiliated the nation and paved the way to the rise of Hitler and the outbreak of the Second World War. After the Second World War the victor states included Germany in the Marshal Plan, which made Germany a prosperous democratic state and one of pillars of the EU.

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[2] S. Kaufman, 'Escaping the Symbolic Trap: Reconciliation Initiatives and Conflict Resolution in Ethnic Wars', *Journal of Peace Research*, 2006, 201.

[3] M. Ross, 'Ritual and the Politics of Reconciliation', in *From Conflict Resolution to Reconciliation*, Bar-Siman-Tov, Yaacov, Oxford: Oxford University Press, 2004: 202.

Should reconciliation be addressed at the level of state or society?

One of the issues raised in scholarly debate is whether Reconciliation is a spontaneous bottom-up process marked by emotional or psychological reconciliation, or a planned socio-political top-down strategy, with an important role to be fulfilled by national political leaderships?[4] A related issue concerns target groups: does Reconciliation address states or societal groups or individuals? The so-called 'Realists' argue that sovereign states are the primary actors in international affairs and that reconciliation should be addressed at the level of states. Others, the so-called 'Liberals', argue that reconciliation concerns personal relations or religious experiences of individuals and of small 'face-to-face' groups and as such should be addressed at the level of society. According to this approach societal reconciliation is the only process that may bring people to internalise the meaning of peace and then support it.[5]

Should reconciliation be seen as a final objective or a process?

A further issue arising from the debate is whether Reconciliation should be seen as an objective to be achieved or as a process. Scholars who see Reconciliation as a socio-emotional phenomenon consider it as the end objective and see it as a final stage of the peace-making process.[6] Some authors see the objective of reconciliation as something to aim towards – 'an ideal state to hope for'.[7] Those who see Reconciliation as a process stress that, in the process of reconciliation, changes of motivation, goals,

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[4] T. Hermann, 'Reconciliation: Reflections on the Theoretical and Practical Utility of the Term' in *From Conflict Resolution to Reconciliation*, Bar-Siman-Tov, Yaacov, Oxford: Oxford University Press, 2004, 42.
D. Bargal & E. Sivan 'Leadership and Reconciliation', in *From Conflict Resolution to Reconciliation*, Bar-Siman-Tov, Yaacov, Oxford: Oxford University Press, 2004, 126.
[5] Hermann, 2004, 43.
[6] Bar-Siman-Tov, 2004, 47.
[7] D. Bloomfield, Reconciliation After Violent Conflict: A Handbook, International Idea 2003: 12.

beliefs, attitudes and emotions by most group members take place and that these changes have to be taken into account.[8]

A model of reconciliation

Conflict studies offer useful analysis of the dynamics of pre-conflict, conflict and post-conflict processes. In the post-conflict period - the stage of Ceasefire - Agreement and Normalisation might be required as preconditions for Reconciliation. Yet there would need to be determined when and how reconciliation could and should take place on the individual emotional-psychological level and to distinguish that from group-to-group reconciliation and from state-to-state reconciliation. Besides, it is not always clear what exactly is the difference between Normalisation and Reconciliation.
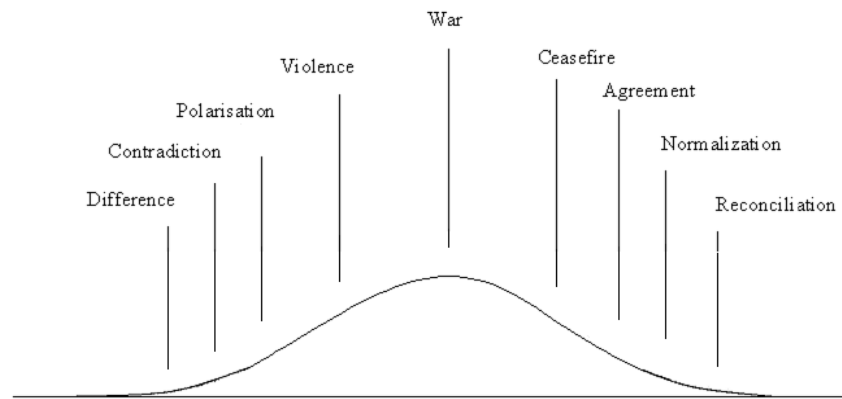
Model of Conflict escalation and de-escalation (Ramsbotham, Woodhouse and Miall 2005, 9)

This chart, helpful though it may be in some ways, does not deal with the concept of Transitional Justice. The realities of post-conflict societies all over the world show that there is no efficient prescription for how a

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[8]   J.P. Lederach, *Building Peace, Sustainable Reconciliation in Divided Societies*, Washington D.C.: United States Institute of Peace Press.

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society should deal with a past legacy of mass atrocities and political violence. Scholarship on Transitional Justice deals with the manner in which a state or a society addresses a legacy of mass atrocities or long-standing human rights abuses. The UN has adopted the following definition of the term:

> The notion of transitional justice comprises ... the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.[9]

Transitional Justice does not look exclusively to criminal justice or retributive justice, but identifies several other justice concepts, as for example restorative justice, historical justice, reparatory justice, administrative justice and constitutional justice.

In practice, it is not always easy to distinguish between the concepts of Reconciliation and Transitional Justice. Both involve mechanisms being applied at individual, collective or state levels to deal with personal trauma, peace, justice, truth and forgiveness and mercy.

A useful concept to consider is the deconstruction of Reconciliation into four constitutive elements, namely: Peace, Justice, Truth and Mercy.

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[9] United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of Secretary General*, S/2004/616, 23 August 2004, 4.

TRUTH
Acknowledgement
Transparency
Revelation

PEACE
Security
Respect
Well-being
Harmony

RECONCILIATION

JUSTICE
Equality
Right relationships
Making things right
Restitutions

MERCY
Acceptance
Forgiveness
Support
Compassion
Healing
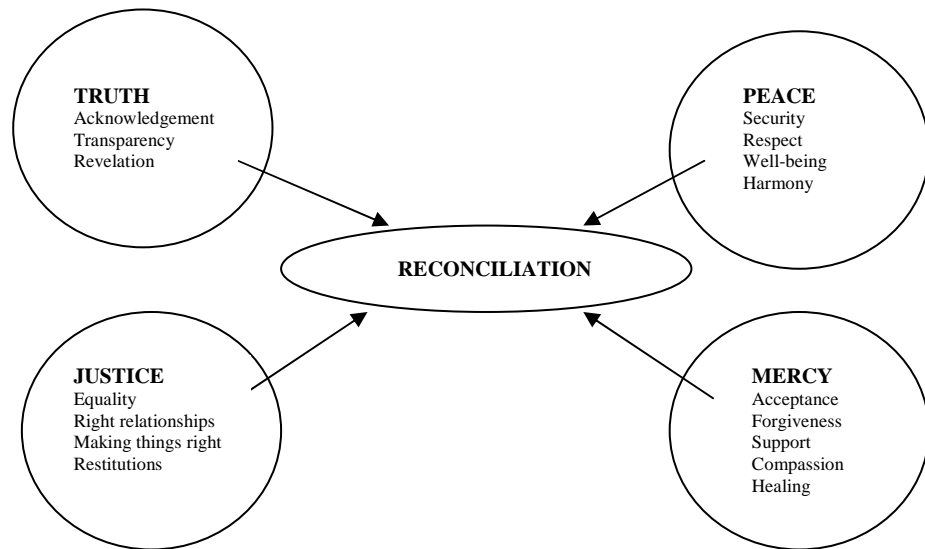
Source: Lederach, 1997, 30.

Explaining the meaning of Peace, Lederach stresses that it is about the need for interdependence, well-being, and security, as in a post conflict environment both parties lack trust, so the establishment of mutually accepted, structural mechanisms is required to prevent recurrence of violence.[10] Those measures are, for example, demobilisation of military forces, disarmament and demilitarisation, which should contribute to mutual trust and positive perceptions of each other, and to a general sense of security.[11]

Democratisation is nowadays regarded as a condition for a stable peace and includes, inter alia, protection of human rights, the right to political organisation and expression, and the rule of law. In addition to democratisation, an improvement of the economic situation is considered as an

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[10]   Lederach, 1997: 28.
[11]   D. Bar-Tal & G. Bennink 'The Nature of Reconciliation as an outcome and as a Process', in *From Conflict Resolution to Reconciliation*, Bar-Siman-Tov, Yaacov, Oxford: Oxford University Press, 2004: 23. L. Kriesberg, 'Comparing Reconciliation Actions within and between Countries' in *From Conflict Resolution to Reconciliation*, Bar-Siman-Tov, Yaacov, Oxford: Oxford University Press, 2004: 85.

important component for reconciliation. There is also an expectation that with economic prosperity, past discrimination and inequalities will disappear.[12]

Reconciliation through truth

Groups on both sides of a conflict have different experiences, feelings, and understanding about the conflict. It is only to be expected that victims will try to disclose the truth about crimes known to them, while the perpetrators will try to deny or obscure it. Competing and sometimes very contradictory narratives might work against reconciliation and even fuel a new conflict. Yet in many post-conflict societies there would be at least two truths, which would find their way into collective memory and possibly in the history books.[13] This is why, in some conflict societies attempts were made to establish truth commissions, as in El Salvador, Chile, Guatemala and in South Africa.

Although criticised for their potential to keep old wounds open for too long, those commissions represent noble and novel attempts to work on reconciliation in post-conflict societies where the number of perpetrators is so large that no criminal system would be able to process them. It is certainly true for the members of the South African Apartheid state bureaucracy as well as for former Communist regimes. Truth commissions work only if they include the stories of victims and perpetrators. There is, of course, always a possibility that perpetrators would not tell their full stories given the risk – that existed in South Africa – of being their charged with crimes to which they had effectively confessed. Yet, even if incomplete, the stories of perpetrators – typically missing from historical or other accounts of conflicts – add substantially to conflict narratives.

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[12]   Bar-Tal and Bennink, 2004, 26. Rothstein, 1999, 12.
[13]   Kriesberg, 2004, 82-83.

Reconciliation through mercy

Mercy has been described as a combination of Acceptance, Forgiveness, Support, Compassion and Healing. It presupposes the willingness of victims to forgive and engage in a dialogue and for victims to tell the truth and repent. There are some interesting examples of how Mercy may work and yet it is difficult to prescribe how victims and perpetrators could reach that point of dialogue and communication.[14] Many criminal justice systems allow for a guilty plea, where an alleged perpetrator has a chance to plead guilty and by that act alone to determine the verdict and influence the sentence to his or her advantage. It is a technical legal issue and does not require any proof that the guilty plea was a genuine admission of guilt and does not reflect repentance or humility of the perpetrator.

Yet, at the ICTY, there were occasional cases of genuine expressions of guilt and remorse by those you pleaded guilty; they did not have quite as positive an effect as one might have hoped. There is an interesting comparison to be made between Biljana Plavšić and Milan Babić, two major politicians in war time BiH and Croatia, who both pleaded guilty. Plavšić did it for cynical reasons of reducing the sentence, which worked well for her. After being sentenced to 12 years in prison she was eventually freed after serving one third of her sentence. Milan Babić, the leader of the Croatian Serbs, first appeared as Prosecution Witness in Slobodan Milošević's trial. He told everything he knew and genuinely tried to help the Prosecution. His testimony was of a great importance for proving Milošević's criminal intent. After his testimony, he was indicted by the ICTY and after pleading guilty, sentenced to 13 years of prison. He was compelled by the Prosecution to testify in other ICTY cases and in the course of his testimony against his fellow Croatian Serb, Babić committed suicide in his prison cell.[15] His remorse did not stimulate any response from those victims and perpetrators who might have been interested in reconciliation, or from UN ICTY officials. If the acts of a man

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[14] Lederach, 1997, 28.
[15] Geoffrey Nice, 'Zločin i kazna: zašto je haška osuđenica za ratne zločine prerano oslobođena', DANI, 20 November 2009.

like Babić cannot contribute to reconciliation through Mercy and Remorse, what can?

Reconciliation through justice

For many reconciliation theorists, justice is one of the primary components of reconciliation. There is a consensus that any sense of injustice in post-conflict societies might lead to the rekindling of the fires of conflict, while a feeling of justice may constitute the basis for a stable and peaceful society.[16] However, the literature on reconciliation does not define justice in clear terms. Does justice relate to retributive, restorative, transitional or historical justice?[17]

Ambitions and realities of the ICTY mandate, 1993-2013

It could easily be argued that the four elements – Peace, Justice, Truth and Mercy – relating to Reconciliation respond to the definition of Restorative Justice, a victim-centred justice system that identifies as the essential needs for victims: the information, validation, vindication, restitution, testimony, safety and support.[18]

All the above considerations only highlight and stimulate the question of why and how can Reconciliation be connected to Retributive Justice as delivered at the ICTY?

In strictly legal terms the normal criminal legal system, as a classical example of retributive justice, is perpetrator-oriented and as such pursues a mandate that deals with the investigation and punishment of individual offenders. Increasingly, especially in international criminal tribunals dealing with war crimes, a no less important legal mandate is the

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[16]   Kriesberg, 2004, 83-84.
[17]   Bloomfield, 2003, 97.
[18]   Lawrence Kershen, QC states that those elements should be starting point of justice. Quoted in Sir Geoffrey Nice's Lecture, 'War Crimes Courts that Reconcile: Oxymoron or Possibility?', 18 April 2013, Gresham College, London, Available at: http://www.gresham.ac.uk/lectures-and-events/war-crimes-courts-that-reconcile-oxymoron-or-possibility.

administration of justice for victims. Finally, there is a legal mandate of deterrence, i.e. there is an expectation that an efficient system of punishment would inevitably result in controlling the recurrence, and reducing the rate, of crime.

Crime – and the need to deal with it – is eternal. Regardless of the ideological foundations of a state and regardless of the level of civilisation achieved in any society, crime is here to stay. In no national jurisdiction do the police and justice systems state as goals the complete elimination of crime. And, properly, when the ICTY was founded in 1993, one of its stated objectives was deterrence of the commission of future crimes. The reality, unhappily, was that some of the gravest atrocities of the war were committed by Serbian armed forces years after the establishment of the ICTY, in 1995 in Eastern Bosnian and in 1998-1999 in Kosovo.

Retributive Justice Systems serve the delivery of justice to victims by punishing perpetrators, but only by verdicts and sentences of those found guilty. Such systems rarely offer more to victims. It is true that victims at the permanent International Criminal Court (ICC) are accorded some rights of appearance with the prospect of recovery of compensation and that this approach is finding some favour elsewhere in national justice systems. At the ICTY victims had no such expectations. They appeared as witnesses leaving a record by their testimonies. Yet those testimonies, as much as they are important, have been given under strict rules and the rigor of the adversarial legal system. Many details – maybe of emotional and social relevance for a victim – would not be included in the testimony as court procedures are primarily concerned with the probative value of evidence and not with the stories witnesses wanted and needed to tell. For some victims, testifying at the ICTY was their first experience of a court. Some of them had never left their villages before, only to find themselves in a court using a foreign language and being cross-examined by an Accused. Slobodan Milošević, Vojislav Šešelj, and Radovan Karadžić, who were representing themselves in court, were allowed to cross-examine the victims. The experience left few victims unmoved and some were left traumatised. They experienced no reconciliation and they found no reason to be merciful; instead they suffered trauma heaped on trauma.

Yet there has been an implicit expectation that the ICTY would facilitate reconciliation. Some lawyers have expressed scepticism about that particular expectation, asking if there is any national court where a court claims – or the public expects – that (say) in a rape case the trial and eventual verdict would lead to reconciliation of the perpetrator(s) with the victim(s)? Or that a bank robber once tried and sentenced should – by reason of the trial itself – become reconciled with the bank clerks he threatened, or with the bank management, or even with the bank clients whose accounts he effectively robbed?

Conclusions

When the ICTY was established in 1993 to deal with political violence and crimes of mass atrocities it was assumed that facilitating reconciliation would and should be possible, just as it has been since with the creation of the permanent ICC at its creation by the Rome Statute in 2002. Yet nobody with decision-making authority within the ICTY and the UN – or now at the ICC – has explained how this might happen. At the ICTY no mechanisms were developed to make a link between the work done by the courts and the regional constituencies where the victims and perpetrators – expected to reconcile in some magical way – still live.

There is no doubt that reconciliation processes in post-conflict societies following a peace settlement and in the absence of violent conflict are of utmost importance. The question of relevance is – can reconciliation be facilitated by a criminal court, national or international?

There are several possible answers to this question:

First, legal procedures, legal discourse, and the legal narrative are not readily understood by the lay public generally or the local communities, for whom the ICTY administers justice. The international criminal justice system is a normative system with strict rules and procedures, specific legal theories, lengthy court sessions, and language barriers that make many aspects of it inaccessible for local communities. The fact that proceedings have been held abroad and through interpretation makes accessibility and appreciation of The Hague's justice additionally

complicated. Regional media coverage has not been adequate and there is no real reason why it should be. The fact that, so far, topics covered by the regional media were episodic and reactive to events – such as the capturing of the fugitives or pronouncing of judgments – reveals basic shortcomings of the functioning of the ICTY's Outreach Office. The ICTY is a legal institution serving a region with a specific legal culture – or lack of legal culture.

In consequence the ICTY should have been involved through its own information dissemination office – the ICTY Outreach Program – in informing and educating public in the region with no previous knowledge or understanding of the adversarial legal system. The ICTY Outreach Office was formed in 1999, but has never been financed from the ICTY's annual budget, only by external donations. It remained a small office with a small staff and a huge mandate to fulfil. Even 15 years later, ICTY Outreach is not expanding proportionately with demands from beyond the Tribunal for more information. This is not merely a question of a budget, but a demonstration of the UN's general, and the ICTY's particular, propensity to control the public narrative, often achieved by minimising contacts with the outside world and identifying as topics of public interest those which were perceived as not-controversial for the image of the institution.

Secondly, in seeking to establish truth – or at least a more reliable narrative - through criminal proceedings that might lead to mutual acceptance of what had happened in the past, it has to be keep in mind that the courtroom narrative in every trial consists of at least two 'truths': a Prosecution and a Defence 'Truth(s)' – neither (none) of which may be accurate. This has been reinforced by the nature of the adversarial legal where the parties are not interested in truth but in proving their case beyond reasonable doubt, or 'disproving' it by creating doubt about the other side's narrative, and eventually winning the case.

Finally, the ICTY, despite all this, could be seen as an institution creating and providing components of Truth and Justice as discussed earlier. In its 20-year long tenure it produced probably the most comprehensive record ever of any conflict. It is hard now to imagine any historical ac-

count of the period without inclusion of evidence from the ICTY record. This record, vast as it is consisting of evidence from more than one hundred individual trials, is not easily or readily accessible for outside users. One of the biggest immediate tasks is how to make this record more accessible to the general public.

There is also a debate on the topic why the ICTY could not be seen as the institution to advance reconciliation by contributing to Truth and Justice. One argument is that the ICTY has been exposed to all sorts of internal and external political influences and as such has been used by individual states for their particular political ends. The most obvious goal of the outside parties has been to control conflict and trial narratives through influencing the scope of trials, indictments policies, (non)production of evidence, access to witnesses and by influencing Judgments. This was not done only by SFRY successor states, Serbia as prime example, but also by the UN and individual states involved in the war. The Srebrenica genocide is a good example of how different parties had overlapping interests in obscuring the truth.

Individual UN states with advanced intelligence capabilities, which had a presence on the ground prior to the take over of Srebrenica, might hold evidence revealing pre-knowledge of the crimes being committed. They could, in consequence, have found themselves being held responsible under international law for inactivity given the duty of all states to prevent any genocide, such as was to unfold in Srebrenica in 1995. The same applies to the UN peacekeepers who did nothing to prevent the Serb forces taking away boys and men from Srebrenica in the summer of 1995. Serbia's more obvious interest was in obscuring its role in planning and executing crimes in BiH, calculating that a form of internationally acceptable justice could be done if all responsibility for all political and military crimes in BiH should remain with the Republika Srpska (RS) and its army (VRS).

In the aftermath of the Srebrenica genocide, in 1995, the ICTY indicted the RS political leader Radovan Karadžić and the Chief of Staff of its army, the VRS, General Ratko Mladić with atrocities committed in the

war in BiH, including crimes of genocide.[19] Other indictments followed, including of the VRS General Radislav Krstić, General Zdravko Tolimir, General Vujadin Popović and others.[20] The trials were held at the ICTY and subsequent convictions of some of the indictees to life imprisonment for crimes of genocide, or for aiding and abetting genocide, have left an important record about individual criminal responsibility and about the nature of the crimes committed in BiH against Bosnian Muslims. What is remarkable from the perspective of the ICTY record of mass atrocities in BiH is that, save for Milošević who died in 2006 before his trial finished, no other individual from the Federal Republic of Yugoslavia (FRY) or from Serbia has been indicted for the crime of genocide.[21] Two ICTY cases conducted against former highly placed officials in the federal and republican state bureaucracies, Prosecutor v. Momčilo Perišić and Prosecutor v. Jovica Stanišić and Franko Simatović, did include Srebrenica in the indictments – not for the crime of genocide but for crimes against humanity.[22] Eventually, the ICTY Appeals Chamber Judgment acquitted General Momčilo Perišić, the Chief of Staff of the

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[19] See ICTY Indictments: *Prosecutor v. Radovan Karadžić* (Case No. IT-95-5/18-PT), 19 October 2009. Fourth Amended Indictment *Prosecutor v. Ratko Mladić* (Case No. IT-09-92-PT), 1 December 201. Available online:
http://www.icty.org/x/cases/karadzic/ind/en/markedup_indictment_091019.pdf
and http://www.icty.org/x/cases/mladic/ind/en/111216.pdf.

[20] See ICTY Indictments: *Prosecution v. Radislav Krstić* (Case No. IT-98-33) , *Prosecution v. Popović et. al.* (Case No. IT-05-88-T), *Prosecutor v. Zdravko Tolimir (Case No.* IT-05-88/2-PT). Available online:
http://www.icty.org/x/cases/krstic/ind/en/krs-1ai991027e.pdf
http://www.icty.org/x/cases/popovic/ind/en/popovic-060804.pdf
http://www.icty.org/x/cases/tolimir/ind/en/091104.pdf.

[21] See ICTY Indictment against Milosević, consisting of three different documents: a Croatia, a BiH and a Kosovo indictment. For the point made in this chapter only the BiH indictment is of relevance. *Prosecutor v. Slobodan Milosevic*, (Case No. IT-02-54). Availabel online:
http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-2ai020728e.htm
http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ai040421-e.htm
http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-2ai011029e.htm.

[22] See ICTY Indictments: *Prosecution v. Stanišić-Simatović* (Case No. IT-03-69-PT); *Prosecutor v. Momčilo Perišić* (Case No. IT-04-81-PT). Available online:
http://www.icty.org/x/cases/stanisic_simatovic/ind/en/staj-in3rdamd080710.pdf
http://www.icty.org/x/cases/perisic/ind/en/per-sai080205e.pdf.

Army of Yugoslavia from 1993 to 1998, of all charges on 28 February 2013.[23] This very significant judgement, received in Serbia with cheers, allows his acquittal to be seen as exoneration not only for him personally but more generally for Serbia.[24]

Another important judgment for Serbia was the judgment in the Stanišić&Simatović case, that was pronounced in May 2013. To the disbelief of many, and to the great disappointment of the victims, Jovica Stanišić, the long-term Head of the Serbian State Security Department (the DB) and Franko Simatović, the Commander of the Units for Special Operaitons of the DB (JSO), were acquitted in a first instance judgment of all criminal resonibility for crimes the JSO unit committed in the wars in Croatia and BiH. This Judgment, although not necessarily final because the Prosecution may appeal the decision, together with Perišić's acquittal will influence in a major way the narrative left of the nature of the involvement of FRY and Republic of Serbia in the wars in BiH and Croatia.

Needless to say, those two judgments were received very differently among those bereaved by the Srebrenica genocide or who were survivors of that and other mass atrocities, demonstrating that legal justice – for whatever reasons - might not tell the full story about a conflict and its human suffering. It would be difficult to claim that simply by the ICTY's pronouncing judgments the mandate of Justice would be met thus contributing to Reconciliation. If a criminal legal system does not deliver judgments that attract acceptance and approval of victims and survivors, it does not achieve anything but leaving trial records to be studied for generations to come. The risk being that – if a different truth emerges than the one produced by the judgments, narratives coming from studying the trial records might give a different truth, but not necessarily on time to help correct the damage process of reconciliation.

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[23]   See ICTY Judgment Summary in the *Prosecutor v. Momčilo Perišić* (Case No. IT-04-81-PT). Available online:
http://www.icty.org/x/cases/perisic/acjug/en/130228_summary.pdf.

[24]   See for example: Lakić Đorović, *Zaslužili ste orden od Pavkovića Miloševića*, E-NOVINE, 15 March 2013.   Available online:
http://www.e-novine.com/stav/80744-Zasluili-ste-orden-Pavkovia-Miloevia.html.

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http://www.icty.org/x/cases/mladic/ind/en/111216.pdf

ICTY Indictments: *Prosecution v. Radislav Krstić* (Case No. IT-98-33) , *Prosecution v. Popović et. al*. (Case No. IT-05-88-T), *Prosecutor v. Zdravko Tolimir (Case No.* IT-05-88/2-PT).Available online:

http://www.icty.org/x/cases/krstic/ind/en/krs-1ai991027e.pdf
http://www.icty.org/x/cases/popovic/ind/en/popovic-060804.pdf
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ICTY Indictment against Milosević, consisting of three different documents: a Croatia, a BiH and a Kosovo indictment. For the point made in this chapter only the BiH indictment is of relevance. *Prosecutor v. Slobodan Milosevic*, (Case No. IT-02-54). Available online:

http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-2ai020728e.htm

http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ai040421-e.htm
http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-2ai011029e.htm

ICTY Indictments: *Prosecution v. Stanišić-Simatović* (Case No. IT-03-69-PT); *Prosecutor v. Momčilo Perišić* (Case No. IT-04-81-PT).
Available online:
http://www.icty.org/x/cases/stanisic_simatovic/ind/en/staj-in3rdamd080710.pdf
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Available online:
http://www.icty.org/x/cases/perisic/acjug/en/130228_summary.pdf

PART II

CONCRETE IMPACTS OF THE RECONCILIATION ISSUE ON REGIONAL COOPERATION AND THE "EUROPEANIZATION" AGENDA

The Complex Relationship between Transitional Justice and Regional Peacebuilding: The ICTY's Challenge for Reconciliation and Conflict Transformation in the Post-Yugoslav Balkans[1]

Dennis J.D. Sandole

Introduction

My objective in this article is to examine, from a conflict resolution perspective, the impact of the International Criminal Tribunal for the Former Yugoslavia (ICTY) on transitional justice, reconciliation and peacebuilding within the former Yugoslavia. I begin with a discussion of a conflict resolution framework – the "3 pillar framework" (3PF) – within which the relationship between ICTY decisions and reconciliation can be examined. I then address reconciliation and its various dimensions. This is followed by a discussion of the origins, functions, and objectives of the ICTY, plus the transitional justice setting within which the ICTY operates. Then I take up the contentious issue of the Tribunal's verdicts, and explore the primary focus of the article: the impact of recent verdicts and appeals decisions on transitional justice, reconciliation and peacebuilding within the former Yugoslavia. As the article draws to a close, I deal with competing narratives and memories among actors in the region as major constraints on reconciliation efforts; the European Union as a source of reconciliation; and a promising experiment in reconciliation among Serbian and Croatian secondary school students in Croatia. I then conclude by visioning the future of reconciliation in the Western Balkans through the 3 pillar framework, which is outlined below.

A conflict resolution framework

Conflict is a process comprising a number of developmental phases, starting with latent conflict – a conflict which has not yet developed in the consciousness of one or more parties (see Deutsch, 1973). When conflict is up and running we have, in the first instance, a manifest conflict process (MCP) that occurs when two or more parties, or their representatives (e.g., lawyers, diplomats), pursue their perceptions of mutually incompatible goals by undermining the goal-seeking behavior of one another. If the parties' reciprocal efforts to undermine each other set off a frustration-aggression dynamic, then the MCP will have escalated to an aggressive manifest conflict process (AMCP). In this case, two or more parties, or their representatives, pursue their perceptions of mutually incompatible goals by damaging or destroying each other's high-value cultural, political, and other symbols of their identities and/or by injuring, destroying or otherwise forcefully eliminating one another (see Sandole, 1993, 1999, 2007, 2010).

To optimally study conflict in order to explore what, if anything can be done about it, I have developed a framework, "A Comprehensive Framework for Conflict Analysis and Resolution: A Three Pillar Approach" or, simply, the 3 pillar framework (3PF) (see Sandole, 1998, 2007 [Ch. 2], 2010 [Chs. 1-2]). Graphically, the 3PF can be expressed as follows:

A Comprehensive Mapping of Conflict and Conflict Resolution:
A Three Pillar Approach (3PF)

Pillar 2:	Pillar 1:	Pillar 3:
Conflict Causes and Conditions	Conflict Elements	Conflict Intervention
Individual	Parties	*3rd Party Objectives*
Societal	Issues	[Violent] Conflict Prevention
International	Objectives	Conflict Management
Global/Ecological	Means	Conflict Settlement
	Preferred Conflict-Handling Orientations	Conflict Resolution
	Conflict Environment	Conflict Transformation
		3rd Party Means for Achieving Goals
		Confrontational and/or
		Collaborative Means
		Negative Peace and/or
		Positive Peace Orientations
		Track 1and/or Multi/Track
		Actors and Processes

The first pillar of the 3PF deals with the elements of conflict such as the Parties (individuals, groups, organizations, states), their Issues (territory, status), their Objectives (changing or maintaining the status quo), the Means they employ to wage conflict over certain issues in order to achieve certain objectives (nonviolent, violent), the parties' Preferred Conflict-handling Orientations, despite whatever means they are actually using, and finally, the Conflict Environment[s] ("space[s]") within which their conflict is playing out.

Pillar 2 addresses the drivers of the conflict, with origins at the individual, societal, international, and/or global/ecological levels. It is primarily at this point that the *complexity* of conflict becomes abundantly clear, as

each level subsumes a number of traditional disciplines, each with its own literature, theories, core knowledge, language, degree programs, and the like. The individual level, for example, comprises biology, philosophy, physiology, psychoanalysis, psychology, and theology. The societal level is made up of anthropology, economics, history, law, and sociology. The international level subsumes all these, plus diplomacy and the multidisciplinary field of international relations. Finally, the global/ecological level includes biology, chemistry, geology, physics, plus various hybrids of the natural sciences such as climate science, environmental science, mathematics, and human-made phenomena that transcend the international level, such as religion and technology.

Given that it would be challenging for only one person to claim mastery in more than one or a very small number of these disciplines – each of whose subject matter can affect the development of a violent conflict – effective conflict research may depend upon the expertise and competence of a team of conflict researchers and practitioners to capture the complexity of any given conflict.

We then come to Pillar 3, which deals with two components: 3rd Party Objectives and 3rd Party Means for Achieving Objectives. Under *3rd Party Objectives*, we may be interested in achieving any or all of the following which collectively can be viewed as types, phases, or stages of conflict resolution "writ large":

1. [Violent] conflict *prevention* (or preventive diplomacy);
2. Conflict *management* (or peacekeeping);
3. Conflict *settlement* (or coercive peacemaking);
4. Conflict *resolution* "writ small" (or collaborative peacemaking); and
5. Conflict *transformation* (or peacebuilding).

Violent conflict prevention (or, in the lexicon developed by former UN Secretary General Boutros Boutros-Ghali [1993], preventive diplomacy) can be pursued to prevent a developing latent conflict from becoming either an MCP or AMCP.

If violent conflict prevention fails, or is not even attempted because, whatever human nature is, it is certainly not proactive, a latent conflict will have developed into either an MCP or AMCP. Given an existing violent conflict, potential third parties may initially opt to contain it by *conflict management* (or, in Boutros-Ghali's [1993] system, *peacekeeping*). If this effort fails and the conflict spreads, then third parties may aggressively suppress it through *conflict settlement* or *coercive peacemaking* (ibid.).

Once a violent conflict has been suppressed and hostilities have ended, establishing *negative peace* (Galtung, 1969, see discussion below), third parties may attempt to discover and eliminate the deep-rooted, underlying causes and conditions of the AMCP by *conflict resolution* "writ small" or, in terms of Boutros-Ghali's (1993) system, *collaborative peacemaking*, so that that particular violent conflict does not recur – a major trend and challenge in the contemporary world (see Hewitt, et al., 2012, Chs. 1 and 3).

Finally, once a recent violent conflict has been definitively addressed to prevent violent conflict recurrence, third parties may work with the former parties to discover or invent new mechanisms through *conflict transformation* or *peacebuilding* (Boutros-Ghali, 1993), so that next time they have a conflict, they do not have to burn down the house, the neighborhood, and the commons (see Sandole, 2007, Ch. 2; Sandole, 2010, Chs. 1-2).

Under *3rd Party Means for Achieving Objectives,* we may be interested in any or all of the following means for achieving goals:

1. Confrontational and/or collaborative means;
2. Negative peace and/or positive peace orientations;
3. Track 1 and/or multi-track actors and processes.

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Although it may seem contradictory to a student of conflict resolution that the field could ever countenance the use of confrontational measures, we have only to consider the question, "What should the international community do when faced with a potential or actual genocidal or any other kind of mass-murder situation (e.g., Rwanda in April 1994; Srebrenica, Bosnia in July 1995; Syria at present)?" This is why the *"Responsibility to Protect"* (R2P) culture has developed within the context both of international law and of civil society. If national governments fail to take steps to protect their citizens – worse, if they are slaughtering their own citizens as in Syria – then the international community is obliged to implement a range of coercive steps to stop the violence (see Bellamy, 2009; Evans, 2008).

Accordingly, before potential 3rd parties can use more preferred collaborative measures, they must first stop the killing, which is a primary objective of conflict settlement or coercive peacemaking. *"Negative peace"* is a condition of the absence of hostilities (see Galtung, 1969), which can be achieved either by preventing violence – violent conflict prevention or preventive diplomacy – or by stopping violence: conflict settlement or coercive peacemaking. *"Positive peace,"* by contrast, is achieved by dealing effectively with the drivers of conflict (Pillar 2), including what Galtung (1969) has labeled *"structural violence"*: a situation in which members of select minority groups, framed in terms of class, ethnicity, gender, nationality, profession, race, region, religion, sexual orientation or any other basis for distinguishing "them" from "us," are denied access to political, social, economic and other resources typically presided over and controlled by members of the dominant mainstream ingroup. One important point in structural violence is that this denial of resource access takes place not because of what the minority group members have done but because of *who they are* (e.g., Jewish, Muslim, Arab, Japanese, "Colored"). Another important point is that neither those victimized nor those privileged by structural violence may be aware of their status in this regard.

Traditionally, when efforts have been made to achieve and maintain negative peace, the third parties involved have been Track 1, official governmental actors using primarily confrontational means to stop

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violence. But since efforts to achieve negative peace (e.g., conflict settlement/coercive peacemaking) tend not to address the deep-rooted underlying sources of conflict (Pillar 2), agreements to cease acts of violence (e.g., a cease-fire or armistice) are inherently unstable and likely to break down into a recurrence of conflict (see Hewitt, et al., 2012, Chs. 1 and 3).

Accordingly, a perceived need arose, originally among the ranks of Track 1 diplomats, for other, civil society processes to be engaged, leading originally to the concept of "Track 2 diplomacy," comprising an array of *nongovernmental* actors (see Davidson and Montville, 1981; McDonald and Bendahmane, 1987). Track 2 was then expanded by the co-founders of the Institute for Multi-Track Diplomacy, Dr. Louise Diamond and Ambassador John McDonald (1996), into the *multi-track framework* which is made up of the following nine tracks:

- Track 1 remains the realm of official, governmental activity, *peacemaking through diplomacy* [plus *military* and *development efforts*], with the original framing of track 2 ("writ large") subdivided into the following tracks:
- Track 2 ("writ small") (nongovernment/professional): *peacemaking through professional conflict resolution.*
- Track 3 (business): peacemaking through commerce.
- Track 4 (private citizen): peacemaking through personal involvement.
- Track 5 (research, training, and education): *peacemaking through learning.*
- Track 6 (activism): peacemaking through advocacy.
- Track 7 (religion): peacemaking through faith in action.
- Track 8 (funding): peacemaking through providing resources. And
- Track 9 (communications and the media): *peacemaking through information.*

The *traditional security paradigm* comprised Track 1, governmental actors pursuing negative peace by primarily *Realpolitik*, power-based,

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confrontational means. When this approach to security was perceived by Track 1 diplomats and others to result often in fragile, negative peace agreements that could collapse into violent conflict recurrence, pressures mounted to design and implement an *alternative security paradigm*. Accordingly, first Track 2, and then the multi-rack framework, developed, not to replace the traditional security paradigm, but to complement it, so that Tracks 2-9 as well as Track 1 actors could employ collaborative, *Idealpolitik* as well as confrontational, *Realpolitik* means to achieve negative peace as a basis for achieving sustainable positive peace (see Sandole, 1999, pp. 110-113).

The basic working hypothesis underlying the 3PF is that, given the likely complexity of intractable, violent conflicts (Pillar 1), potential third parties should ensure that they design and implement interventions (Pillar 3) that capture the complexity, especially of the multi-level causes and conditions ("drivers") of those conflicts (Pillar 2). Complexity in this regard could include, for instance, whether a conflict analyst is examining influences from civil society (bottom-up), such as efforts to achieve restorative justice, and/or from government or international governmental organizations (top-down), which aspire to achieve retributive justice. Complexity is also an issue when one is addressing reciprocal victimhood or the relatively more straight-forward distinction between a clearly defined perpetrator and victim; or when dealing with the often contradictory relationship between justice (especially retributive justice) and peace (especially positive peace [Galtung, 1969]).

A subset of complexity concerns *time* and how we treat it, whether in terms of the short, middle, and/or long term; and whether developments *over time* occur in a linear or "messy," nonlinear manner.

One important utility of the 3PF – of special attraction to conflict theorists – is that it can be used to map the entirety of the field of conflict and conflict resolution/peace studies by providing a framework for locating all that we think we know about the field in a way that enhances conceptual integration across disciplines.

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If the 3PF can be useful in mapping the entirety of the field, then it can certainly be used to map any particular conflict as a basis for potential interveners exploring what, if anything can be done about the conflict. In this regard, the 3PF can highlight potential unintended consequences of any particular intervention, for conflict researchers (Pillars 1 and 2) and conflict resolution practitioners (Pillar 3).

The potential value of the 3PF embraces the complex process of reconciliation: the timing of reconciliation efforts and the type of reconciliation, involving a combination of micro and macro measures, i.e., cognitive *(neocortical-brain)* and affective *(limbic-brain)*, and structural changes to bring parties together in meaningful relationships following the termination of an AMCP through conflict transformation or peacebuilding (see Sandole, 1990; Sandole, 1999, Ch. 6).

Let's now discuss a major theme in this article in depth: reconciliation. Where and how does it fit in, within the overall 3PF system?

Reconciliation

Attempts to achieve reconciliation between parties who have been involved in a violent conflict, such as war, in which members of their respective identity groups have killed each other and destroyed symbols of their respective identities and cultures, can be especially challenging and in some cases unattainable. How, for example, can we convince a man whose mother and father have been killed to reconcile with the person who killed them? This is complexity of a very high order!

According to British peace studies scholars Oliver Ramsbotham, Tom Woodhouse, and Hugh Miall (2011), who have done more than anyone else to systematize the comprehensive corpus of knowledge in conflict and conflict resolution, reconciliation:

> […] restoring broken relationships and learning to live nonviolently with radical differences – can be seen as the *ultimate goal of conflict resolution*. … it is the long-term process of reconciliation that constitutes the *essence of the lasting transformation that conflict resolution seeks* – the hallmark of the integrative power that alone binds disparate groups into genuine societies. …

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reconciliation constitutes the heart of deep peacemaking and cultural peacebuilding. Indeed, sometimes reconciliation is equated with peacebuilding in general, and thereby with conflict resolution…. All of this is further compounded by the fact that the scope for reconciliation, and the different ways by which it can be achieved, *vary greatly from culture to culture* (emphasis added) (ibid., pp. 246-247).

Further, Ramsbotham, et al. (2011, p. 247), indicate that reconciliation is a process comprising four interrelated dimensions:

Aspects of Reconciliation	Stages of Confict De-escalation
1. Accepting the status quo	1. Ending violence
2. Correlating accounts	2. Overcoming polarization
3. Bridging opposites	3. Managing contradiction
4. Reconstituting relations	4. Celebrating difference

The first dimension of this four-stage model of reconciliation requires "some measure of political closure, at least to the point where a return to violence has become unlikely" (Ramsbotham, et al., 2011, p. 258). The minimal condition for achieving this state of affairs is negative peace brought about by conflict settlement or coercive peacemaking. If efforts to achieve transitional justice (discussed below) have not yet been initiated at this stage, then they should be.

The second stage deals with reconciling the parties' different narratives of the conflict: "The deeper processes of reconciliation cannot be reached while dehumanized images of the enemy are still current and mutual convictions of victimization are widely believed" (ibid., p. 259). This stage of reconciliation can be achieved through conflict resolution ("writ small") or collaborative peacemaking.

The third stage highlights the transformation of the deep-rooted, macro (structural) and micro (psycho-emotional) causes and conditions of violent conflict, where:

> […] efforts are made to bridge continuing deep differences by structural political and economic rearrangements, and by strengthening the psychological possibilities of living together peacefully despite persisting conflicts (Ramsbotham, et al., 2011, pp. 259-260).

This stage of reconciliation is embodied in the nexus between conflict resolution ("writ small") or collaborative peacemaking and conflict transformation or peacebuilding, with positive peace fast becoming the dominant status of the relational system comprising the former parties to conflict.

In the fourth and final stage, the parties "enter the realm of atonement and forgiveness." Here the differences of former enemies "are not only tolerated, but even appreciated" (ibid., pp. 260-261):

> Many never reach this stage, which often includes formal acts of acknowledgement and apology on behalf of previous generations and general acceptance that a shared future is now more important than a divided past. This involves deeper levels of peacemaking and cultural peacebuilding that stretch from revisions of formerly polarized official accounts and media representations, through pluralization of education and stories told in school textbooks …. Identities themselves become softened and transformed …. Confidence-building turns into trust (ibid., p. 261).

This final stage of reconciliation represents a decidedly advanced level of conflict transformation or peacebuilding, and of positive peace.

Before examining the extent to which ICTY decisions in recent years have facilitated *or* hindered reconciliation between parties to the violent conflicts that drove the disintegration of former Yugoslavia, let's examine the institution itself.

The International Criminal Tribunal for the Former Yugoslavia (ICTY)

The ICTY was established by the United Nations Security Council on 25 May 1993 (Resolution 827), to deal with war crimes committed during the wars driving the dissolution of the former Yugoslavia (see Martinez, 1996; Cryer, 2007). According to the ICTY's own website (http://www.icty.org/sections/AbouttheICTY):

> In May 1993, the Tribunal was established by the United Nations Security Council, in response to mass atrocities then taking place in Croatia and Bosnia and Herzegovina. Reports depicting horrendous crimes, in which thousands of civilians were being killed and wounded, tortured and sexually abused in detention camps and hundreds of thousands expelled from their homes, caused outrage across the world and spurred the UN Security Council to act.
>
> The ICTY was the first war crimes court created by the UN and the first international war crimes tribunal since the Nuremberg and Tokyo tribunals. It was established by the Security Council in accordance with Chapter VII of the UN Charter.
>
> The key objective of the ICTY is to try those individuals most responsible for appalling acts such as murder, torture, rape, enslavement, destruction of property and other crimes listed in the Tribunal's Statute. *By bringing perpetrators to trial, the ICTY aims to deter future crimes and render justice to thousands of victims and their families, thus contributing to a lasting peace in the former Yugoslavia.*
>
> Situated in The Hague, the Netherlands, the ICTY has charged over 160 persons. Those indicted by the ICTY include heads of state, prime ministers, army chiefs-of-staff, interior ministers and many other high- and mid-level political, military and police leaders from various parties to the Yugoslav conflicts. Its indictments address crimes committed from 1991 to 2001 against members of various ethnic groups in Croatia, Bosnia and Herzegovina, Serbia, Kosovo and the Former Yugoslav Republic of Macedonia. More than 60 individuals have been convicted and currently more than 30 people are in different stages of proceedings before the Tribunal (emphasis added).

Although most of the cases heard by the ICTY have dealt with the alleged crimes committed by Serbs and Bosnian Serbs, the Tribunal has also dealt with, and brought charges against Croats, Bosnian Muslims

and Kosovo Albanians (ICTY website). The understandable framing of Serbs as the major culprits in the Bosnian Wars, however, has reinforced traditional Serb perceptions that they have been, and continue to be victims of unjust persecution, prosecution, stereotyping, and international isolation.

Before examining recent ICTY decisions and their impact on reconciliation, let's address the transitional justice setting within which the ICTY functions.

Transitional Justice: the ICTY's immediate objective on the complex journey towards reconciliation

According to the International Center for Transitional Justice, *transitional justice*:

> [...] refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms. … [it is] an approach to achieving justice in times of transition from conflict and/or state repression. By trying to achieve accountability and redressing victims, transitional justice provides recognition of the rights of victims, promotes civic trust and strengthens the democratic rule of law (http://ictj.org/about/transitional-justice; also see Ramsbotham, et al., 2011, pp. 252-257).

As a form of criminal prosecution, the ICTY is a zero-sum, highly emotive judicial process aimed at identifying and assigning culpability to perpetrators of those "massive human rights abuses" and, most importantly, meting out sentences to them. Given that its primary objective is to advance *retributive justice*, the ICTY is not – independent of other transitional justice measures – capable of advancing the reconciliation and positive peace implied in its charge. Indeed, three years prior to the most contentious ICTY decisions, discussed immediately below, Jelena Subotić – author of *Hijacked Justice: Dealing with the Past in the Balkans* (2009a) – argued that, far from being in a state of reconciliation (at least beyond the first stage of the four-phase model), relationships in the

former Yugoslavia region were characterized by competing, incommensurable worldviews: "the memories of war – the understanding of what caused it, who was to blame, who committed atrocities and against whom – *remain deeply contested* " (emphasis added) (Subotić, 2009b, p. 35).

Let's now explore the actual record of recent ICTY decisions and their impact on transitional justice, reconciliation and peacebuilding in the Western Balkans.

Recent ICTY decisions and their impact on reconciliation

Recent ICTY decisions have not only furthered Serb feelings of victimhood, but have undermined the role of the Tribunal as an agent of peace, one of its own objectives which, as indicated above, it was structurally incapable of achieving in the first place. These decisions concern military personnel allegedly responsible for war crimes committed against Serbs in the Krajina of Eastern Slavonia in Croatia during *Operation Storm ("Oluja")* of July-September 1995. The Croatian Government launched this operation to reclaim parts of the country taken earlier by Croatian Serb paramilitaries and forces controlled by Belgrade. Colonel General Ante Gotovina of the Croatian Army and Colonel General Mladen Markač, Commander of the Croatian Special Police during Operation Storm, were indicted and convicted in November 2011 for "crimes against humanity, violation of the laws or customs of war, and the participation … in Operation Storm (a 'Joint Criminal Enterprise') to forcefully and permanently remove the Serb population from Krajina by unlawful attacks against civilians and civilian objects, persecution and deportation, murder and plunder of property" (Nakarada, 2013, online version, p. 2). Generals Gotovina and Markač received 24- and 18-year prison sentences, respectively. A year later, on 16 November 2012, the two men were acquitted by the Appeals Chamber, thereby suspending the Trial Chamber's original decision.

The reason for the acquittal had to do with an obscure criterion - the "200 Metre Standard." According to University of Belgrade professor of peace studies Rudmila Nakarada (2013):

> […] artillery projectiles that impacted within a distance of 200 metres of an identified artillery target were to be considered deliberately fired. By extension, shelling was considered indiscriminate or unlawful if the projectiles fell more than 200 metres from a legitimate military target, perhaps in the vicinity of a hospital, factory, cemetery, or a UN headquarters. The Majority [of the Appeals Chamber] found, however, that the Trial Chamber erred in adopting a margin of error that was not substantiated by the existing evidence, and in failing to explain on what basis it adopted the standard (i.e., 'failing to provide a reasoned opinion'). Having established this error in the analysis, the Appeals Judgement concluded that all the evidence lost its probative value with the 200 Metre Standard discounted (ibid.)

The acquittal of Generals Gotovina and Markač "caused shock in Serbia and celebration in Croatia" (ibid.). Nakarada (2013, online, p. 4) goes on to say that, "one of the biggest ethnic cleansings since the Second World War was legitimized as a defensive military action, tainted by only a few isolated criminal incidences." Generals Gotovina and Markač returned to Croatia as heroes. By contrast, the Serb victims were humiliated (ibid.), an observation which has been reinforced by that fact that, "No one is or has been prosecuted at the ICTY, or in the Croatian court system, for the crimes perpetrated during Operation Storm" (ibid.).

Nakarada concludes her assessment of the ICTY's acquittal of Gotovina and Markač by specifically addressing the objective of this article: "the Appeals Judgement has dealt a heavy blow to the process of reconciliation between Croatia and Serbia, and in the region as a whole" (2013, online, p. 4). Further, the "Operation Storm victory will continue to be celebrated with no discomfort, as one of the main national *holidays* in Croatia, while the Serb minority will be reliving it as one of [their] greatest, unacknowledged *national disasters* (emphasis in the original) (ibid.).

As of this was not enough:

> [Serb] humiliation has been compounded by the fact that shortly after the Appeals Judgement, on 29 November 2012, the Trial Chamber dropped charges against the Albanian leader of the Kosovo Liberation Army Ramush Haradinaj for war crimes committed against Serbs in Kosovo, due to insufficient evidence (Nakarada, 2013, online, p. 4).

The upshot of these decisions, even for Serbs who were supportive of the ICTY, is that the institution is "highly biased, i.e., treating victims unequally depending on their ethnic origin, reducing the rule of law by acting more as a political than a legal institution" (ibid.).

This view of the ICTY as biased is not only a Serb view. Five years prior to these recent decisions, University of Rijeka (Croatia) professor Vjeran Pavlakovic (2007, pp. 4-5) wrote:

> It has become evident that the ICTY is overly politicized in its relations with the Yugoslav successor states. Despite the shortcomings of a 'tribunal as historian', there is little doubt about the impact of the Nuremberg and Eichmann trials on the historical narrative of the Holocaust and World War Two. It is therefore quite likely that the ICTY will have a similar [effect] on how the history of [Operation Storm and the larger] Homeland War is written, regardless of the debates over the legitimacy of that tribunal.

It is difficult to avoid the conclusion, therefore, that, at least in the short, and perhaps the medium term, the ICTY has not been an agent of transitional justice and, therefore, of reconciliation in the post-Yugoslav space beyond the first stage of the four-stage model. Instead, the ICTY seems to have deepened the wounds of war and of traumatic loss – which, in the case of Serbia, go all the way back to 28 June 1389. As such, the ICTY has, *thus far,* failed even to achieve its own goal to bring justice and closure to the region in the wake of the horrific warfare of the 1990s, serving merely to shift the ontology of warfare from military weapons and mass killings to competing identities and narratives.

This view has also been embraced by concerned international observers, such as British Balkans expert, Janine Clark, author of *Serbia in the Shadow of Milosevic: The Legacy of Conflict in the Balkans* (2008), who states unequivocally that, "I reject the claim" that the ICTY "is aiding reconciliation." Specifically:

> …the ICTY's trials are not facilitating reconciliation, defined as the repair and restoration of relationships and the re-building of trust. Indeed, in some cases, its work has revived ethnic tensions; Croat reactions to the verdict in the so-called "Vukovar Three" case and Serb reactions to the recent acquittal of

Croatian generals Ante Gotovina and Mladen Markač are just two examples (Clark, 2013).

The ICTY has failed to facilitate reconciliation not only because of its emphasis on retributive justice and the nature of its decisions, but also because it has regrettably reinforced the increasingly negative view of the top-down "Liberal Peace" held by many in war-torn host nations, that the international community continues to ignore the views and wishes of the locals (see Ramsbotham, et al., 2011, Ch. 19; Sandole, 2010, Ch. 3); in this case, the ICTY has not done a very good job of investing "enough time and energy in explaining its work to local communities," in turn nourishing "claims, prevalent among Serbs and Croats, that the ICTY is an unjust, biased and political court" (Clark, 2013). Clark, therefore, asks the poignant question, "Can such an unpopular institution aid reconciliation?" (ibid.).

Clearly not! The irony is that there has been an overreliance on this unpopular institution "as the principal arbiter of the past and distributor of justice," which "has led to a number of unintended consequences, most acutely the foreclosing of other, broader transitional justice efforts" (Subotić, 2014, pre-publication copy, p. 23). In other words, once the ICTY was up and running, it became the dominant approach to transitional justice in the Western Balkans:

> From a broader framework of transitional justice, however, more significant is the complete lack of work in restorative and reparative justice. Efforts at forming truth commissions in Serbia and Bosnia have failed, and Croatia never even debated establishing one. There are no memorialization projects acknowledging crimes committed against the "other" ethnic group, no official state apologies, no reparations or restitution. There has been no serious educational reform that would include thoughtful and respectful teaching about crimes of the past. Transitional justice advocates in the region have been quite active in promoting a variety of appropriate models, but they have been mostly shunned by state officials and have remained on the margins of public discourse (Subotić, 2014, p. 16).

Given this "absence of other official [Track 1] transitional justice efforts, the ICTY became *the* transitional justice mechanism, and the continuing

serious obstacles to reconciliation in the region became, as a consequence, [the] ICTY's liability" (emphasis in the original) (ibid., p. 18).

Fundamental assaults on reconciliation in the Western Balkans: competing narratives and the politics of memory

Among those serious obstacles to reconciliation, Serbs and Croats (and others) are not on the same page with regard to the factors responsible for the genocidal unraveling of their former country. Accordingly, while Serbs and Croats may agree that the ICTY is biased, they certainly do not agree on their framing of the wars of the early 1990s, including Operation Storm. Croats, for instance, responded to the ICTY decision to acquit Gotovina and Markač by expressing a profound sense of vindication in their framing of Operation Storm as "the most brilliant page in Croatian history" and their celebration of that "heroic" campaign every year since 1996 (Pavlakovic, 2007, p.). Serbs, by sharp contrast, continue to view Operation Storm as the most egregious example of ethnic cleansing, on a par with the Srebrenica massacres of Bosniaks, since World War II, and certainly as a *planned* military operation.

These contrasting reactions to the acquittals of Gotovina and Markač are powerful reminders that Serbs and Croats continue to wage combat with each other through incommensurable worldviews, belief-value systems, identities and narratives. This is especially the case with regard to how the historical and recent past is framed, creating problems, which, for Jelena Subotić (2009b, p. 35), "are perhaps nowhere as acute and visible today as they are in the Balkans." Quite simply, the stories the parties tell themselves and the world about each other – which have been reinforced by recent ICTY decisions – are a powerful statement that reconciliation between Croats and Serbs in Croatia, and between Croatia and Serbia, remains a challenging issue.

"The root cause of this contestation," according to Subotić, "is that, in the Balkans, the past is not yet over. The violence has stopped [i.e., "negative peace" is in place] and the vitriolic rhetoric has eased, but the grand narratives of the nation, ethnicity, and territory have not been re-

placed" (2009b, p. 35). Hence, reconciliation in the Balkans has not progressed beyond the first stage in our four-stage process model.

The underlying factor in this war of competing narratives is *memory*, including historical memory, of painful losses. Perhaps the most poignant expression of this phenomenon is Vamik Volkan's (1997) concept of *"chosen trauma"*:

> I use the term chosen trauma to describe the collective memory of a calamity that once befell a group's ancestors. It is, of course, more than a simple recollection; it is a shared representation of the event, which includes realistic information, fantasized expectations, intense feelings, and defenses against unacceptable thoughts.
>
> Since a group does not choose to be victimized, some of my colleagues have taken exception to the term chosen trauma. But I maintain that the word chosen fittingly reflects a large group's unconsciously defining its identity by the transgenerational transmission of injured selves infused with the memory of the ancestors' trauma (emphasis in the original) (Volkan, 1997, p. 48; also see Sandole, 2008).

Once historical memory of chosen trauma (e.g., Serb memories of the chosen trauma of the fall of Kosovo to Ottoman Turks on 28 June 1389) has been reinforced by recent events (e.g., Serb experiences and memories of Operation Storm and of the ICTY's decisions to acquit Gotovina and Markac), then reconciliation may well become an endangered species.

But is this the end of the story of reconciliation in the Western Balkans?

The European Union: an effective agent of reconciliation

Fortunately, the ICTY is not the only game in town in this regard. On 1 July 2013, Croatia will have entered the European Union, the besieged transnational entity that still remains the closest empirical expression anywhere on the planet to Immanuel Kant's (1795/1983) "Perpetual Peace" (*ewiger Frieden*) system. Despite almost daily, gloomy reports in the *Financial Times* and other global media of the EU's impending collapse and demise, it still exerts considerable influence over those states

which seek to enter its ranks. Croatian professor Pavlakovic (2007, p. 5), for example, tells us that, in Croatia's case:

> The rhetoric of the anniversary [of] Operation Storm has … changed, with Croatian politicians acknowledging that war crimes did occur and that there were Serbian victims as well, something that would have been unimaginable under [former President] Tudjman.

There is, however, a significant caveat to this startling admission:

> The Croatian leadership has insisted … that these were individual crimes, which must be separated from Operation Storm, and that under no circumstances can it be considered planned ethnic cleansing (emphasis added) (ibid.).

Despite this face-saving qualification - understandable given the potency of the nationalistic opposition to any "selling out" to either the ICTY or the EU – Croatia's leadership has implemented a number of reforms in order to comply with the EU's rigorous criteria for accession, including collaborating with the ICTY (see Subotić, 2009b, p. 35) and, therefore, dispatching Croatian "war heroes" Gotovina and Markač, among others, to The Hague to be tried for war crimes. In that sense, the EU, far more than the ICTY, has been an active and successful agent of reconciliation and peacebuilding in the wider Yugoslav space. As one palpable example, one has only to consider the recent, landmark agreement "normalizing relations between Serbia and its former province of Kosovo" (FT, 2013). This surprising agreement, coming less than a month after the talks had collapsed, demonstrates that "EU foreign policy can [still] yield results," especially when the EU's foreign policy head, Lady Ashton, is mediating the sensitive negotiations between the parties (ibid.).

One likely impact of this agreement is that Serbia, having already sent Slobodan Milošević, Radovan Karadžić, and Ratko Mladić to The Hague, will be rewarded by the EU with a fast-track to accession to the Union.

Some Steps toward Serb-Croat Reconciliation in Croatia: a Promising Sign of Things to Come?

In the meantime, an interesting development is taking place between Croats and Serbs in Croatia, perhaps approaching at least the second stage of the four-stage model of reconciliation for some young members of both communities. According to the doctoral dissertation defended only a day before I flew to Vienna to attend this Workshop, my student, Borislava Manojlovic (2013) – herself a Serb from Eastern Slavonia – found that Serbian and Croatian secondary school students enrolled in *integrated* history courses were more likely than their peers in *segregated* courses, using the same textbooks, to agree on issues dealing with their recent historical past, including the wars of the 1990s. She cautions, however, that:

> Although the findings of this study show that the integrated model of schooling seems to generate more agreement among students, we cannot claim that such a model would, indeed, contribute to the reduction of tensions, interethnic stereotyping and biases. However, a certain degree of openness seems to foster conditions for free inquiry into the problems that need constant and explicit tackling (ibid., p. 230).

Whether her findings can be explained through the *"contact hypothesis"* (Allport, 1954) and/or by other factors, one implication of her study is that a recommendation could be made that the international community should continually fund regional projects for young members of various ethnic communities. The objective would be to address issues that no one state or international organization could deal with on its own. Variously referred to as *"superordinate goals"* (Sherif, 1967) or elements of the *"Global Problematique"* (Sandole, 2010), these complex issues could include, among others, climate change, economic and social inequality, biodiversity, clean water, sustainable energy, and their impact on the region. What is particularly compelling about such a recommendation is that it could be viewed as an *indirect* approach to reconciliation and, therefore, not likely to be resisted by those who feel that emotions are still too raw for any talk about reconciliation at the present time.

Conclusion: Imaging the future of reconciliation in the Western Balkans through the lenses of the 3PF

There are clearly multiple institutional, top-down approaches to reconciliation and peacebuilding in the Balkans, and the ICTY, as one potential source of transitional justice, is only one of these. Thus far, the EU has fared much better in bringing former enemies together, building upon the first stage of the four-stage model of reconciliation. Nevertheless, over time, the ICTY may prove to be an integral component of a broader mosaic of transitional justice, conflict transformation and positive peace in the region, with its emphasis on truth seeking and retributive justice. For this objective to be realized, however, other forms of transitional justice (e.g., truth commissions) must complement the work of the ICTY which, until recently, has been the privileged approach to putting the past to rest (see Subotić, 2014).

Accordingly, the people of the Western Balkans need to discover or invent, and then implement, an array of bottom-up, civil society (Tracks 2-9) as well as top-down, political (Track 1) measures at all levels of their interrelated, interdependent societies. Then they must carefully monitor and, with appropriate assistance from the international community, progressively fine-tune the overall, integrated transitional justice, reconciliation and peacebuilding process, especially with regard to addressing the deep wounds of war and of traumatic loss that still remain.

Such a comprehensive process could be enhanced by my effort to apply the 3PF to an intervention model I designed to prevent the kind of warfare associated with the genocidal implosion of former Yugoslavia. Labeled the "*new European peace and security system*" (NEPSS), this applied model comprises the nine tracks of the multi-track framework (see Diamond and McDonald, 1996) as the horizontal axis, while local, societal, subregional, regional, and global levels of analysis constitute the vertical axis, i.e.,

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The Structure of NEPSS

	Track 1	Track 2	Track 3	Track 4	Track 5	Track 6	Track 7	Track 8	Track 9
Local									
Societal									
Sub									
Regional									
Regional									
Global									

See Sandole, 2010, pp. 168-169; Sandole, 1997, ch. 3.

Enhancing the overall coherence of this application of NEPSS, plus the coordination and collaboration between horizontal tracks and between vertical levels, and across tracks and levels, the application of the model could be processed within the context of the *Regional Cooperation Council* (RCC), the successor to the EU-driven *Stability Pact for South East Europe*. Building upon the successes and lessons learned by the Stability Pact, the regionally-owned RCC facilitates cooperation and coordination on a host of regional issues dealing with security, politics, and economics. By enhancing the further integration of South East Europe – the Western Balkans – the RCC is helping the Yugoslav-successor and other states in the region to prepare for eventual EU membership (see Riedeland, et al., 2009).

Accordingly, an appropriate design and implementation of a NEPSS-type model of coordination and collaboration between top-down (Track 1), governmental and bottom-up (Tracks 2-9), civil society actors at various levels within an RCC context could be the optimal way forward to achieve complex peacebuilding in the Balkans, advancing transitional justice and reconciliation beyond the first stage of negative peace and well toward the fourth stage and sustainable positive peace.

An ideal, yes, but certainly one worth aiming for! As Rabbi Hillel put it in Jerusalem some 2000 years ago, "if not now, when?"

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RECOM – A Regional Initiative for Supporting Reconciliation

Nenad Golčevski

There aren't many feel-good stories that come out of the Balkans. Rarely do we hear that in the region of the former Yugoslavia something positive has happened. Apart from quite a few sporting heroes, some world class artists, academics and scientists, who mostly succeed as individuals, in spite, rather than because of where they come from, the post-Yugoslav states have rarely produced systematic, collective efforts, which would be worth of praise, or serve as examples of good practice which could be replicated elsewhere in the world.

Therefore, it almost seems as a science fiction storyline, an alternative history book plot if you will, that the peoples of the SEE have come together, and successfully urged their governments to do what no other post-conflict region has managed thus far – to create a regional mechanism, a regional truth commission, which will result with the acknowledgement and public recognition of all victims, regardless of their nationality, by all sides in the conflicts.

Yet, this is exactly what is now happening in the region of the former Yugoslavia.

The RECOM process: an overview

It all began seven years ago, when four human rights organisations, dedicated to implementing the program of transitional justice in the post-Yugoslav region, – the Humanitarian Law Centre (HLC) from Belgrade, Documenta from Croatia, Research and Documentation Centre from Sarajevo and the Humanitarian Law Centre Kosovo – began a process of civil and wider society consultations about the mechanisms of post-conflict truth-seeking and truth-telling. At the First Regional Forum for Transitional Justice held in Sarajevo in May 2006, the support was given

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to the joint regional approach to truth-seeking, as opposed to separate national truth commissions.

Two years later, in May 2008, at the regional consultations with the associations of victims' families and former detainees of detention camps, the initiative for the establishment of the Regional Commission, which would be mandated to establish and disclose the facts about all victims of the wars in the former Yugoslavia in the 1990s (RECOM) has been launched. In a period of more than three years, dozens of regional consultations have been held across the Western Balkans with youth, artists, media, representatives of religious communities, human rights NGOs, and victims, associations of victims and associations of war veterans. Further, seven more Regional Forums for Transitional Justice have been organized, bringing together the RECOM supporters and transitional justice experts from across the region and beyond.

At the Fourth Regional Forum, held in October 2008 in Priština, Kosovo, more than 100 organizations and individuals from Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia formed a Regional Coalition for RECOM (the Coalition). The goal of the Coalition became to widen the ownership of the Initiative throughout the civil society in the region, build the support of the citizens and politicians, propose the form and mandate, i.e. the Statute of the future Regional Coalition, and then work to transfer the process from the civil to the political society.

Namely, the aim of the RECOM Initiative is to establish the facts about all victims, as well as for all sides to acknowledge the suffering of all persons who lost their lives or have been forcibly disappeared during the armed conflicts, regardless of their ethnicity. This could only be achieved if the post-Yugoslav states themselves were to establish RECOM, given that a commission established by the civil society would run a serious risk of being disregarded by the authorities, and its results ignored, rather than embraced by all sides. This made obtaining the buy-in of the political elites a *sine qua non* for the success of the project.

The process reached a critical benchmark in 2011. Civil society organisations and individuals from Slovenia and Macedonia embraced and

joined the Initiative. After much debate, numerous amendments of the members of the Coalition, and the resulting revisions, the proposed Statute of RECOM had been adopted at the Assembly of the Members of the Coalition for RECOM in March 2011. This was followed by a six-week campaign for the collection of signatures from citizens of all post-Yugoslav states in support of the establishment of RECOM. The campaign showed unprecedented backing of the people of the region for the Initiative, given that in that short period over 542,000 signatures of support for the establishment of the regional Commission have been collected.

At the same time, as a result of the Coalition's advocacy activities, the Presidents of all post-Yugoslav states gave verbal support to the RECOM Initiative. The request for establishing of the Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia in the period from 1991-2001 (RECOM), supported with the proposed RECOM Statute adopted by the Coalition and more than a half a million collected signatures of citizens of the region, have been submitted to the authorities of all post-Yugoslav states. However, there was no response.

While most of the Presidents were still willing to meet with the representatives of the Coalition and reiterate their general support to the cause and the Initiative, except for the President of Montenegro none of them was willing to take any concrete measures towards the establishment of RECOM. The Coalition responded by forming a political advocacy team, consisting of well-known and respected persons from all post-Yugoslav states – human rights activists, university professors, journalists and artists. In addition, it continued organising street actions, furthering the citizens' support, pressurising the authorities to respond and intensifying its efforts to gain support from the religious communities.

All this, as well as some external factors, resulted in a breakthrough at the beginning of this year, when, first, the Presidents of Croatia and Montenegro, and then the two members of the Presidency of Bosnia and Herzegovina, the Macedonian and Kosovo Presidents, all named their

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personal representatives to the Regional Expert Group for RECOM, which is soon to be established. We fully expect that the President of Serbia will do the same, sooner, rather than later. The President of Croatia has already offered to host the first meeting of the Group, which will be held soon.

This represents a huge achievement, not merely for the Coalition for RECOM, but for the whole process of reconciliation in the former Yugoslavia. For the first time, the official representatives of all post-Yugoslav states will sit together and discuss the legacy of violence from the past. For the first time they will search for a way to reach a minimum of consensus about what happened during the wars of the 1990s. And for the first time, the victims will be in the focus of the states' attention, and not their numbers, but their names and identities.

The RECOM process, which began as an initiative of a handful of human rights NGOs, has grown into the largest ever civil society gathering in the Balkans with over 1900 members (individuals and organisations), supported by over half a million citizens of all post-Yugoslav states, and the Initiative has now successfully been transferred from the civil to the political level.

The method

The multi-year process (2006 to 2011) of civil and wider society consultations about the mechanisms of post-conflict truth-seeking and truth-telling, has served as the foundation for launching of the RECOM Initiative, gaining momentum and increasing support. Inclusion of various target groups from throughout the region, and engagement of all actors in the dialogue, even those who did not support the Initiative, has helped to widen its reach, as well as increase the credibility of the process.

The method applied in further development of the RECOM Initiative was based on three mutually supportive tracks: a) strengthening and expanding the Coalition for RECOM; b) increasing the public support and understanding of the relevance and importance of the RECOM process; and c) creating incentives and applying pressure to the regional political

society, to accept and embrace the creation of the Regional Commission. These three tracks converge in the overall objective of the Initiative, i.e. to secure the level of the social consensus which can guarantee that the decision-makers in all post-Yugoslav states will conduct the activities necessary for the establishment of RECOM.

Another important methodological feature of the process is that, while it has been encouraging and building capacity of the civil society to advocate a regional approach to post-conflict fact-finding and truth-telling, it was also seeking to create linkages between the civil and political society. This is fundamental for success of the process, in that while civil society can foster support for post-conflict fact-finding and truth-seeking, and can facilitate public debate on the past, ultimately it is the political society, the decision-makers, which bear the responsibility for establishing any post-conflict fact-finding body, or truth commission mandated to establish an official, but no less objective, narrative of past abuses based on facts. As such, the nexus between political and civil society has continuously been a crucial element to the process.

The specific value of RECOM is that it is an entirely 'home grown' process, based on the bottom-up approach. The whole initiative has hitherto been conceived and implemented by local actors responding to local needs. In fact, the regional approach and the local character of the initiative for RECOM marks it out as unique among the transitional justice mechanisms applied in the Western Balkans. In this sense RECOM has the potential, which has partly already been realised, to obtain the legitimacy in the eyes of citizens of the region, which the ICTY, as a UN established Tribunal, never had.

The place of RECOM in the process of transitional justice in the Western Balkans: synergy

The process of the establishment of RECOM is clearly a segment in the overall process of transitional justice and reconciliation in post-Yugoslav states. In that sense, it should be viewed as an action which is complementary to other mechanisms of facing the past, i.e. the war crimes trials before the ICTY and national courts, reparation programmes, institu-

tional reform, memorialisation practices etc. Even more, RECOM inter-acts with these other segments of transitional justice, influences them, and is also positively or negatively affected by them.

In particular, the successful completion of the project Human Losses: Creating a Name by Name Record of the Killed and Forcibly Disappeared Persons in the Armed Conflicts in the Former Yugoslavia in the 1990s, will represent a huge boost to the activities of the Regional Commission, once it is established. Namely, the research of human losses involves a thorough process of fact-finding, which will result in a comprehensive record of the killed and forcibly disappeared persons in the armed conflicts in the former Yugoslavia, which will be based on, and supported by, documents and evidence. The collected data will be published online and in a serious of books.

The First Volume of the Kosovo Memory Book (KMB) has been printed and launched in September 2011. It contains the names, details and short narratives about each killed or forcibly disappeared person in the Kosovo conflict in 1998. By 2015, three more volumes of the KMB will be published, covering the period 1999-2000. Further, the 'Bosnian Book of Dead', which consists of the list of names of all persons who lost their lives or have been forcibly disappeared during the war in B&H, has been published in December 2012. The research is also ongoing for the Croatian citizens who were the casualties of the war, then for the human losses of Serbia and Montenegro in the wars in B&H, Croatia and Slovenia, the casualties of the conflicts in Macedonia and Presevo Valley, as well as during the NATO bombing of Serbia and Montenegro. In the frame of this project the HLC, Documenta and HLC Kosovo will create the Interactive Online Map of Human Losses, containing all available data, documents, short narratives and name-by-name record of killed and forcibly disappeared persons in the armed conflicts in the region during 1990s.

These activities of registering human losses will directly support and benefit the work of RECOM, once it is established. Namely, a part of the mandate of the RECOM will be to establish a name-by-name record of all the killed and forcibly disappeared persons in the wars in the former

Yugoslavia. Hence, by putting the well researched and documented data at the disposal of the RECOM when it is established, the *Human Losses* research will secure that the significant segment of the work of the Regional Commission can be completed adequately and within a reasonable timeframe. Through the research of human losses and other related activities, the members of the Coalition for RECOM will continue to support the Regional Commission, even after it is established.

Contribution of RECOM to reconciliation in the Western Balkans

The establishment of RECOM will create a positive impetus in regional cooperation in the field of transitional justice, thus improving the existing policies of post-Yugoslav states in the domains of criminal proceedings, reparations, vetting/lustration procedures and building a consensual acceptance of the established facts about the recent past.

At the social level, the creation of RECOM, a grass root human rights initiative, will strengthen the position of all actors (e.g. the civil society, politicians, the media, and the opinion leaders) who put human rights at the top of their agenda. It will give them a strong argument, a precedent which shows that large scale, regional citizens' initiatives can be successful, and that human rights are important to the citizens and the societies of the post-Yugoslav states.

The RECOM Initiative has already produced important positive outcomes for all key stakeholders in the process of reconciliation in the Western Balkans. It has resulted in unprecedented networking and cooperation between the civil society organisations on the regional level, as the Coalition for RECOM represents the largest alliance of NGOs and individuals from pots-Yugoslav states ever created (the Coalition has over 1900 members – organisations and individuals). Other important outcomes include raising of citizens' and politicians' awareness of the importance of transitional justice and reconciliation, of the need for a regional approach to these issues and for the establishment of a credible, fact-based record of war crimes and victims during the wars of the 1990s.

Finally, the whole RECOM process, its creation, future work and results, are expected to generate a positive change in how the various ethnic communities of the Western Balkans perceive and conceptualize each other. Already in the phase of consultations a precedent has been set, where victims and veterans from the opposing sides have listened and understood each other, and worked together on a project aimed at determining all the facts about the past. If fully realised such a change would certainly contribute to an increased inter-ethnic tolerance and understanding - which are the preconditions for achieving the reconciliation, the lasting peace and security in the region.

International relevance of RECOM

The development of a regional process of wide-ranging civil society consultations on post-conflict fact-finding and dealing with the past, the development of a model to address an armed conflict with a pronounced regional character, and the proposed inter-state agreement on the establishment of the Regional Commission to investigate and disclose the facts about war crimes and grave breaches of human rights committed in the past, will all lead to important lessons learned that may be applied in other post-conflict situations, where the legacies of conflict continue to affect daily life and hinder thoroughgoing conflict transformation, especially in places of regional conflict, such as Western Africa (Sierra Leone, Liberia, Cote d'Ivoire, Guinea), the Great Lakes region of Africa, the Caucasus or the Middle East.

Many contemporary conflicts have a regional character, as groups, often divided by ethnic, linguistic or religious identity, which in many instances do not coincide with national borders, fight over scant natural resources in neighbouring states. The need to develop and test appropriate transitional justice responses, such is the locally initiated Regional Commission of inquiry into past abuses, acquires increased importance. The RECOM model can thus serve as a blueprint for approaching regional post-conflict issues elsewhere, through a regional framework, based on a bottom-up approach, and owned by the local actors.

Regional Co-operation towards EU Integration

Ivis Noçka

In order to meet the strict conditions of EU membership, the Western Balkans, including Albania have been required to undertake drastic reforms in its political, economic, and legal systems. As a result, the domestic reform program is largely dictated from abroad and the legislative process is guided by the arduous task of transferring an ever-expanding of thousands pages of EU laws and regulations known as the *Acquis communautaire* into national's domestic law. These laws cover a multitude of diverse fields, including competition laws, social policies, product standards, agriculture, telecommunication, energy, the environment, intellectual property, civil law, company law, and consumer protection.

As Albanian Prime Minister Berisha stated, "Candidate status means hundreds of millions of euro of free investments from the European Commission, for roads, schools, hospitals in order for Albanians to live and have the infrastructure of European citizens". Therefore, one cannot understand Albanian's domestic politics without considering the EU influence on this process.

The objective of joining the EU has also influenced Albania's regional relations. The desire for EU membership has created a dual objective for the Albanian government of situating itself firmly as part of the "West", while also building good relations and strengthening ties with its neighbours in South Eastern Europe (SEE). Albania's NATO membership process took too much time when compared to the other Eastern European countries due to the inherited weaknesses since the independence days.

Albania was a weak country from the economic perspective, and had security concerns emanating from the territorial claims of neighbouring countries. The support for NATO integration was about 90% among the population according to the survey by the Institute for Democracy and

Mediation in May 2007. At the April 2008 Bucharest summit, with the strong US backing, Albania together with Croatia was invited to the accession talks as a final step to full membership. As of April 1, 2009, Albania has been the full member of NATO. According to Berisha, it was the most important event in his country's history since gaining independence in 1912.

Regional cooperation is instrumental in addressing the security challenges facing the Balkan region, since many serious issues, such as organized crime and corruption, the spread of illegal weapons or integrated border management and illegal migration, can be effectively addressed only by a trans-border approach.

Concerted actions are considered as indispensable, not just as an end in itself but also a signal to the rest of Europe that all the western Balkan countries share the EU's and NATO conditions on this issue.

Regional cooperation can lead to tangible results in the field of security and justice with freedom for the people living in the region, while at the same time meeting the concerns of EU citizens. Efforts to address the criminal threats to the stabilization and development of the region, as to the very security of the EU, will only be successful if the western Balkan countries and the EU work together to fight corruption and trans-national organised crime, which prevents legitimate economic growth and undermines democratic rule and democratic stability in the region.

The negative perception of the regional security environment by elements of local political elites is detrimental to the formation of national security agendas. Reform of the security sector throughout the region is often not seen as a key domestic priority, but must instead be forced from the outside, mainly through the EU and NATO membership conditionality. Security cooperation is largely externally driven and disowned by local elites, instead of being seen as an opportunity for a systematic response to common security threats.

Creating good neighbours – meeting EU conditions

Albania's focus on Euro-Atlantic integration from the very start of its transition might have led the country to ignore its neighbours, especially given initial conditions. Economically, Albania was almost completely isolated from both Eastern and Western Europe so there were no significant ties with neighbours to build upon. Indeed, the EU (in particular Italy, Germany, Greece) quickly became the country's largest trading partner and now accounts for over 65% of Albania's exports and 60% of its imports. Politically, Albania's relations with her neighbours Greece, Macedonia, Kosova and Montenegro have not suffered from unresolved border disputes and minority rights concerns. These facts have increased the border relations with Albania's neighbours much more than have been expected.

The good-neighbourly relations are one of the preconditions of EU as well as to NATO membership. France's ex European affairs minister, Alain Lamassoure, noted that "admission [to the EU] is only possible for countries that maintain good relations with their neighbours. No country with unsettled border or minority conflicts will be allowed to join." Thus, the settling of any disputes and the signing of friendship and co-operation treaties with neighbours have become a necessary precondition for EU membership.

It seems plausible that economic growth, public security and social organization depend on each other. Economic growth is not possible without a certain level of social organization and a measure of peace and stability in a given society. Indeed, higher levels of economic development require more sophisticated forms of social organization, which in turn need a high level of public security and stability.

However plausible all this may seem, we need to bear in mind that some of these concepts are not clear enough to be operational. The processes going on between them are not simple or automatic-other factors intervene. Nor are the relationships necessarily linear: an increase at one point of the triangle will not always result in a commensurate increase at the other two.

The Albanian government is doing as much as it can to address the issue domestically and to liaise with international organizations to ensure economic sustainability.

The strong desire of Western Balkan countries for EU membership provided the EU with an opportunity to strengthen security and stability in a potentially unstable region in its own backyard. If and when EU membership would be granted, it was also in the interest of the EU Member States to have border and other disputes between new members already resolved, so as not to weaken the ability to fully cooperate within the organization.

The Stability Pact for South Eastern Europe in itself provided a framework for cooperation on a variety of issues in order to foster peace, stability, and economic development in the region. Its three Working Tables addressed democracy and civil society, economic development, and internal and external security. At the Stability Pact Summit in Sarajevo in July 1999, President Martti Ahtisaari of Finland stated that "the ability of countries within the region to cooperate and establish good-neighbourly relations as well as to achieve reconciliation within and between themselves will be an important criterion for evaluating their prospects of full integration with the European Union." At the end the Stability Pact and its successor organisation, the Regional Cooperation Council, were a test for regional cooperation that every EU candidate must pass.

PART III

RECONCILIATION, COOPERATION AND EUROPEAN INTEGRATION IN THE CONTEXT OF THE KOSOVO AND SOUTH SERBIA ISSUE

KFOR: Contributing to Security and Accommodating Change

Leonid Graf von Keyserlingk

The emergence of the Republic of Kosovo would not have been possible without the military intervention of NATO in 1999.[1] However, the establishment of Kosovo as a state was not the intended but the unintended outcome of the intervention. This circumstance is a defining delineation of KFOR's room of maneuver throughout its history. NATO led peace-keepers, known as KFOR, sought – and continue to seek – an impartial and essentially nonpolitical position in a highly divisive and politicized dynamic environment. However, the mission, throughout its almost 14 years of history, was seen by the majority of the Kosovo populace as ally, while the minority, especially Serbs, were torn between seeing KFOR as an enabling force executing Pristina led policies, and viewing it as the last protective shield able to offer safety and actually prevent authorities in Pristina from fully integrating the Northern part of the country into its legal and administrative realm.

As of 2008, institutions in Pristina, as well as international and diplomatic offices supporting them, have, at times, been critical of KFOR operations in the North of Kosovo, accusing the force of "not doing enough" or – somewhat ambiguously – "not enforcing the laws of the land". Not surprisingly, representatives of so-called non-recognizing countries, as well as some representatives of international missions, such as UNMIK and OSCE, have, at times, made opposite allegations. In the

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[1] Leonid Graf von Keyserlingk is currently with the German Federal Ministry of Defense and has been serving in Kosovo in different civilian and military capacities during the period 2004 to 2013. The latest position in Kosovo was as Chief Political Advisor to the Commander of KFOR from September 2010 to February 2013. This paper is based on comments made on the occasion of the 26th Workshop of the PfP Consortium Study Group "Regional Stability in South East Europe", held on 02-04 May 2013 at Château Rothschild, Reichenau/Rax. Views expressed in this paper represent the author's personal and private opinion.

meanwhile no one had an answer as to how to deal with an area in which claims of power stood in the way of sound administration and the rule of any law, rendering people North of the Ibar defenceless and subject to manipulation.

This paper looks at how KFOR, over the years, contributed to security in Kosovo while being faced with an increasing political complexity that compelled the force to accommodate both constant change and continuity - so characteristic for this operational theatre. Part one discusses how KFOR's role evolved from humanitarian intervention towards the accommodation of change. The second section of the paper addresses recent developments that see an increasing EU mediated effort of Belgrade and Pristina to end the deadlock situation of limited state sovereignty of Kosovo on the one side, and stalled EU integration of Serbia on the other.[2] This recent process is another reality KFOR is to accommodate. The third and final part aims at formulating policy recommendations that aim at translating generic and symbolic agreements made under the EU facilitated dialogue into practical progress.

From humanitarian intervention to the accommodation of change

Having intervened in Kosovo based on a humanitarian cause and within the broader political context of the Yugoslav wars, KFOR, at least during the fierce anti-Serb riots in March 2004, learnt that the situation was complex and multidimensional. Essentially, peacekeeping troops had to realize early in their mission that the most critical element of military planning was lacking: it was what the J5, the branch concerned with planning in a military Head Quarters, refer to as "opposing/enemy forces." In Kosovo, right from the start, the *situation as such*, not individuals or groups, constituted the *opposing force*.

On the one side, KFOR operated in a formerly autonomous province with a majority of the population rejecting authority being ever again exercised by the former central government in Belgrade. On the other

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2   Since May 2013 some realities did change in Kosovo while the strategic map of interests appears to only gradually shift – with an uncertain outcome.

side, the Serbian Government sought to prevent anything like an effective statehood from being established led by Pristina, leveraging powerful allies such as China and Russia. Caught in between was the Serb population that was dependant on financial resources from Belgrade and, at the same time, especially in the North, nourished convictions that it would be impossible to life under Pristina rule. There an entire generation has emerged that never even heard someone speaking Albanian – a development that is mirrored South of the Ibar, where the young Albanian generation is more likely to speak English and German than Serbian.

South of the Ibar, Serbs, at times under very difficult circumstances, have begun to adjust their lives to a changed reality. With the readiness to at least tolerate the Governmental institutions based in Pristina, came an increasing acceptance and use of specific privileges and rights, that saw some success, for example in the field of decentralization. With regard to decentralization the project was an ambitious one and successes are at times overstated. However, in some areas many Serbs appeared to hold a view, that is was better to be badly governed by their own than being badly governed by Albanian representatives.

Areas beyond the control of the Pristina led administration, located North of the Ibar River, continued to resist any notion of Government control or influence remaining convinced that little good was to be expected from a mostly ethnic Albanian Central Government. Such convictions were based on legitimate and less legitimate concerns:

Justice and Law enforcement

The concern that justice and law enforcement could too often be ethnically biased appears legitimate. So was the fear that the administration would often struggle to safeguard property, language and other rights stipulated by poorly implemented laws.

Ethnicity based vulnerability

Serbs in Kosovo had a point when expressing concern that they would

easily become victims of hate crimes and discrimination with police doing little or nothing to ensure their safety and the protection of their rights.

Economic wellbeing

With Belgrade providing significant financial support, to include pensions, welfare, pro forma and actual employment, the question of economic wellbeing under exclusive administration of Pristina was valid too.

Education

There was a reasonable doubt that in the field of education Pristina authorities would with integrity deal with Kosovo history, neither falling for the myth of Kosovo as the cradle of this or that national identity, nor spreading lies and false history in order to hide crimes committed before, during and after the war.

Racist argumentation

Then again, KFOR over and over again bore witness to views by ethnic Serb representatives that showed that they did not oppose a biased history, as long the bias presented was theirs. The peak of utterly unacceptable views was plain racism expressed in the notion that a Government administrated mostly by ethnic Albanians could per se never be proper and fair as if belonging to a specific ethnic community would impact on professional performance.

A comprehensive, gradual and verifiable approach to concerns listed remains a precondition for a sustainable solution to the challenge of developing the Northern part of Kosovo into a stable and prospering region. This became clear to anybody who undertook the effort to analyze the situation in an impartial manner. Moreover, Pristina and the international community has to appreciate that Serbs in North Kosovo must neither be infantilized by avoiding discussing the hard issues, nor dis-

credited, by criminalizing them and directing a racist and derogatory rhetoric at them.

Before 2008 KFOR could be content with witnessing the transition from UNMIK to locally led institutions: every relevant administrative act was driven by the Special Representative of the UN Secretary General (SRSG). Following the declaration of independence, the situation changed. KFOR, in addition to continuing the handing over of tasks to local authorities, was caught in a dilemma: on the one side the aim was to enable a Kosovo Security sector to flourish in order to reduce troops and, in the end, make NATO forces in Kosovo redundant. Then again, KFOR did not and could not agree with many of the policies implemented by that security sector as they themselves at times showed the potential of becoming a threat to a *safe and secure environment*. In terms of real politics: elected politicians at times take decisions a non-elected and temporary NATO Commander would chose not to take.

From "establishing" a *safe and secure environment* in 1999, KFOR shifted to "guaranteeing", then "contributing" to it. From 2010 onwards, KFOR realized that additional static tasks had to be transferred (e.g. the monitoring of borders and the guarding of selected religious and cultural heritage). This transition was, in my view, driven by two overarching principles:

Firstly, there was a requirement to take into account the inevitable consequences of allied nations desire to reduce their military commitment.

Secondly, there was a clear understanding that a dignified and peaceful life for all in Kosovo was conditioned by local leaders of all ethnicities to take on their responsibility to work towards peaceful cohabitation. Even at the outset of its deployment, numbering almost 70.000 soldiers, KFOR was unable to prevent revenge and ethnic crime based incidents. With 6.000 troops left in 2012, KFOR had to be even more dependent on local leaders and courageous citizens to take on the challenge of reconciliation and normalization. Disengaging from tasks, such as guarding religious and cultural heritage, actually triggered positive reactions in

terms of compelling the parties, for example the Serb Orthodox Church and local mayors, to work together.

KFOR, albeit based on its 1999 mandate and cautious not to undertake operations that would expose the force to claims of making politics on its own, constantly reflected as to how to maintain an impartial stance while transitioning responsibilities and tasks to local authorities. Unsurprisingly, the outcome reflected the overall complexity of the Kosovo situation and may be best illustrated by an attempt to square a circle. Evidently, the differentiation between *creating capabilities*, for example when supporting the training of the Kosovo Security Force, established in 2009, and *supporting policies* of nascent security institutions, was a challenging area of operations in which KFOR always sought to remain transparent and principled.

When an ill advised, purely politically motivated and badly executed police operation in July 2011 triggered a large degree of nervousness among the Serb populace North of the Ibar, KFOR had to address an intense period of roadblocks that lasted well into spring 2012 and continues to impact the effective deployment of the European Union Rule of Law Mission, EULEX.

Operationally and politically, KFOR, since 2008, had to find its place between one school of thought that basically sought to minimize its role to only intervening where military means and capabilities were required to restore public safety, and another view that saw KFOR as a means to actively progress a "normalization" agenda that would essentially consolidate Kosovo statehood and create the precondition for a departure of international peacekeepers from Kosovo.

KFOR pursued an approach that lied between those positions. While repeatedly signalling towards local authorities that it had an essentially impartial role and was, against the commonly held view, not a military extension of the late Kosovo Liberation Army (KLA), the force repeatedly and consistently sent a strong signal to Serbs in the Northern part of Kosovo, that it considered Pristina institutions capable and exclusive in terms of administrating and providing security throughout Kosovo.

While supporting the development of the Kosovo Security Force (KSF), KFOR repeatedly entered into dialogue with its leaders clarifying that the KSF was not to be turned into an organization dedicated to the legacy of the KLA. There clearly was a challenge in mitigating the fact that the "politically correct" and internationally prescribed "Kosovo history", often collided with the sentiments and life experiences of the majority population and its political leadership. Serbs spoke about Serbian History while Albanians elaborated Albanian history. We, the internationals, were the only ones uttering the words "Kosovo History."

With regard to EULEX, KFOR focused on creating an environment conducive to that Rule of Law mission, while clarifying that it in itself had no role in law enforcement. In walking that thin line KFOR sought to convey another message to the parties: Pristina had to realize that KFOR was an independent actor making own policy choices and reserving the option to prevent or publicly condemn Government actions it considered detriment to a safe and secure environment. Serbs in Kosovo received the message that it was in their best interest to make use of rights and privileges afforded to them under the "Ahtisaari plan" and work towards normalization and dialogue, as opposed to taking a fundamentalist stance of maintaining the status quo wherever possible.

In the meanwhile operations in the North of Kosovo, mainly focused on addressing repeated blocking activities of main supply routes, continued in a firm but prudent manner that sought to minimize risks to civilian population while ensuring that Freedom of Movement was maintained. The aim was to stay within mandate and mission, avoid additional static tasks and contribute to an environment in which the political process could prosper.

The Belgrade-Pristina dialogue: success and challenge

Starting from March 2012 KFOR witnessed an increasing trend towards dialogue between the parties. While the technical teams usually concluded with ambiguous and most generic results, usually documented through the press office of the European Union, optimists saw the real chance for effective progress. On the ground such progress was much

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more modest and at times one was under the impression that negotiators in Brussels had little appreciation of the real conditions in the field.

However, with the elevation of the dialogue to the political level in autumn 2012, by now under a changed Serbian administration, the dialogue gained new momentum. Nevertheless: Belgrade never ceased to only make minimal concessions and do so at the latest possible time. Pristina, on the other hand, was keen to maximize its leverage from the strategic view, that Belgrade had a somewhat more concrete motive to move ahead: the opening of negotiation talks with the European Union.

The pace of negotiations and the degree of pragmatism displayed by both Prime Minister Ivica Dačić and Prime Minister Hashim Thaçi came as a surprise. However, days before the recent settlement it almost seemed that negotiations had failed.[3] It was on 19 April 2013, when an agreement was reached that some coined historic while others called it a "huge breakthrough".[4] When analyzing the path leading to that document, it becomes evident that the agreement as such is not the breakthrough but the processes and debates that followed. With both parliaments having ratified what was agreed, the remarkable and new momentum was the cathartic aftermath of these turbulent spring days within the Serbian political spectrum.

Initially, some Serbs from Northern Kosovo requested a referendum, without specifying whether it would seek the electorate to opine on the 19 April agreement or the Kosovo question in general. Subsequently, they requested that the Serbian Constitutional Court was to review the agreement prior to any further decision. The Government in Belgrade reacted swiftly and decisively: rejecting both the referendum and the appeal to constitutional judges it sent the decisive message. When, at the end of April 2013, Serbs from Kosovo travelled to Belgrade in order to represent their case to the state leadership, the administration undertook another step of great relevance: only Serbs from Northern Kosovo en-

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[3] Sabine Freizer, "Security on the Line in Kosovo-Serbia", Today's Zaman, 10 April 2013.

[4] Tim Judah, "A breakthrough at last", The Economist, 20 April 2013.

tered the building while Serbs representing Serb Belgrade oriented structures South of the Ibar had to wait outside – expressing their protest in an isolated fashion. By doing so, Belgrade had yet sent another message to its fellow Serbs in Kosovo: no more discussions about the entire former province, but a new focus on the concrete issue of Northern Kosovo. It was a moment in which the national narrative of Serb unity arrived in the harsh reality of today's state of affairs.

While hinting that talks would continue with Serbs in Northern Kosovo as to how to implement the agreement, Belgrade made clear, that, ultimately, there would be an implementation – with or without them. While those that believe there is no alternative to a EU led path to normalization welcome such decisiveness, it remains to be seen how far Belgrade is willing to go on the ground. After all, there is a crucial weak point that could undermine the effort of implementation: the 15 Point Paper asks Belgrade on the one side to de facto cede sovereignty over Northern Kosovo, while pressing it on the other, to exercise state power to ensure that local Serbs will comply with what was agreed. This is a contradiction that will govern the implementation effort. In the end, there is no alternative than to address the legitimate concerns of Serbs in the Northern part of Kosovo.

Having reached a decisive point in the Belgrade-Pristina dialogue, the complex ground work has to be done, that is a carefully conducted outreach to Serbs in Northern Kosovo during which Serbia, Kosovo and the European Union ensure Serbs on the ground are addressed with honesty, firmness and respect in order to receive a clear understanding of the complex transitions that lie ahead and how they will be conducted.

The way ahead: defining objectives and aligning actors

The 19 April 2013 agreement is as good as it got at the time but it is in no matter of speaking a comprehensive and operational document. The title implies already that it is the first, meaning one of many agreements. A pessimist would read the title as describing principles that are either temporary and/or incomprehensive. This is a "first agreement on principles", not an agreement on a given matter.

Many questions are open: what if Serbs in Northern Kosovo do not allow for Serbs South of the Ibar to join what is described as "Community/Association"? Where and under whose protection is such forum to convene? When referring to "applicable law": did the authors of the paper keep in mind that this will open a debate during implementation? How will the vague expression of such "Community/Association" having "full overview over economy, education" and other policy fields translate into reality?

Another issue representing a challenge to implementation is how a functioning chain of command of the Kosovo Police in the North is to be established and made effective? More importantly: who will be leading the overall process of eventually integrating Serb security structures into Kosovo structures?

The judiciary continues to represent a constant challenge in Kosovo: what if safeguards for a Serb judiciary are offered – but no Serb judge found that would be qualified and willing to serve in such court? Just to mention two more examples: what if elections in the North will be boycotted and energy and telecommunication negotiations fail?

This is neither place nor time to comprehensively analyze the 19 April document. What we can see, however, is the following: the "Normalization Train" has been accelerated, yet: its next stop and estimated time of arrival is unknown. Still: it is more comfortable to sit in a moving train with uncertain timetable than one not moving at all.

Implementation can only be achieved if Belgrade, Pristina, as well as EU and NATO realize the operational gap that opens when one actor, Serbia, is asked to cede sovereignty while another actor, Pristina, is not yet ready either, both by resources and capacity. Neither KFOR nor EULEX appear currently resourced, formally mandated and politically directed to proactively engage in the transition process needed to implement what was agreed. However, I believe that this would be necessary.

- EU and NATO should agree on a *Northern Kosovo Assistance and Development Initiative* that would consist of defining con-

crete operational challenges ahead, align actors to specific tasks and include robust monitoring.

- NATO should appreciate that successful normalization is a precondition for achieving the strategic goal of reducing and, finally, redeploy troops.

- EULEX should be resourced and tasked to provide adequate policing in the area while administrative structures are being created in order to accommodate personnel transitioning from what is currently termed "parallel structures".

- Pristina should appreciate the sensitivity of the moment, continue to avoid triumphalism and declare a moratorium on deploying special police and KSF until such time as they have increased their ethnic Serb members and for a period of at least 24 months.

Great attention must be given to transform Serbs in Northern Kosovo to real political subjects; to this end the EU must increase its communication effort and analyze legitimate concerns and address them in seriousness. Any ambiguity stemming from these political agreements must be minimized and all stakeholders carefully managed.

Let me come to an end now: much remains to be done in order to achieve normalization in Kosovo. It will take many years for Serbia to join the European Union and many more years for Kosovo to eventually follow. In times of economic crisis among EU member states the very question of enlargement is open ended and the answer all but sure. This means: the basic assumption that in general public opinion in both aspiring countries favours EU integration is only valid as long as there is a credible case to be made that EU integration will indeed be possible and realistic.

Inside Kosovo economic, social and political challenges will for many years stand unresolved. All former socialist states struggled with their transition towards being democratic and future oriented countries. How-

ever, Kosovo faces generational conflicts, a legacy of war, a weak economy, a challenged administration and a reserved neighbourhood. On the positive side, its people are resourceful in spirit, there is an entrepreneurial approach to life and openness to the world that stands out among the region and forms an ironic contrast with some of the more traditional views held especially in rural areas.

Solving the complex issues of Kosovo-Serbia relations and the question of how Serbs and Albanians can live together in Kosovo stands at the heart of progress. Serbia-Kosovo relations can be solved if the parties and the international community, mainly the European Union courageously move forward in implementing what is agreed and commit to further addressing concerns listed earlier. Interethnic relations will be harder to establish and require fresh commitment of all stakeholders. Legitimate concerns of Serbs in Northern Kosovo, some of which apply to all Serbs and even other minority communities in the country need to be addressed comprehensively, gradually and in a verifiable manner. Only then the complex transition towards normalization, rule of law and economic development will become possible.

Everybody discussing processes of integration and reform likes to refer to trains and anything else that moves on tracks: in some years we will be travelling by magnetic train from Vienna to Thessaloniki. Our train will briefly stop in the Mining and Research centre of Mitrovica. While we look at a sign reading *Euro-Region Ibar River* we will smile at our kids staring at their very thin and very powerful electronic gaming devices and remember how much excitement this place once represented. However, until then more works remains to be done.

The 2013 Agreement between Kosovo and Serbia: A Success Story or a Missed Opportunity?

Krenar Gashi

The 'First Agreement of Principles Governing the Normalisation of Relations' between Kosovo and Serbia that was signed by the Prime Ministers of two countries in April 2013, is already being considered as a success story for the Common Foreign and Security Policy (CFSP) of the European Union (EU). Reached after ten rounds of what was described to be 'gruelling talks' facilitated by the EU's High Representative (HR) Catherine Ashton, the agreement seeks to normalise relations between Kosovo and Serbia and guide them in their efforts to become full members of the EU.

In a nutshell, the agreement says that Serbia does not have to recognise Kosovo's independence, but has agreed to normalise relations with the Kosovo authorities, and has to withdraw all of its presence from the Serb-dominated northern Kosovo. In exchange, Kosovo agreed to extend the level of self-government for Kosovo Serbs. Also, the two countries agreed not to block each other in the process of European integration. Baroness Ashton said the agreement was a 'landmark' and 'a step closer to Europe' for both Kosovo and Serbia.[1] The President of European Commission Jose Manuel Barroso stated that 'this is a historic agreement, which must now be implemented quickly.'[2] The reaction from most of the EU member states on the matter was very similar.

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[1]   Serbia and Kosovo Reach Landmark Deal, European External Action Service, April 19, 2013, available from:
http://eeas.europa.eu/top_stories/2013/190413__eu-facilitated_dialogue_en.htm, accessed on May 18, 2013.

[2]   Statement by President Barroso on the agreement in the EU-facilitated dialogue between Serbia and Kosovo, European Commission, MEMO/13/353 of April 19, 2013, available from: http://europa.eu/rapid/press-release_MEMO-13-353_en.htm, accessed on May 18, 2013.

History tells us that agreements in the Balkans are easily reached but very hardly implemented. Thus, this article will critically analyse the political processes that led to the Agreement as well as its 15 provisions. It will establish that the provisions of the Agreement could be a good first step towards normalisation of relations between Kosovo and Serbia and towards long-lasting stability in the region. However, the ambiguities of the Agreement over the issue of Kosovo's independence will require a continuous involvement of the EU during the implementation phase, so the parties can avoid unilateral interpretations of the Agreement, as it has happened in the past. By taking an inductive approach, this article will look at EU's conditionality and the political situation in both countries and will argue that the agreement represents everything between a success story and a missed opportunity, asking the question whether the EU could aim higher and seek to resolve the last conflict in its neighbourhood at last.

Before reviewing the provisions of the Agreement it is important to understand the negotiating process in which the Agreement was reached. Following a resolution of the General Assembly of the United Nations (UNGA) of September 9, 2010, the EU took the lead in facilitating a dialogue process on the so-called 'technical issues'.[3] The context of the dialogue was such that it would assist the eventual integration of Kosovo and Serbia into the EU, creating high hopes in both countries, albeit a fair dose of criticism by radical political forces. As a facilitator, the EU remained neutral on the questions of Kosovo's legal and political status. After one year and 11 rounds of talks, the EU reached 7 conclusions that were treated as agreements and were supposed to be implemented by the parties.[4] Both parties hindered the dialogue as they continued to interpret the agreements unilaterally whilst using the old hostile rhetoric for each other.[5] In this context, it is worth noting that, while the negotiations were

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[3]   United Nations General Assembly Resolution 64/298, September 9, 2010.

[4]   The agreements were: Freedom of Movement, Civil Registry, Recognition of University Diplomas, Cadaster books, (July 2, 2011), Customs Stamps, (September 2, 2011), Integrated Border Management (December 2, 2011) and Regional Cooperation (February 24, 2012).

[5]   For more details about this process and its regional implications, see previous publications by RSEEE, especially Felberbauer and Jureković (2011) From Bosnia

being held in Brussels, politicians in Pristina continued to dismiss the relevance of the process. Furthermore, politicians in Belgrade continued to promote the idea of partitioning Kosovo, according to which, the northern municipalities would re-join Serbia. Commentators from the region noted that the idea of partition once again become salient, before and after the 2011 elections.[6]

While Kosovo authorities rapidly moved to implement the agreements that were reached, Serbia was reluctant to do so amid election campaigns. The elections interrupted the dialogue, which by this time had become a salient issue in both polities. As one commentator rightfully noted, the relations between Kosovo and Serbia were not improved by the Brussels talks – on the contrary – they were tenser than they used to be before the dialogue began.[7] Northern Kosovo Serbs contributed to the tension by setting up barricades in the main roads, separating the region from the rest of Kosovo. There was a widespread perception that the dialogue was about to fail.

Serbia's President Boris Tadić lost the Presidential election against Tomislav Nikolic, a former radical nationalist. Nikolić's new Serbian Progressive Party (SNS) also won the parliamentary vote against Tadić's Democratic Party (DS). SNS formed a governing coalition with Milosević's Socialist Party of Serbia (SPS) that is now led by Ivica Dačić, who became Prime Minister. The new Serbian government did not withdraw to nationalistic rhetoric about Kosovo; on the contrary, it pledged to make concrete moves towards normalisation of relations.[8] This rhetoric is still being used but only for domestic political consumption.

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[6] and Herzegovina to Northern Kosovo: Coping with the remaining impasses in the Western Balkans, Vienna: Austrian National Defence Academy.

Ibid.

[7] See Muharremi, S. (2012) The Kosovo-Serbia Dialogue: Close to EU, Far From the Citizens. Pristina: Fes and Development Group. Available from http://www.fes-prishtina.org/wb/media/Publications/2012/Larg%20Qytetarit%20Afer%20BEse_finale%20eng.pdf.

[8] Ker-Lindsay, J. (2012) After a shock victory in Serbia, Tomislav Nikolic now faces a dilemma over Kosovo and EU accession. LSE European Politics and Policy (EUROPP) Blog (24 May 2012).

The governing coalition has a narrow majority in the Assembly, as, with a coalition of minor parties called the United Regions of Serbia, the SNS and SPS have 144 out of 250 parliamentary seats. However, when it comes to normalising relations with Kosovo, the parliamentary opposition is quite weak. Having been the leaders of the dialogue with Kosovo, the DS of former President Tadić does not oppose the process and neither does the Liberal Democratic Party of Čedomir Jovanović, which is the only party to openly accept Kosovo's independence. With a parliamentary support that exceeds the governing coalition seats, Serbian executive is considered to be very strong, and, as some have argued, this could translate to bold decisions vis-à-vis Kosovo.

The Kosovo government, on the other hand, is not that strong. As from the 2010 election, the government of Kosovo is comprised of the Democratic Party of Kosovo (PDK) of Prime Minister Hashim Thaçi, the New Kosova Alliance (AKR) of Behgjet Pacolli, and the Serbian Independent Liberal Party led by Slobodan Petrović, and currently has only 58 out of 120 parliamentary seats. The government is supported also by other MPs representing national minorities, and usually has a functional majority. When it comes to negotiations with Serbia, however, the government also has the support of two opposition parties, the Democratic League of Kosovo (LDK), which has 27 seats, and Alliance for Future of Kosovo (AAK) with 12 seats. The only political party that is fiercely opposing the process is Levizja Vetëvendosje (Self-determination movement), which has 12 MPs.

With two relatively strong governments in place, the EU used this political momentum to push for a fresh round of talks, this time under high-level political representation. On October 19, 2012, the HR Catherine Ashton hosted the first meeting between Prime Ministers Thaçi and Dačić.[9] The agenda of the dialogue included highly complicated political issues such as northern Kosovo and Serbia's presence there. The series

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[9]   EU-facilitated dialogue: Catherine Ashton discussed further with Prime Ministers Thaci and Dacic, November 9, 2012, available at
http://www.eeas.europa.eu/top_stories/2012/081112_ca_dacic_thaci_en.htm,
accessed on May 20, 2013.

of meetings led to the First Agreement, which was initialled by the two prime ministers on April 19, 2013.

At first sight, the Agreement looks simple and vague. Generally, it corresponds with Kosovo's constitutional framework and its safeguards for national minorities, thus its implementation should be much easier for Kosovo, given the fact that the authorities are very familiar with the context. The same cannot be said about Serbia, especially since the provisions of the Agreement refer, although indirectly, to Kosovo's constitutional order.

The first six articles regulate the level of autonomy for Kosovo Serbs in Kosovo. The Agreement defines that there will be an Association/Community of the Serb-majority municipalities in Kosovo, which should serve as a coordinating body between the municipal and central level of governance (Article 1). Based on the principles of the European Charter of Local Self-Government, the member municipalities would be able to transfer some powers to this association, or use it as a platform for cooperation in 'the areas of economic development, education, health, urban and rural planning' (Article 4). The Association could be further strengthened by exercising additional competences that may be delegated by the central government (Article 5) and will participate in key Kosovo institutions that safeguard national minorities (Article 6).

The legal guarantees for this Association, according to the Agreement, 'will be provided by applicable law and constitutional law (including the 2/3 majority rule).' The Agreement does not refer to the constitutional law of the Republic of Kosovo, which means it does not recognise Kosovo's status, yet it refers to a constitutional order. The 2/3 majority rule, included in parentheses above, would be applied to guarantee the functioning of the Association, is a unique safeguarding element of the Kosovo Constitution, according to which, the Constitution and other vital laws that protect national minorities in Kosovo could only be altered by 2/3 of all the MPs, including 2/3 of all non-Albanian MPs.

The ambiguity over this new institution that will result from this Agreement is, by all means, a result of the differences that the parties

have. There are at least two major issues, which could become problematic. First of all, the parties could not agree on a single term for this institution. It is called the Association/Community in order to represent a compromise between the negotiating parties. The Serbian delegation insisted on the word Community, in Serbian 'zajednica', which can also be translated as 'union'. This corresponds with the names of previous institutions of Serbs in Kosovo, thus, it is meant to provide the Serbian public an impression that the new institution will be somehow independent from Kosovo's constitutional order. On the other hand, the Kosovo delegation preferred to call it Association, as this word corresponds with an existing Association of Kosovo Municipalities that has a coordinating role, thus providing the Kosovo public the impression that the Agreement will require no constitutional changes and will have no real executive powers. Secondly, there is an ambiguity whether this Association would be established with the current municipal authorities of Kosovo Serbs in the north, which Kosovo and the international community consider illegal, or will wait for the new elections to take place first.

Articles 7 to 11 regulate the security issues for Kosovo Serbs. First of all, the Agreement established that there shall be only one police force in Kosovo – the Kosovo Police – and that members of Serbian Police, who were operating in northern Kosovo, as well as 'members of other Serbian security structures, will be offered a place in equivalent Kosovo structures' (Article 8). Northern Kosovo, however, will get its own Regional Commander of the Police, who will be in charge only for 'the four northern Serb majority municipalities (Northern Mitrovica, Zvecan, Zubin Potok and Leposavic). Until now, these municipalities were part of the Regional Police Command that also included northern Albanian municipalities of Mitrovica South, Skenderaj and Vushtrri. The Regional Commander comes due to the high distrust of Kosovo Serbs at the Special Police Units of Kosovo Police. This feeling was further boosted in July 2011, when a special police unit was sent to restore control in the two border points with Serbia. The unsuccessful attempt ended up with one police officer shot dead and local Serbs placing barricades throughout northern roads. The Agreement provides for the Serbs in the

north to have their own Regional Command and Special Police Units, which enhances their powers of self-governance.

Articles 10 and 11 of the Agreement regulate the issue of the judiciary, which 'will be integrated and operate within the Kosovo legal framework.' Beside the Basic Court, the northern Kosovo Serbs will also have a special division of the Appellate Court based in Mitrovica North. These provisions also will require changes in Kosovo's legislation, as currently the law foresees only one Appellate Court based in Pristina.

Here again, there are quite some uncertainties that could become problematic at a later stage. First of all, members of the Serbian security forces are expected to be included within the Kosovo police. This opens at least two questions: whether there will be a selection criteria or simply the whole security forces will simply changes their badges overnight (1), and whether it can be guaranteed that these forces would not receive orders from Serbia after the transition (2). These two topics have been reported by the media to be salient issues within the negotiating process. Although the Agreement refers to Kosovo's constitutional framework, it should not be assumed that both parties would have the same approach to the issue. Further clarifications will be needed during the implementation phase.

The Agreement also regulates that fresh municipal elections shall be organised in the northern municipalities in 2013, in accordance with Kosovo law and at the same time with regular elections in other municipalities (Article 12), and urges the parties to intensify their discussions on energy and telecommunication, which was left over from the previous round of technical dialogue (Article 13). Furthermore, parties agreed that they will not 'block, or encourage others to block, the other side's progress in their respective EU path' (Article 14) and to establish an implementation committee (Article 15).

To summarise, the provisions of the Agreement enable Kosovo to restore sovereignty over its territory, resolve the problematic issue of northern Kosovo and secure a wider autonomy for Kosovo Serbs. Given the depth of the conflict between Kosovo and Serbia, this represents a

major achievement on the path towards a final reconciliation in the Western Balkans. In addition, the Agreement terminates, once and forever, the idea of partitioning Kosovo, which as we recall from the first round of negotiations became quite salient.

However, as a document, it only represents the first step towards a solution. Its success depends on its implementation and any other agreements that may follow. The ambiguity over many issues that are directly or indirectly linked to Kosovo's independence is likely to be an obstacle in the implementation process. Immediately after the Agreement's provisions were made public, the contradiction in statements continued. While Kosovo's Prime Minister said the Agreement strengthens Kosovo's statehood, the Serbian President said Kosovo would never become an independent state.[10] The differences in statements were not only inter-parties but also within the Serbian political scene.[11] From the previous rounds of negotiations, we know that implementation is always an issue, thus, for the Agreement to be a complete success story, further and continuous guidance by the EU will be needed.

In order to analyse the role of the EU, it is important to review the process that led to the agreement and understand the concept of conditionality. Following the collapse of Communism, the academic scholarship has produced substantial literature on the role of the EU in the transition of Central and Eastern European countries. Scholars have observed that by offering full membership as the ultimate leverage, the EU was able to influence the transition and it was established that by having full membership to offer as the ultimate leverage, the EU is able to use conditionality against aspiring countries.[12] Furthermore, the leverage is only

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[10] B92, President: Kosovo will never become state, available from http://www.b92.net/eng/news/politics-article.php?yyyy=2013&mm=05&dd=03& nav_id=85996, accessed on May 18, 2013.

[11] Balkan Insight, PM Fuels Serbian Confusion over Kosovo, available from: http://www.balkaninsight.com/en/article/serbia-pm-changes-stance-on-kosovo-in-a-day, accessed on May 18, 2013.

[12] See especially Vachudova, M. (2005) Europe Undivided: Democracy, Leverage & Integration After Communism. Oxford: Oxford University Press.

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available there if it is perceived as such by the governments of aspiring countries. These governments must not only have the willingness to implement reforms in their EU accession process, but they also need to have the capability to do so.

Similarly to enlargement to Central and Eastern Europe, enlargement to Western Balkans is coordinated through a joint process as part of EU's Neighbourhood Policy, which is the Stabilisation, and Association Process (SAP). The SAP makes the EU enlargement to Western Balkans somewhat different from previous accessions. In addition to the Copenhagen criteria to maintain democratic governance, guarantee human rights and establish a functioning market economy, the EU has added additional specific criteria that derive from political agreements to the checklists of the Western Balkan countries.[13] In this 'multidimensional instrument' the countries have progressed towards the EU unevenly.[14] In other words, it's a tougher process.

Serbia launched its SAP negotiations in October 2005.[15] The negotiations were stopped by the EU in March 2007, as Serbia had failed to deliver on the main condition set by the EU – cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY) – but they resumed in November of the same year. Following Kosovo's declaration of independence in 2008, Serbia signed the Stabilisation and Association Agreement (SAA) on April 29. On March 1 2012, the European Council confirmed Serbia as a candidate country. The Agreement with Kosovo opened the next door in Serbia's EU path. In a joint report to the European Parliament and the Council of the EU, the European Commission

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[13] Such criteria are the rule of law, regional cooperation, full cooperation with ICTY and other specific political criteria that derive from the Ohrid Agreement for Macedonia, Dayton Agreement for Bosnia. For more details about the SAP see Balfour, R. and Stratulat, C. (2011) The democratic transformation of the Balkans, European Policy Centre, Policy Paper No.66, November 2011.

[14] See Anastasakis, O. and Bechev, D. (2003) EU Conditionality in South East Europe: Bringing Commitment to the Process. *South East European Studies Programme*, April 2003. Oxford: University of Oxford.

[15] For a detailed timeline of Serbia's EU accession see the special page at EU's portal, available from: http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm.

said it 'considers that Serbia has met the key priority of taking steps towards a visible and sustainable improvement of relations with Kosovo' and recommended that negotiations for accession to be opened.[16]

Kosovo, on the other hand, lagged behind in European integration.[17] This, first of all, comes as a consequence that its independence is not recognised by five EU member states. Given the intergovernmental nature of the enlargement process, Kosovo's participation in the SAP has only been possible through enhanced Tracking Mechanisms established in 2002. Kosovo remained the only Western Balkan country whose citizens cannot travel visa free to EU member states and the only country with no clear EU perspective. However, following the 2013 Agreement with Serbia, the Commission recommended to the Council to authorise opening of negotiations on a SAA between the EU and Kosovo.[18]

The key challenge to European integration for Kosovo and Serbia remains the dispute over Kosovo's independence. Two researchers of the London School of Economics and Political Science (LSE), James Ker-Lindsay and Spyros Economides, rightly noted that the issue of independence represents a major obstacle for Kosovo, but also for the whole region. In their words,

> 'Where the problem of status does become seemingly insurmountable is on the question of actual accession. While moves can be made to establish some

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[16] Joint Report to the European Parliament and the Council, on Serbia's progress in achieving the necessary degree of compliance with the membership criteria and notably the key priority of taking steps towards a visible and sustainable improvement of relations with Kosovo, April 22, 2013, available from: http://ec.europa.eu/enlargement/pdf/key_documents/2013/sr_spring_report_2013_en.pdf, accessed on May 18, 2013.

[17] For a detailed timeline of Kosovo's EU accession see the special page at EU's portal, available from: http://ec.europa.eu/enlargement/countries/detailed-country-information/kosovo/index_en.htm.

[18] Joint Report to the European Parliament and the Council on Kosovo's progress in addressing issues set out in the Council Conclusions of December 2012 in view of a possible decision on the opening of negotiations on the Stabilisation and Association Agreement, April 22, 2013, available from: http://ec.europa.eu/enlargement/pdf/key_documents/2013/ks_spring_report_2013_en.pdf, accessed on May 17, 2013.

type of formal relationship with Kosovo short of membership while its status remains inconclusive, it seems unlikely that this can apply to Kosovo within the EU. Furthermore, there are genuine questions about the degree to which a state can accede without being a full member of the United Nations.'[19]

To conclude, the 2013 Agreement between Kosovo and Serbia was shown to be a substantial success for the EU integration processes of both countries, in addition to being the highlight of EU's foreign policy. However, what was achieved could be hindered precisely due to the fact that the Agreement does not resolve the political dispute over Kosovo's independence. Serbia will start membership negotiations without being formally conditioned to recognise Kosovo. Yet, some of the 22 member states that have supported Kosovo's independence, in particular Germany, Britain, France and the Netherlands, are very likely to do this informally. Furthermore, the EU officials have repeatedly stated that they would never accept a country with a disputed territory as a full member. At the same time, Kosovo could negotiate an SAA with the EU, but it remains very uncertain how the parliaments of five member states that don't recognise its independence will ratify such an agreement. The question that emerges is if the EU was able to push Kosovo and Serbia towards a final agreement, whether that would resolve the last puzzle of the Western Balkans.

As this article has shown, the EU took control over the process of the dialogue only after elections in Serbia. The political momentum that was created contained two necessary elements needed for EU conditionality to work: there was a clear leverage for both parties on the negotiating table with a tangible immediate benefits and full membership in the long run (1) and both Kosovo and Serbia were politically capable and, at least declaratively, willing to accept higher prices and implement unpopular political solutions (2). The stability and the composition of the government in Serbia are of a particular importance here. Given this political momentum and the high risk that the implementation of this Agreement brings, it is very legitimate to ask whether this was a missed opportunity

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[19]   Ker-Lindsay, J. and Economides, S. (2012) Standards before Status before Accession: Kosovo's EU Perspective: Journal of Balkan and Near Eastern Studies, Vol. 14, No.1, pp.47-92.

for the EU to reach a final solution to the last conflict of the Western Balkans. A negative answer to this question would be based on the fact that the negotiating process will continue. As established in this article, the process will require continuous support by the EU, which, will continue to offer full memberships to Kosovo and Serbia as the ultimate leverage. However, with no short-time tangible benefits for either of the country, the EU has lost its carrots, and by doing so, also weakened its position as a conditioning power.

PART IV

RECONCILIATION, COOPERATION AND EUROPEAN INTEGRATION: DEVELOPMENTS IN BOSNIA AND HERZEGOVINA, MACEDONIA, MONTENEGRO AND ALBANIA

Reconciliation, Cooperation and European Integration: Developments in Bosnia and Herzegovina

Johannes Viereck

Several years of interactions and exchanges have undoubtedly made it clear to all of us that each country in the Western Balkans has its own challenges and each has its own solutions. It is clear too that what happens in one country has an impact on its neighbours – for good or ill. There is broad agreement that one-size-fits-all policies will not work, but at the same time policies will be most effective if they take into account the regional context.

A positive shift

The thorniest problems are generally left until last, which is a reasonable enough problem-solving strategy. It explains to some extent why in 2013 we are dealing with some of the most deep-seated problems arising from the break-up of former Yugoslavia.

This should not obscure the fact that in the last decade, enormous progress has been made in the region. It is precisely because progress has been made that it is now possible to address the most difficult issues.

A decade ago, rapprochement between the states in the Western Balkans often depended on the courage and initiative of individual leaders. Today, by contrast, we have in place a developed system of structures that facilitate dialogue.

Today, cooperation is sustained – though of course, leaders still have the capacity to stand in the way of progress if their own politics are behind the times. We saw this recently, for example, with the statements of Serbian President Tomislav Nikolic about the ICTY and his repeated reference to the Republika Srpska as a "state". Likewise, the UN General

Assembly debate on war crimes a few weeks back was hardly seen by many more particularly helpful to others than to those who organised it. Then again, a week or two later this debate was somewhat overtaken by President Nikolić's apology on behalf of Serbs and Serbia over the atrocities committed in Srebrenica.

When examining the legacies of human rights abuses it is important to stress that a focus on the future does not mean forgetting the past. It has been rightly said that if you look after justice, peace will look after itself. There is no justice in distorting history, in pretending that evil was not evil. Historical truth prevents individuals and entire societies from being imprisoned in a time-warp of recrimination.

With Croatia having become the European Union's 28th member state, the region's European trajectory moves up a notch. While the remaining countries in the Western Balkans are at different stages in their EU engagement, we may be able to see here again cases where the most difficult problems have been left until last.

In Serbia and Kosovo, while the central dispute continues to elude a settlement, a great deal of ground seems to have been covered not least by the agreement reached in Brussels on 19 April. It is a hard issue, but like other hard issues over the last decade it too could eventually be resolved.

In Macedonia, domestic political problems and the name dispute with Greece have complicated the country's European integration effort, but here too, we see broad progress – not fast enough, but real progress never is.

In Bosnia and Herzegovina (BiH) there are significant institutional and political obstacles to integration, of course, but it should be stressed that BiH's relations with its neighbours are significantly better than a decade ago.

An asset or a liability

However, internal political developments in BiH have placed in jeopardy the country's prospects of maintaining the European trajectory along with its neighbours.

This is a tragedy for the people of BiH, and it is something that matters to people throughout the region – for reasons of solidarity and normal human empathy, of course, but also for reasons of self-interest. Because BiH can be an asset or a liability for the region and Europe – socially, politically and economically – and, as things stand now, it is now in danger of becoming something of a liability.

Nor is this a matter of purely regional concern.

The International Community assisted at the birth of the Dayton Peace Agreement and is a guarantor of that Agreement. It has a fundamental responsibility to ensure that the Agreement continues to protect the lives and livelihood of four million BiH citizens.

No matter how intractable the problems appear to be – BiH is not a country from which the International Community can simply walk away.

A bitter collective sigh

Over the last eighteen years, the International Community has carefully calibrated its engagement in BiH, changing its approach to meet changing circumstances. In 2006, as will probably be vaguely recalled, the Peace Implementation Council concluded that the dynamic day-to-day intervention of the Office of the High Representative should be scaled back in order to create space for the domestic political establishment to take on full responsibility for the country's continuing progress.

There were good reasons for this decision. BiH's prospects seemed very positive in 2006.

- Key government, security, regulatory and judicial bodies were up and running;

- The armed forces command structure was integrated and subjected to parliamentary oversight; the police forces had been substantially professionalised;

- Refugee return had achieved a momentum that made it reasonable to believe that the process could be completed under the auspices of domestic agencies; and

- Economic growth was strong and sustained – inward investment and employment were rising, and sound Central Bank supervision together with a state-of-the-art indirect taxation system provided the BiH authorities with one of the most promising scenarios for macroeconomic management in Southeast Europe.

It was realistic to encourage BiH political parties to take full ownership of the recovery process.

But the results after seven years have been disappointing. We have not seen strategic vision, wise leadership or attention to the major economic and social problems facing the country's citizens. Instead, the Dayton checks and balances that were incorporated in the political system to ensure communal security have been misused to secure tactical advantage for political parties.

BiH citizens have responded to this unedifying spectacle with a bitter collective sigh that can be heard right across the Balkans. In a country that was beginning to recover from terrible wounds, hope and enthusiasm have been replaced by cynicism and despair.

We have seen a real and admirable effort by civil-society activists, by some brave journalists and community workers – and by some although very few independent-minded and courageous politicians too – to stand

against the tide of short-sighted chauvinism that has blighted the country's social and economic prospects.

But the system – the very same system that the International Community helped put in place – has been shamelessly abused by the political parties. A system that was designed to protect the rights of citizens has been turned on its head and used instead to protect the rights of parties and politicians.

The High Representative Valentin Inzko is very right in calling for the wider International Community to confront the reality of what has happened in the past seven years. And he is right in trying to get the International Community to agree on a strategy to change this reality.

Political malfunction

The BiH Council of Ministers, formed long after the 2010 General Election – has been unable to discharge its duties in an effective way because the work of the Parliamentary Assembly has been blocked by politics. In the two and a half years since citizens went to the polls almost no laws have been enacted by their representatives. All this at a time of global economic crisis, and, moreover, at a time of increasing domestic hardship.

At a time when the volume of legislation that is required in order to match the demands of the European integration process would test the legislative ability of even the most efficient and productive parliamentary assembly.

And when laws have been enacted, we have encountered a growing problem of partial implementation or non-implementation. Political malfunction is not confined to the state level. In both Entities the main parties have embarked on a systematic effort to recover the control over public bodies that was taken away from them as part of the European integration process when it was moving forward.

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Protecting citizens

The Office of the High Representative is saying that we cannot look the other way and pretend that this ugly political reality is other than it is. Nor can we simply call on BiH leaders to act decently and responsibly and then warn them half-heartedly when they fail to do so. We need to change the system that has made it hard to govern well and easy to govern badly.

Complementary agenda

Several important initiatives are already underway.

The European Union is engaged with the BiH authorities in a Structured Dialogue on the Rule of Law. The High Representative has given his full support to this systematic and important effort to make the legal system work more efficiently. It has a single objective – and that is to enhance the legal protection of BiH citizens.

At the same time, the US is leading efforts to build political consensus behind an overhaul of decision-making systems and administration at different levels of government. This too has the full and active support of the High Representative.

The European integration process is the template of the International Community's efforts to provide BiH with the political, institutional, legal, and social tools that it needs in order to complete its post-war recovery and move along the path to full European integration.

The High Representative cooperates closely and productively with the EU's Special Representative to ensure that the agendas of Office of the High Representative (OHR) and the EU are complementary. The High Representative has continued and expanded the policy of local ownership begun by a predecessor seven years ago, refraining from the use of the Bonn-Powers and giving the European Union the lead role on more and more issues.

This is all part of our agreed strategy for BiH and one which the High Representative wholeheartedly supports.

At the same time, we need to be honest with ourselves that so far the pull factor of integration into Euro-Atlantic structures has not proven to have the same power in BiH as elsewhere, as we had hoped they would.

It has not been enough simply to present the political establishment with the European option and say: take it or leave it. Because they will leave it – that is the lesson of the last seven years. BiH has exposed the limits of local ownership as the primary force moving BiH towards accession.

Local ownership and EU foreign policy

The High Representative totally accepts that local ownership is the only long-term way for a country to progress towards European integration. And in the case of BiH, it might indeed make itself felt, hopefully, at a later stage. But it is not working – by most measures – right now.

And so, we must – especially us Europeans – look beyond enlargement to the other essential components of our common foreign policy. Components which are perhaps less reliant on local ownership and more prescriptive than the EU member states are probably used to. This is important because the challenges facing Bosnia's sovereignty and integrity have already attained a momentum that is disruptive to the long-term progress and stability of the country.

To those who consider the possibility that BiH's disintegration is inevitable and that it might lead to more stability in the region, the answer must be a clear no. First there is nothing inevitable about BiH's disintegration – and certainly not its peaceful disintegration. Republika Srpska President Milorad Dodik's direct challenges to the existence of BiH can be turned back. The challenges facing the government of the Federation which also undermine BiH can be addressed. But it requires a vocal policy, a consistent policy and more prescriptive policy that makes complimentary use of conditionality and the international executive mandates.

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The executive mandates

Dayton is the bedrock of nearly two decades of physical peace in BiH and it remains the guarantee of BiH integrity and sovereignty.

OHR is fulfilling its constitutional mandate to uphold Dayton, and is fully engaged in facing down renewed efforts by the political parties *to roll back* many of the institutional achievements of the peace settlement.

We have acted to prevent efforts to challenge the sovereignty and integrity of BiH. The executive mandates are in place. They cost relatively little. However, to recreate them once they are gotten rid of will cost a lot if it wont be outright impossible to get the mandates back.

The argument of disintegration leading to greater stability in the region is also wrong. The existing minority questions in the Balkans warrant an inclusive approach rather than one that is bent on separating people on false premises of history and ethnic affiliation. Those elements of inclusion should be the core components of the EU's foreign policy in the Balkans and thereby ensuring the foundation on which local ownership of the accession process can take root.

The next phase

The first phase of post-war international engagement in BiH involved emergency economic and humanitarian aid and a massive and successful peacekeeping deployment.

The second phase involved consolidating a political and economic basis for self-sustaining progress towards full Euro-Atlantic integration.

The third phase involved removing the resistance to the second phase so that it could be completed by the domestic actors.

The next phase must address the shortcomings we have seen in the last seven years and these shortcomings arise from a divergence of values.

The domestic political establishment has manifestly failed to absorb the underlying values of European integration – the integrity of the citizen, the rule of law, and the various freedoms we pride ourselves of as citizens in the EU.

But if we are to persuade the BiH leadership and the people of BiH that these values are fundamental and non-negotiable then we too must recommit to these values. We must rediscover our purpose and we must be ready to take a prescriptive approach to helping the country and its leaders return to the European road.

In other words, we have to make it absolutely clear that we believe our own philosophy.

A policy of political and moral appeasement will not deliver a country fit for European integration, and it should be made clear to anyone flirting with the notion of population movements, for example, as a shortcut to political settlements that such shortcuts are incompatible with European standards. More than that: those short-cuts are dangerous and morally poisonous.

Asserting European values

Europe is today confronting an existential crisis: it is engaged in a difficult effort to uphold the single currency and to ensure that economic turbulence does not threaten the social and political achievements of three generations.

This challenge will be met successfully if Europe's underlying philosophy prevails. This is the philosophy that healed the wounds of the greatest conflict in history. It is based on solidarity, on the rights of citizens, on shared interest and pooled resources; it is based on the rule of law, on tolerance and inclusiveness.

In BiH the post-war settlement is being challenged by leaders who have not properly understood or embraced these European values.

That challenge will be met successfully by asserting these values not by diluting them.

The European Union must continue with its policy of proactive engagement with BiH stakeholders. This must be based on effective conditionality where the leadership is concerned and on a clear and confident belief in European values where the people as a whole are concerned.

The OHR, for its part, will continue to maintain the space in which this policy can succeed.

We do not have the right to abandon the people of BiH. As long as we remain an integral part of the BiH political settlement we must act effectively and in a way that is consistent with our values.

This approach succeeded in Europe in the past and it can succeed in Europe in the current crisis. If it succeeds in Europe it can certainly succeed in the Western Balkans as a whole and in BiH in particular.

Is the Republic of Macedonia 'Waiting for Godot'?[1]

Dennis Blease[2]

Introduction

In Samuel Beckett's internationally renowned play 'Waiting for Godot', the principal characters are endlessly waiting for somebody called Godot, who never arrives.[3] The absurdist notion of this constant vigil, without making any real attempt to break the impasse, seems to have parallels with the Republic of Macedonia's espoused aspirations for Euro-Atlantic integration. The government in Skopje would argue that the blockage of its membership to both NATO and the European Union, is the result of a long-running dispute with Greece over Macedonia's constitutional name. The delay is perceived to be merely the most visible consequence of an unequal power relationship (one of the protagonists being inside the 'NATO and EU club' and one outside) and thus Greece placing an unfair impediment to the achievement of Macedonia's rightful destiny.

This is perhaps too simplistic an explanation. It is worth pondering the extent to which Macedonia is an innocent bystander in this Greek tragedy or, at least in part, the architect of its own problems. Furthermore, if one recalls Christian theology such waiting time is often described as the 'time of preparation', where one is busy ensuring that everything is as fully prepared as possible for the denouement –

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[1] This paper is based on an original panel paper of the same title presented by the author at a 'Regional Stability in South East Europe Study Group (RSSEE)' Conference in Skopje on 29 September 2012 and has been updated as at May 2013 in order to reflect current circumstances.

[2] Dennis Blease is a retired British Army flag officer, who has served in the Western Balkans with NATO, the UN and the EU. He is currently a part-time Doctoral Candidate with the Department for Management and Security, Cranfield University. The views expressed in this paper are purely his own

[3] Beckett, S., 1954. *Waiting for Godot*. New York: Grove.

whatever that denouement may be. Unfortunately, the parallels between Macedonia's approach and those of this Christian tradition would seem to be less obvious. Nonetheless, the European Commission press release that accompanied the April 2013 progress report on Macedonia stated that the "… implementation of EU-related reforms [...] has continued, with progress on almost all the targets and indicators."[4] A more detailed review of the full report[5] would, however, seem to suggest a lack of progress in several important areas. Many knowledgeable observers, including Erwan Fouéré, the former EUSR to Macedonia, have been deeply critical of the country's lack of genuine reform and for wasting the enforced waiting time to prepare fully for EU membership.[6]

Given this rather difficult background, the purpose of this paper is to analyse Macedonia's current situation with respect to Euro-Atlantic integration and how it might move from the 'waiting room' of the European Union and NATO to being a full member of both. In order to attempt this task, it is proposed, first, to identify the geo-political constraints that now beset the European Union and NATO and their resultant impact upon Macedonia; second, restate where Macedonia stands in the current accession process; third, review the state of Macedonia relationships with its neighbours; and finally, review some of the

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[4]   EC Press Release: *The former Yugoslav Republic of Macedonia: Reforms continue despite political tensions.* IP/13/334 dated 16 April 2013. Available at: http://europa.eu/rapid/press-release_IP-13-334_en.htm (accessed: 20 May 2013).

[5]   EC: COM(2013) 205 Final dated 16 April 2013. *The Former Yugoslav Republic of Macedonia: Implementation of Reforms Within the Framework of the High Level Accession Dialogue and Promotion of Good neighbourly Relations.* Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2013/mk_spring_report_2013 _en.pdf (accessed: 20 May 2013).

[6]   For example: Fouéré, E., 2013. *Enlargement Agenda - Special Focus on Macedonia, Serbia and Kosovo.* CEPS Commentary dated 27 March 2013. Available   at: http://www.ceps.be/book/enlargement-agenda-special-focus-macedonia-serbia-and-kosovo (accessed: 27 March 2013); also: RSSEE, 2012. *Meeting the Challenges of EU membership and NATO Accession - Macedonia and her Neighbour: Policy Recommendations*, Skopje, 27-29 September 2012. Vienna: Austrian Defence Academy. Available at: http://www.bmlv.gv.at/pdf_pool/ publikationen/pfp_poli_2012_skopie_email.pdf (accessed: 5 April 2013).

key areas where reform is still required for Macedonia to achieve its espoused strategic goal of Euro-Atlantic integration.

Geo-Strategic Issues

It is inevitable that any discussion of Macedonia, and its integration into the Euro-Atlantic structures, will touch upon much broader issues, such as the role that the European Union and NATO have to play in the Western Balkans. Circumstances today are very different from the EU's optimistic rhetoric of the Thessaloniki Accords in 2003 and the high point of the Euro-Atlantic reform process in the Region in 2006. For example, competing political priorities and the continuing crisis within the Eurozone have brought into sharp focus whether the European Union really does have the appetite to carry through the integration process that has been underway over the past ten years.

European Union

This uncertainty is exacerbated because the EU appears to be suffering a crisis of confidence, and the financial crisis seems to be just one element of this wider malaise. It is perhaps worth analysing three key issues:

- First, the introduction of the Lisbon Treaty seems to have weakened the resolve and coherence of the entire institution. The President and the High Representative would appear to have been chosen by member states so that they wouldn't overshadow the European Union heads of state and government. Whilst there is a clear political need to achieve consensus in the choice, opting for a lowest common denominator approach, would seem to lack both vision and boldness. In so doing, the EU as an institution, is behaving like a 'Reluctant Power' rather than leading player on the world stage that it should be.[7]

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[7]   The honourable exception being the recent Serbia-Kosovo agreement brokered by the EU on 19 April 2013.

- Second, within the Western Balkans, the institution appears to have become more tactical and less strategic in its approach. As an example, EU member states have been unable to agree a coherent and unified policy in Kosovo, with five EU countries deciding not to recognise Kosovo's independence for, what can only be described as, domestic reasons.[8] This has led to a complete imbroglio for EU foreign policy, with the former EUSR being expected to take a 'status neutral' stance with his EU hat on, and then actively supporting Kosovo's supervised independence, whilst wearing his International Civilian Representative (ICR) hat.[9] Although this messy situation was eventually resolved, it left many international observers scratching their heads in bewilderment at the EU foreign policy discourse.

- And finally, the worrying rise of nationalism and national agendas in many EU countries has harmed the institution's reputation for coherence and compromise. The British Conservative Party, the centre-right partner in the current UK ruling coalition, has been most vocal in the debate for a referendum on leaving (or changing) the EU. There is no doubt that it has been influenced in part by the rise of the euro-sceptic 'UK Independence Party' and in particular by that party's successes in the UK's May 2013 local elections.[10] There have, however, been other voices raised in concern amongst core Euro-zone members. Most surprisingly, some of these are in Germany. Opposition to the current *status quo* is growing, and the 'Alternative für Deutschland' (Alternative for Germany) group has articulated the clear goal of leaving the Euro-zone and ending bailouts.[11] The increasing popularity of

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[8] For some background on this issue see: Derks, M. and Price, M., 2010. The EU and Rule of Law Reform in Kosovo. Den Haag: Clingendael. p.29.

[9] *Ibid*, p.28.

[10] Economist Online, 9 May 2013. *Nigel Farage - Aux armes, citoyens!* Available at http://www.economist.com/news/britain/21577413-rise-ukip-means-british-politics-becoming-more-european-aux-armes-citoyens (accessed: 11 May 2013).

[11] Der Spiegel Online, 14 May 2013. *Letter From Berlin: Anti-Euro Party a Growing Challenge for Merkel*. Available at:

such groups owe much to a "building sense of outrage"[12] that was fanned by a recent report from the European Central Bank[13] that appeared to show that 'Southern Europeans are wealthier than Germans'. This was seized upon, not just by the media, in the shape of the influential German magazine, *Der Spiegel*,[14] but also by the Bundesbank.[15] There are kernels of truth in the basic assertion, but for numerous reasons (too many to articulate here), including the disproportionate impact of home ownership, the wide timeframe of the study, and the highly beneficial German social architecture not being included in the figures, it is not possible to establish meaningful cross-national comparisons. This has been accepted by most media and those institutions with a less-populist agenda.[16] Coming as it does in an election year for Chancellor Merkel, however, this turn in public discourse might not be helpful to her cause.

All of this would suggest that power and credibility seems to have been ebbing away from the European Union and its various organs. So how does this crisis of confidence and the Euro-zone crisis impact upon the Western Balkans? In reality, most commentators agree that they just

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http://www.spiegel.de/international/germany/anti-euro-party-alternative-for-germany-a-growing-problem-for-merkel-a-899803.html (accessed 20 May 2013).

[12] International Herald Tribune, 2 May 2013: *Germans Angry at Being Poorer Than Greeks, Even If They're Not.*

[13] European Central Bank, Statistics Series No2, April 2013: *The Eurosytem Household Finance and Consumption Survey.* Available at: http://www.ecb.europa.eu/pub/pdf/other/ecbsp2en.pdf (accessed 15 May 2013).

[14] Der Spiegel Online, 17 April 2013. *The Poverty Lie: How Europe's Crisis Countries Hide their Wealth.* Available at http://www.spiegel.de/international/europe/poor-germany-it-is-time-for-a-debate-on-euro-crisis-burden-sharing-a-894398.html (accessed: 21 April 2013).

[15] Budesbank Press Release dated 21 March 2013. *Vermögen ungleicher verteilt als Einkommen.* Available at: http://www.bundesbank.de/Redaktion/DE/Kurzmeldungen/Fokusthemen/2013_03_21_phf.html (accessed 12 May 2013).

[16] London School of Economics Blog, 13 April 2013. *The Bundesbank's disingenuous claim that Southern Europeans are richer than Germans has stoked anti-bailout sentiment.* Available at: http://blogs.lse.ac.uk/europpblog/2013/04/13/bundesbank-rich-south-europeans/ (accessed 12 May 2013).

don't know.[17] There are undoubtedly competing agendas with one side suggesting that Europe can no longer afford (financially or politically) to integrate the Western Balkans in accordance with Thessaloniki and the other side arguing that they must be integrated in order to ensure there is peace and stability within the European region.

A paper written by Dimitar Bechev in 2012 has tackled this issue head on.[18] He suggested that the "... Euro crisis has not killed enlargement but it is relegating the region to the outermost circle in a multi-speed Europe – the periphery of the periphery."[19] He went on to argue that "... in good times, the European core exported its prosperity towards its southeastern periphery; but now, at a time of crisis, it is exporting instability."[20] Most countries of the Western Balkans are linked financially, in one form or another, to the Euro and thus are vulnerable to shocks within the Euro-zone. This has led to the recent economic stagnation and rising unemployment. Macedonian is not immune to these pressures with the Dinar pegged *de facto* to the Euro and in the midst of a double-dip recession.[21]

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[17] For example, see: RSSEE, *The EU Meeting its Internal Challenges: Implications for Stability in the Western Balkans - Policy Recommendations*, Reichenau, 3-5 May 2012. Vienna: Austrian Defence Academy. Available at: http://www.bmlv.gv.at/pdf_pool/publikationen/pfp_rssee_policy_paper_eu_interna l_challenges.pdf (accessed: 4 April 2013). For a well-researched view of the impact, see: Jeleva, R., 2012. *The Impact of the Crisis on the EU Perspective of the Western Balkans.* Brussels: Centre for European Studies. Available at: http://thinkingeurope.eu/sites/default/files/publication-files/the-impact-of-the-crisis-western-balkans-web.pdf (accessed: 20 April 2013).

[18] Bechev, D., 2012. *The Periphery of the Periphery: the Western Balkans and the Euro Crisis.* The ECFR Policy Brief - August 2012. Available at: http://ecfr.eu/page/-/ECFR60_WESTERN_BALKANS_BRIEF_AW.pdf (accessed 30 September 2012).

[19] Ibid, p1.

[20] Ibid, p1.

[21] World Bank Online, 18 December 2012. *From Recession to Reform: The Western Balkans and the Impacts of a Double Dip Recession.* Available at: http://www.worldbank.org/en/news/feature/2012/12/18/from-recession-to-reform-western-balkans-and-impacts-of-double-dip-recession (accessed 20 May 2013).

So whilst the populations of the Western Balkans still seem to accept membership of the EU as inevitable at some stage in the future, there is not the missionary zeal for integration that there once was. Indeed, in Macedonia's case, Prime Minister Gruevski and his VMRO-DPMNE party, seem to pay a degree of lip service to both EU and NATO integration, whilst pursuing an inward looking nationalistic agenda. A former minister in the Macedonian government has suggested that by agreeing to ethnic-Albanian politicians from the junior coalition partner (DUI) taking the policy lead for both European and NATO integration, this should tell one that the Prime Minister's political priorities do not lie in that direction.

Similarly, the former minister suggested that increases in funding for the Ministry of Interior, and in particular for the intelligence agency (UBK), during a time of financial hardship, would seem to indicate a desire to consolidate political power rather than to improve public service.[22] Whilst retaining power should not necessarily concern the ethnic-Albanian DUI party, reports indicate that their leader, Ali Ahmeti, is concerned about the undue influence of the UBK and its head, Sašo Mijalkov – who conveniently is also the Prime Minister's cousin.[23]

NATO

Although NATO is not presented with the same sort of dilemmas as the European Union, current circumstances still have a direct impact on its institution building and security sector reform role in the Western Balkans. It is worth highlighted three points:

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[22] Interview M15 in Skopje, 21 September 2011. (All interview material held by researcher.)

[23] Balkan Insight Online, 1 June 2011. *WikiLeaks: Macedonia PM's Youth Worried Ahmet.* Available at: http://www.balkaninsight.com/en/article/wikileaks-macedonia-s-ahmeti-concerned-over-pm-s-inexperience (accessed: 15 June 2011).

- First, the Western Balkans has simply slipped down the priority list within HQ NATO in Brussels.[24] A review of NATO summits shines a light on those areas that preoccupy the attention of individual nations, and thus NATO. The cost in both 'blood and treasure' in Afghanistan continues to be the number one concern. Notwithstanding some very real progress NATO has made in recent years in developing the Afghan National Army (ANA) and the Afghan National Police (ANP),[25] recent 'green-on-blue' attacks have served to undermine the mentoring role the NATO has been performing. And if NATO's security agenda was not sufficiently busy, events over the past two years in North Africa and the Middle East continue to be high on the security agenda in Brussels. The ongoing civil war in Syria prompted the Alliance to deploy military support, including patriot missiles, to Turkey's southern border in 2012.[26] There are also very real concerns about the regional impact of a possible pre-emptive strike by Israel on Iran. All these issues consume considerable political attention and political capital in NATO HQ Brussels – far more than the Western Balkans.

- Second, the ongoing global financial crisis has forced the Allied nations to take a long hard look at their discretionary expenditure. Since 2008 most have steadily reduced their contributions to defence and security, and thus to NATO. The figures for 2010 show that only five countries out of the 28 member Alliance met the Alliance target of 2% of GDP for their defence expenditure.[27]

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[24] This was the author's personal reflection from interviews conducted with NATO officials at HQ NATO Brussels over the period 9-11 May 2011 and this view has been reinforced by discussions with NATO officials in April 2013.

[25] Caldwell, William: NATO Training Mission – Afghanistan. Chatham House Event 12 April 2011. Transcript available at: http://www.chathamhouse.org.uk/files/19116_120411caldwell.pdf, accessed 14 April 2011.

[26] NATO Secretary General Report for 2012, 31 January 2013. Available at: http://www.nato.int/cps/en/natolive/opinions_94220.htm?selectedLocale=en (accessed 12 February 2013).

[27] NATO Press Release PR/CP(2011)027: Financial and Economic Data Relating to NATO Defence dated 10 March 2011. p.6. Available at: http://www.nato.int/

The figures for 2011 indicate that this figure had shrunk to just three.[28] In order to cut back on costs, both the civilian and military structure within NATO are also undergoing some fundamental downsizing.[29]

- And finally, another major challenge faced by NATO is its current lack of political engagement in Western Balkans. The reformist political dialogue seems to be left either with bilateral actors or the EU. Whilst KFOR troops are the embodiment of NATO's 'hard power' in Kosovo, the state and institution building associated with NATO's security sector reform role in the Western Balkans demand a more active political presence from NATO than it has had for a number of years.

On this latter point there is something specific that NATO could do at no additional financial cost and little inconvenience. In order to be well-poised to influence and deal effectively with possible uncertainties from events in Northern Kosovo, as well as any asymmetric shocks from political events within the wider region, one of the DASGs from NATO's International Staff could be given cross-cutting responsibilities for the Western Balkans. This would bring more political coherence and focus for NATO both within HQ NATO Brussels as well as well as in dealings with the countries in the region. The recent 15 point agreement signed by the Prime Ministers of Serbia and Kosovo on 19 April 2013 would argue for more political engagement by NATO at this sensitive time, not less. Furthermore, the more active use of 'soft power' by

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nato_static/assets/pdf/pdf_2011_03/20110309_PR_CP_2011_027.pdf, accessed 10 March 2011.

[28] NATO Press Release PR/CP(2012)047 Rev1: Financial and Economic Data Relating to NATO Defence dated 13 April 2012, p.6 Available at: http://www.nato.int/nato_static/assets/pdf/pdf_2012_04/20120413_PR_CP_2012_047_rev1.pdf (accessed 21 May 2013).

[29] For more details see the relevant 'Backgrounders' from the NATO Defence Ministers Meeting in Brussels on 8-9 June 2011 on the NATO website: http://www.nato.int/cps/en/natolive/events_74946.htm?selectedLocale=en, accessed 13 June 2011.

NATO would probably be welcomed by most of the region's political elites.

Where Macedonia stands in the current accession process for the EU and NATO

European Union

Macedonia was granted candidate status for the European Union in 2005. After several annual reviews, the Commission recommended opening accession negotiations in October 2009. This, and two subsequent recommendations (2010 and 2011), were vetoed by Greece due to the ongoing 'name dispute'. Notwithstanding the ongoing positive recommendations, concerns were beginning to grow both in Skopje and in Brussels during 2011 that all was not well with the process of reform.[30] Freedom of the media seemed to be slipping;[31] weaknesses in the rule of law, particularly in the judiciary, were not being tackled,[32] and, inter-ethnic tensions were rising, especially over construction activity at the sensitive Kale Fortress in Skopje and the mono-ethno 'Skopje 2014' project.[33] This eventually led to a decision by the Commission in the Spring of 2012 to create a 'High Level Accession Dialogue (HLAD)' with Macedonia. This was ostensibly aimed at bridging the gap between acceptance for candidate status and formal negotiations, and also "to inject new dynamism in the EU accession reform process".[34] Informally, however, it was a means to keep the

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[30] Interview with European diplomat in Skopje, 20 September 2011. (Interview M22-IC held by researcher)

[31] For example, see: Reporters Without Borders Online, 17 August 2011. *Disastrous Summer for Macedonian Media*. Available at: http://en.rsf.org/macedonia-disastrous-summer-for-macedonian-17-08-2011,40797.html (accessed: 20 September 2012).

[32] European Commission, SEC(2011) 1203 final, dated 12 October 2011. *The Former Yugoslav Republic of Macedonia 2011 Progress Report*, p.27.

[33] *Ibid*, p.20.

[34] EC: MEMO/12/187, dated 15 March 2012. *Start of the High Level Accession Dialogue with the government of the former Yugoslav Republic of Macedonia*. Available at: http://europa.eu/rapid/press-release_MEMO-12-187_en.htm (accessed: 17 March 2012).

Skopje government focussed on the reforms in five key areas and create the level of ownership that had been lacking hitherto.[35]

Three HLAD meetings were held during early- to mid-2012 and these did seem to energise the Macedonians. This new impetus was reflected in the Commission's 2012 annual review, which contained another positive recommendation for Macedonia to start negotiations.[36] After indications from both Greek and (for the first time) Bulgarian[37] diplomats that they would block a formal start date, the General Affairs Council meeting in December 2012 effectively postponed a decision by requesting:

> "... the Commission to provide an extra Report on the implementation of European Union-related reforms and on steps taken to promote good neighbourly relations and on the 'name issue' which it would take into account in its discussions – and hopefully decision – in June [2013]."[38]

It was perhaps unfortunate that the five key areas of reform scrutinised by the HLAD did not include the need for constructive political dialogue, as it was the lack of such dialogue that led to a dramatic turn of events at the end of 2012. In an effort to remove expenditure from the

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[35] Discussion with EU diplomat in Skopje, 29 September 2012.

[36] European Commission, SWD(2012) 332 final, 10 October 2012. *The Former Yugoslav Republic of Macedonia 2011 Progress Report*. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mk_rapport_2012_en.pdf (accessed 17 October 2012).

[37] Although Bulgaria was the first country to recognise Macedonia by its constitutional name, relationships have soured in recent years as Bulgaria accused the Skopje government of usurping elements of Bulgarian history as part of the 'Skopje 2014' project and, more recently, accusing Macedonia of hate crimes against Bulgarians both inside and outside the country. For synopsis see: Balkans Insight Online, 17 December 2012: *Bulgaria and Greece Block Macedonia's EU Talks*. Available at: http://www.balkaninsight.com/en/article/bulgaria-joins-greece-in-blocking-macedonia-s-eu-bid (accessed 23 December 2012).

[38] As quoted from a speech by the Enlargement Commissioner: Füle, S., 2013. Speech Presenting Spring Reports for 2013 to Enlarged Bureau of the Foreign Affairs Committee (AFET) of the European Parliament / Strasbourg on 16 April 2013. Available at: http://europa.eu/rapid/press-release_SPEECH-13-323_en.htm?locale=en (accessed 17 April 2013).

budget (some of it connected with the 'Skopje 2014' project) and to prevent the government raising two more loans from the IMF, the centre-left opposition Social Democratic Union of Macedonia (SDSM), tabled some 1200 amendments to the 2013 budget.[39] The ensuing fractious debate lasted for several days and eventually descended into chaos on 24 December 2012 when opposition MPs and journalists were forcibly removed from the Parliamentary chamber.[40] Afterwards the 2013 budget was quickly passed by the remaining government MPs but the scene had been set for a political crisis that has seriously undermined the country's aspirations for membership of the EU. As Erwan Fouéré points out:

> "While the opposition parties are not blameless, the government nevertheless made no attempt to repair the damage or even to stretch out a hand of reconciliation. Instead in early February, it pushed through a change in the parliamentary rules of procedure to limit debate, despite the absence of the opposition parties which continued to boycott parliament following their forced eviction."[41]

Further to their boycott of Parliament, the SDSM also decided to boycott local elections that were due to be held in March 2013. This would undoubtedly have a deleterious impact on perceptions in Brussels. In a final effort to put Macedonia's accession plans back on course, the European Commissioner for Enlargement, Štefan Füle, flew to Skopje on 1 March 2013. He was accompanied by the former European Parliament President, Jerzy Busek, and the Rapporteur for Macedonia in the European Parliament, Richard Howitt. Füle's shrewd mix of centre-right and centre-left politicians in his team seemed to pay off. After many hours of negotiations a deal was struck that allowed, *inter alia*, for the return of the opposition to Parliament, the holding of local elections, the setting

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[39] Balkan Insight Online, 17 December 2012. *Macedonian Budget Blocked in Parliament*. Available at: http://www.balkaninsight.com/en/article/macedonian-budget-clogged-in-parliment?utm_source=Balkan+Insight+Newsletters&utm_campaign=56f5c93926-RSS_EMAIL_CAMPAIGN&utm_medium=email (accessed: 18 December 2012).

[40] *Ibid*, 26 December 2012: *Macedonian Opposition Calls for Civil Disobedience*. Available at: http://www.balkaninsight.com/en/article/macedonian-opposition-calls-for-civil-disobedience (accessed 31 December 2012).

[41] Fouéré, E., 2013. *Op cit*, p.2.

up of a commission of inquiry to investigate the events of 24 December 2012, as well as a commitment to pen a cross-party Memorandum of Understanding confirming support for the Euro-Atlantic integration agenda.[42]

Štefan Füle's diplomatic wiles seem to have been successful and allowed both the local elections to take place and for the HLAD agenda to continue with its fourth meeting on 9 April 2013. This in turn meant that the latest progress report issued by the Commission on 16 April 2013 was able to state that "[p]rogress has been made in the areas that this report covers, despite the political crisis which followed events of 24 December 2012."[43] And, as expected, the Enlargement Commissioner continued to press for negotiations to begin.

Given recent events, one might be forgiven for thinking that the Commissioner had been unduly lenient in his dealings with Macedonia, but his thinking was probably much more pragmatic than that. Macedonia was brought back from the brink of war in 2001 and from then until 2006 was viewed as a Balkans success story. Unfortunately, over the past three to four years the VMRO-DPMNE government of Nikola Gruevski has looked more like a nationalistic movement rather than a centre-right government, and has exhibited authoritarian tendencies.[44] It is therefore possible that Füle views the situation in a similar light to Fouéré, in that only an immediate start to accession negotiations will haul Macedonia back from the brink of instability and that the "intrusive nature of the accession process would ensure better control over an errant government and a more effective way of

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[42] Full details of the agreement can be found on Füle's website at: http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2013/03/20130301_en.htm (accessed: 26 February 2013).

[43] EC COM(2013) 205 Final, 16 April 2013. *The Former Yugoslav Republic Of Macedonia: Implementation of Reforms Within The Framework of The High Level Accession Dialogue And Promotion Of Good Neighbourly Relations.* Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2013/mk_spring_report_2013_en.pdf (accessed 1 May 2013).

[44] Views expressed by Predrag Jureković, senior researcher at Austrian Defence Academy, Vienna, 10 May 2013. (Interview R1. Notes held by author.)

signalling to the government that its deep-rooted nationalist agenda is incompatible with its EU aspirations [... and ...] a more stable future."[45]

Whatever the thinking behind Füle's intent, there are still significant barriers to be overcome: some internal and some external. Commissioner Füle has been crystal clear in all his recent pronouncements that the Skopje government has to implement in full the detail of the deal brokered by the EU on 1 March 2013, including setting up the Commission of Inquiry.[46] This has yet to happen and thus remains an internal challenge that must be overcome. Externally, Macedonia's progress might still be blocked by Greece and Bulgaria.[47] It is perhaps worth noting that they not only have a veto on whether negotiations may begin with a candidate country, they also have a subsequent veto on closing individual chapters of the negotiations, the drafting of the accession treaty, as well as the actual ratification of the treaty. It is therefore clear that even if Greece and Bulgaria were to relax their current hard-line position on negotiations, they still have plenty of other opportunities to slow down Macedonia's accession into the EU. Macedonia's accession will thus remain on a knife-edge no matter what EU Foreign Ministers decide in June 2013.

NATO

The position with NATO membership is more clear cut. At the NATO summit in Bucharest in April 2008, Heads of State and Government

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[45]   Fouéré, *op cit*, p.4.

[46]   For example: EC MEMO/13/321, 9 April 2013. *Press points by Commissioner Štefan Füle following the fourth High Level Accession Dialogue (HLAD) in Skopje.* Available at: http://europa.eu/rapid/press-release_MEMO-13-321_en.htm (accessed: 30 April 2013); and, EC SPEECH/13/448, 22 May 2013. *Plenary Session of the European Parliament - Discussing progress and shortcomings of the former Yugoslav Republic of Macedonia.* Available at: http://europa.eu/rapid/press-release_SPEECH-13-448_en.htm?locale=en (accessed: 23 May 2013).

[47]   Balkan Insight Online, 17 May 2103. *Macedonia Fears Renewed Greek, Bulgarian EU Blockade.* Available at: http://www.balkaninsight.com/en/article/macedonia-fears-renewed-greek-bulgarian-blockade-in-brussels (accessed: 19 May 2013).

agreed that Macedonia would be offered an invitation for membership "... as soon as a mutually acceptable solution to the name issue has been reached."[48] This commitment has been reiterated at subsequent Summits and is exempt of any additional hurdle, although it would be expected for Macedonia to continue to implement the reforms set out in the annual Membership Action Plan (MAP).

Macedonia's relationships with her neighbours

Turning now to Macedonia's relationships with her neighbours, it is perhaps worth dwelling briefly on why both NATO and the European Union set so much store on good neighbourly relations as part of their accession criteria. Obviously, there is a need to improve individual and collective security, as well as cooperating and coordinating activities for mutual benefit in areas other than security. But there are other issues at stake for a poor country in the Western Balkans. The Oxford academic, Paul Collier, postulates a theory that the poorest countries in the world (what he terms the "Bottom Billion"[49]) are locked into a cycle of poverty that is exacerbated by four basic poverty traps. These include conflict, economic reliance on natural resources which leads to rent-seeking and corrupt political elites, a country being landlocked with a bad neighbour or neighbours, and finally a small country with poor governance. To a greater or lesser extent Macedonia has suffered from all four of these poverty traps over the past 20 years.

Given the history of conflict in the Balkans, it is perhaps a little surprising that Macedonia should have built up a reasonable record of cooperation with its neighbours in the region. Bilateral cooperative agreements, liberalisation of trade and transport relations, joint deployments of troops on NATO operations – all have been accomplished with the minimum of fuss. It is a point that has been praised by both the European Commis-

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[48] NATO Online: *Bucharest Summit Declaration*, 3 April 2008. Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008,. Available at: http://www.nato.int/cps/en/natolive/official_texts_8443.htm (accessed: 20 May 2013).

[49] Collier, P., 2008. *The Bottom Billion*. Oxford: OUP.

sion in its 2011 annual report on Macedonia,[50] as well as NATO at its recent summit in Chicago.[51]

One could reasonably argue that this is a classic example of *Realpolitik* for a small landlocked state but empirical evidence would suggest that there is a genuine desire on the part of Macedonia to get along with its neighbours. It is therefore all the more surprising that over the past four years the Macedonian government has seemed to be at pains to antagonise both Greece and Bulgaria needlessly in the course of their 'antiquitisation' of parts of Skopje. Whilst this may have played well to the nationalistic elements of its own population, it certainly did not play well with Macedonia's ethnic-Albanian population, nor in Greece or Bulgaria, and neither with the international audience. As one diplomat in Skopje is alleged to have said, in rather undiplomatic language, "It is nuts. They don't see the cause and the effect."[52]

This has been compounded by some rather aggressive and illogical lobbying by Macedonian diplomats on the 'name issue' in both Brussels and New York. Even those countries who were eminently sympathetic to Macedonia's position have been left exasperated with Macedonia and its politicians. The former US speaker, Tip O'Neill, is said (wrongly as it turns out[53]) to have coined the phrase "All politics is local." This maxim certainly appears to be true in Macedonia, where Prime Minister Gruevski has won three general elections in succession on the back of some shameless nationalism and questionable patronage. Unfortunately, this seems to be at the expense of the countries espoused strategic goal of Euro-Atlantic integration. In consequence there appears limited appe-

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[50]   European Commission, SEC(2011) 1203 final, *op cit*, paragraph 2.3, p.22-23.

[51]   NATO Online, *Chicago Summit Declaration,* 20 May 2012. Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Chicago on 20 May 2012. Available at: http://www.nato.int/cps/en/ natolive/official_texts_87593.htm?mode=pressrelease (accessed 20 November 2012).

[52]   Economist, 2 April 2009. *Troubled Macedonia: The name game*. Available at: http://www.economist.com/node/13414181 (accessed: 25 April 2010).

[53]   See: New York Times, 21 July 2008. *Quote…Misquote—A Commentary by Fred R. Shapiro*. Available at: http://www.law.yale.edu/news/7399.htm (accessed: 10 September 2012).

tite on the international stage to bring the required political pressure and influence to bear in order to reach a satisfactory conclusion to this stand-off with Greece.

Nonetheless, there may be three different but related approaches that could help. All three would rely upon Macedonia's politicians toning down their nationalistic rhetoric. Success on the international stage is about cooperation not conflict, particularly if a country wishes to achieve Euro-Atlantic integration.

- First, Macedonia needs actively to seek out more areas of economic and financial cooperation with both Bulgaria and Greece. Over the past 10 years, for example, there has been considerable inward investment from Greece and "... Greek banks account for as much as 25% of the assets, deposits and loans in Macedonia."[54] Given the parlous state of economies in the region, it would seem to make economic as well as political sense to enhance relationships rather than to be continuously at loggerheads.

- Second, the UN has been leading attempts at resolving the 'name issue' for over 20 years. The veteran US official Matthew Nimetz has been personally leading the negotiations since 1999.[55] Given the UN's lack of success perhaps the time is now right for the EU to take the lead. Not only has the EU an abiding interest and leverage over both countries, it has also built an enviable reputation for compromise and the resolution of impenetrable political stalemates. As the Economist once opined, "Faced with the prospect of a near-death experience in a meeting room in Brussels, people often discover new possibilities for compromise."[56] It is

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[54] Bechev, *op cit*, p5.
[55] UN Press Release SG/A717, 23 December 1999. Available at: http://www.un.org/News/Press/docs/1999/19991223.sga717.doc.html (accessed 15 September 2012).
[56] Economist Online, 25 May 2010. *What's in a name?* Available at: http://www.economist.com/node/15766873 (accessed: 27 May 2010).

something that the Prime Ministers of both Serbia and Kosovo have recently discovered.[57]

- Third, Macedonia should be sensitive to the domestic considerations of both Bulgaria and Greece, particularly in their differing perceptions of cultural history, and seek to emphasise areas of cooperation rather than areas of disagreement. In particular, Macedonia needs to reconsider the impact of the 'Skopje 2014' project on its near neighbours.

Macedonian reforms

Any assessment of the quality and substance of Macedonia's reforms will always be subject to some form of interpretation. The European Commission's 2013 Spring progress report on Macedonia[58] was broadly positive, but it is perhaps in the nature of a department dealing exclusively with enlargement to err on the side of admitting candidate countries into the Union. If one looks below the headline comments, there are still a number of areas where progress had either been slow or non-existent. Indeed, the HLAD process focussed on five of those key areas. For the sake of brevity let us examine in more detail three of the HLAD priorities, media freedom, rule of law, and public administration, as well as the issue of political dialogue.

Freedom of the Media

Freedom of expression for the Macedonian media has rightly received significant criticism in the Commission's recent progress reports[59] as well as from the OSCE.[60] Various international indices for freedom of

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[57] EEAS Press Release, 19 April 2013. *Serbia and Kosovo reach landmark deal.* Available at: http://eeas.europa.eu/top_stories/2013/190413__eu-facilitated_dialogue_en.htm (accessed: 22 May 2013).

[58] EC: COM(2013) 205 Final, *op cit*.

[59] In 2011 and 2012, with rather less criticism in the Spring Report of 2013.

[60] For example: OSCE, FOM.GAL/6/12/Rev.2, 29 November 2012. *Regular Report to the Permanent Council by The Representative on Freedom of the Media, Dunja Mijatović.* Available at: http://www.osce.org/pc/97651 (accessed 22 May 2012);

expression have also shown negative trends.[61] It has been suggested by one former MP that there has been "systematic corruption of the media through reliance on advertising".[62] As an example of this, a former minister suggested that in 2008 there was an €18 million budget for government advertising. Some €11.8 million was paid to A1 television for its services. This payment was apparently entirely legal. The owner of A1 television, Velija Ramkovski, even presented himself to the public as an integral part of the government. The former minister commented that the Prime Minister and Ramkovski would meet on a regular basis to discuss matters of importance and that "... this was not all self-aggrandisement as some of Ramkovski's interventions in the area of agriculture proved to be quite helpful."[63] The use of this advertising revenue thus brought immense leverage for the government and, given the lack of competition within the media in Macedonia, receiving such revenue is a make or break issue for local media outlets.

Whilst the tap can be turned on for 'good behaviour', the downside is that it can be turned off for 'bad behaviour'. When Ramkovski subsequently fell out with the government, the tap was indeed turned off, and some of Ramkovski's more questionable financial dealings resulted in him being convicted in the Macedonian Court of Law. As the interviewee said rather ruefully, "this government has a low tolerance for criticism".[64] A diplomat in Skopje echoed this sentiment and suggested that

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and, Balkans Insight Online, 19 September 2012. *OSCE 'Worried' about Macedonian Media*. Available at: http://www.balkaninsight.com/en/article/osce-woried-about-macedonian-media-freedom (accessed 20 September 2012)

[61] For example: the Paris-based 'Reporters without Borders' ranked Macedonia 34th in the world in 2009, 94th in 2012 and 116th in 2013: a drop of 82 places in just four years. Available at: http://fr.rsf.org/IMG/pdf/classement_2013_gb-bd.pdf (accessed 22 May 2013).

[62] Interview with former MP in Skopje, 20 September 2011. (Interview M35 held by researcher)

[63] Interview M15, *op cit*. Care should be exercised with regard to the figures quoted by the minister as the author has been unable to triangulate this data. The broad thrust of the claim has, however, been corroborated by others.

[64] *Ibid*.

"... the selective nature of the law being applied to one particular outlet, the excessive use of government advertising to create dependencies, a lack of transparency, the pressure being exerted on journalists, through editors and the like... [created] ...a huge amount of mistrust between the media, journalists and the government, and it will take a lot of effort to get everyone to start talking normally again."[65]

But has the situation improved since the start of the Commission's High-Level Accession Dialogue? The Macedonian government has recently proposed a new law on civil liability for 'insult and defamation', which should strengthen freedom of expression,[66] but, at the same time it has also announced a new draft law that tightens procedures on foreign media working in Macedonia.[67] The ejection of journalists from the Parliament on 24 December 2012 harmed the government's cause and the journalists subsequently gave short shrift to the Speaker of the Parliament.[68] Perhaps most importantly in the current climate, however, is that one of the key actions placed on the Skopje government by the 1 March 2013 deal was to improve dialogue with journalists through their Association. This has condition not yet been met. Thus the jury still seems to be out on freedom of expression.

Rule of Law and the Judiciary

Turning now to Rule of Law and the Judiciary: in normative terms, the current government had passed some good laws. The setting up of the Academy for judges has also been a success for this government. The standards to get into the academy are very high and are monitored by the EU. There is thus a reasonable chance of the graduating judges being

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[65] Interview M17-IC, *op cit.*

[66] EC COM(2013) 205 Final, *op cit*, p.3.

[67] Balkans Insight Online, 19 September 2012. *Macedonia Tightens Rules on Foreign Media.* Available at: http://www.balkaninsight.com/en/article/macedonia-tightens-control-over-foreign-journalists?utm_source=Balkan+Insight+Newsletters&utm_campaign=3c6ede65e8-RSS_EMAIL_CAMPAIGN&utm_medium=email (accessed 20 September 2012).

[68] Balkan Insight Online, 28 December 2012. *Journalists Give Macedonian Speaker Rough Ride.* Available at: http://www.balkaninsight.com/en/article/macedonian-journalists-woo-parliament-speaker (accessed 31 December 2012).

decent and impartial at the end of the process. But this will take time. In the meantime there are some 400 judges, who, at least in part, owe their position to the current governing VMRO-DPMNE party. Some individuals interviewed expressed real concern about the independence of the judiciary and suggested that some of those judges might feel that they owe an obligation to the party, perhaps to the extent of striking down some cases by a troublesome junior judge or allowing some contentious legislation through if a constitutional judge.[69] As the commission's 2011 progress report on Macedonia suggested that "... recent amendments to the law on courts failed to address shortcomings, instead having further grounds for dismissal, which may encroach on independent decision-making."[70]

A local businessman outlined another area of possible government influence. He argued that the government can ostensibly be following EU procurement and competition rules for contracts, but that it is relatively straight-forward for the request for proposals to be tailored in such a way that only certain companies (such as those that support the ruling party) would stand a chance of being compliant. Even once a company secures a construction or similar contract, such a government can delay payment should it wish to do so for political reasons (for example if the owner of the company criticises government policy). This would certainly make an owner think twice about being critical of the government or even supporting an opposition party.[71]

Public Administration

The issue of public administration has consumed much attention from the international community. Politicisation of the public sector has been a feature of Macedonia for many years and it is deeply embedded. The European Commission have regularly reported on it in their progress reports and, while there has been some success in countering the prac-

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[69] Synthesis of views from Interviews M9, M10, M15, M17-IC, M23-IC. (All data held by researcher.)
[70] EC Progress Report on Macedonia, SEC(2011) 1203 final, *op cit*, p58.
[71] Interview M10, Skopje, 15-22 September 2011. (Interview data held by researcher.)

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tice, there is still a long way to go. As Analytica highlighted in an excellent report[72] on the politicisation of the public administration that they produced in August 2011,

> "...the administration has been a useful (and easy) tool for governing coalitions to increase the employment rate in the country. In addition, those that benefit from the 'mass employment' opportunities are exclusively party loyalists and close ones of party officials, making the administration a reflection of a loyal electorate of the governing coalition."

An example of this was provided by a former Member of Parliament. He stated that when the Ministry of Interior recruited a number of specialist staff from the Ministry of Defence in 2009, an incentive for those staff that they particularly wanted, was to offer employment to individuals' spouses as well, without the spouses necessarily having to turn up and work.[73] This practice of so-called 'home employment' acts as political patronage, which sets the scene for further political manipulation, and directly impacts on the efficiency of the administration.

Indeed the European Commission progress reports for both 2011[74] and 2012[75] have highlighted the practice of recruiting employees from the non-majority communities in order to comply with principle of equitable representation without any consideration of the of the institutions. In reality this practice goes well beyond the non-majority communities. Even with a number of officials being 'home employed', it was necessary for the Macedonian Ministry of Defence to build another floor to their HQ building in Skopje to house the additional 300 or so that had been 'employed' by the ministry over the past five years.[76]

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[72] Analytica, Policy Report, August 2011. *Politicization in the Macedonian Public Administration.* Available at: http://www.analyticamk.org/images/stories/files/report/2011/044/11044policyreport.pdf (accessed 3 September 2012).

[73] M35, *op cit.*

[74] European Commission, SEC(2011) 1203 final, *op cit*, p.10.

[75] European Commission, SWD(2012) 332 final, *op cit*, p.8 & 9.

[76] Information provided by serving MOD employee in Skopje, 27-29 September 2012.

Political Dialogue

Politics in Macedonia has never been for the faint-hearted, as events in the Macedonian Parliament on 24 December 2012 clearly demonstrated. Nonetheless, the polarisation between the current political elites has been of an order of magnitude worse than in the past. The increasingly nationalistic and authoritarian tendencies of the Gruevski government do not leave much room for compromise. In a recent commentary on the political situation in Macedonia, Harald Schenker outlined the way the 'Putinesque' political model works, where there is no longer a battle of political ideas but a battle for the rights of 'clientelism and patronage'. The aim is to retain power and "... to keep people dependent, with lots of promises, partially fulfilled. For the rest, blame the enemy and produce more promises."[77] It is a deeply dark vision but perhaps goes some way to explaining why the political battle in Macedonia is so bitter and divisive. As Schenker goes on to say, in this battle "... almost any means are legitimate ..." Here lies the rub. If the governing coalition are so intent on retaining power at all costs, they begin (if they have not already done so) to serve only their party interests and the interests of their own supporters, and they cease to serve the interests of the citizens of the country at large. Society thus becomes even more deeply divided and distrustful of each other than before. Sadly, there are historical precedents for such an approach in pre-war Germany. Certainly during the author's recent visits to Macedonia there has been an palpable sense of foreboding for the country's future that has not been present since 2001.

Whatever happens in the current debate over accession, it is of paramount importance for the Commission to put constructive political dialogue centre-stage in the reform process for Macedonia. It is a major lacuna in their current approach to the country. The EU has the tools and the political leverage to help the country implement reforms in order to make them sustainable over the longer-term. Macedonia has many

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[77] Balkans Insight Online, 28 December 2012. *Patronage Politics Push Macedonia to a Precipice.* Available at: http://www.balkaninsight.com/en/article/patronage-politics-push-macedonia-to-a-precipice (accessed: 31 December 2012).

redeeming features and needs to be integrated into the Euro-Atlantic structures, but, without a mature political dialogue between competing ideas, there can be no European-style governance and no European-style democracy.

Concluding remarks

By the time this paper is published, the reader will know the outcome from the EU Foreign Ministers meeting in June 2013 and the next steps (if any) towards Europe for Serbia, Kosovo and Macedonia. A review of the evidence adduced in this paper would seem to suggest that Macedonia, and more particularly the government of Nikola Gruevski (both VMRO-DPMNE and DUI) could, and should, have done more to further the country's Euro-Atlantic aspirations. Although overcoming a potential veto from Greece for NATO membership at the Bucharest Summit in 2008 was always going to be difficult,[78] astute statesmanship and assiduous attention to the reform process, could have built an international consensus and the required political capital to bring pressure to bear on Greece. Macedonia's continuing tendency to pass laws, and then not implement them, counted against the country, as did its nationalistic rhetoric. The rhetoric may have been cheap at the time, but has proved to be extremely costly in the longer-term. Putting aside the ICJ judgement of 2011,[79] once Greece used that veto in 2008, it was always going to be more difficult for both Greece and Macedonia to overcome their own domestic pressures in order to compromise – pressure which unfortunately both sides helped stoke.

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[78] By the summer of 2007, the US-led NATO chain of command in the Western Balkans was alerted to the possibility that Greece was preparing to veto Macedonia's bid for membership. Author's private notes. This possibility was reinforced by US diplomatic traffic from Athens in August 2007. See: AMEMBASSY ATHENS, 07ATHENS1594, of 081410Z AUG 07. Available at: http://www.cablegatesearch.net/cable.php?id=07ATHENS1594 (accessed 15 September 2012).

[79] ICJ: *Application Of The Interim Accord Of 13 September 1995*. Docket dated 5 December 2011. Available at: http://www.icj-cij.org/docket/files/142/16827.pdf (accessed: 1 September 2012).

It is clear that the European Enlargement Commissioner has been extremely imaginative in his efforts to spur Macedonia into action and has encouraged the government to take ownership of the pace and implementation of the reform process. This paper has suggested a number of issues where Macedonia could take positive steps to improve their prospects for an EU negotiation timetable. Immediate implementation of the 1 March 2013 agreement must surely be a priority. Without implementation EU member states will draw their own conclusions. Tackling the residual issues listed in the various EC progress reports would need to be done in a systematic and thorough manner, not just at the headline-level, but at the grassroots-level addressing some of the hidden iniquities caused by the current 'Putinesque' political system. It must also be axiomatic for Macedonia to cultivate closer links with its near neighbours and suggestions have been made in the paper on how to do this. The Commission needs to continue assisting Macedonian stakeholders in building a sustainable and constructive political dialogue, and make this the cornerstone of the whole reform process.

Macedonia responded wisely to the country's crisis in 2001. Although the dangers are not so apparent in 2013, there is a need to recognise that some of today's choices are just as important for the future well-being of the country. It is clear that both the EU and NATO want Macedonia to join their ranks but they recognise that Macedonia is a sovereign state and, as such, the choices are in the hands of the country, its politicians and its people. It is equally clear, however, that one road leads to Brussels and the other leads to uncertainty. If Macedonia can respond to the current challenges positively and willingly, accept the advice on offer from those like the Enlargement Commissioner, then the doors of the 'waiting room' will be opened to Euro-Atlantic integration. Macedonia would then have proved that it was not just 'Waiting for Godot'.

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Reconciliation, Cooperation and European Integration: Current Developments in Macedonia

Aleksandar Spasov

It can be hardly said that there are new tendencies in the political development of Macedonia that can be described as significantly positive development of the democratic institutions, inter-ethnic relations, socio-economic conditions and the European and Euro-Atlantic integration of the country. As you all probably now, Macedonia is a candidate country for full membership in EU since 2005 and since 2008 (the Bucharest Summit of NATO) is invited to become a full member of NATO after "a mutual acceptable solution to the name issue with Greece is found".[1, 2] Since than, the country has not started the accession talks with the European Commission (although a recommendation to begin the negotiations was given by the Commission in 2009)[3] and the NATO accession continues mostly on a technical level between the Ministry of Defense and the NATO staff although the country fulfilled the standards and is fulfilling the tasks from the annual strategic plans.

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[1] See more: NATO 2008: http://www.nato.int/cps/en/natolive/official_texts_8443.htm.

[2] The full text of NATO Bucharest Summit Declaration from 2008 dedicated on Macedonian application for full membership states: "We recognize the hard work and the commitment demonstrated by the former Yugoslav Republic of Macedonia to NATO values and Alliance operations. We commend them for their efforts to build a multi-ethnic society. Within the framework of the UN, many actors have worked hard to resolve the name issue, but the Alliance has noted with regret that these talks have not produced a successful outcome. Therefore we agreed that an invitation to the former Yugoslav Republic of Macedonia will be extended as soon as a mutually acceptable solution to the name issue has been reached. We encourage the negotiations to be resumed without delay and expect them to be concluded as soon as possible."

[3] See more: Library of the European Parliament 2013: http://libraryeuroparl.wordpress.com/2013/05/18/former-yugoslav-republic-of-macedonia-seventh-eu-progress-report-towards-accession-what-has-changed/.

Although, the country remains dedicated to accomplish its strategic goals and above all the European integration, still there are developments that have negative impact on the country's transition and can slower Macedonia on its path towards accomplishment of its goals.

In the following report I will try to summarize the events that had and have impact on the development of the democratic institutions, the inter-ethnic relations (with emphasize on the implementation of the Ohrid Framework Agreement and confidence building and reconciliation) and the European integration (with emphasize on the High Level Accession Dialogue-HLAD,[4] the spring Progress Report[5] and the "name issue"). It is not by accident that the question of democratic development is listed before the "classical issues" like the inter-ethnic relations and the "name issue". The fulfilling of the basic Copenhagen criteria, which was considered fulfilled when the candidate status was awarded in 2005, rose as a new challenge for our fragile democracy.

Regarding the development of the democratic institutions and the democracy in general, three major events marked the last months in Macedonia. The first event was the violent incident in the Parliament from 24 December 2012, the local elections in March/April 2013 and the spring Progress Report from April 2013.

The events from 24 December 2012 are a key sign showing the fragility of the institutions, the parties' dominance over all segments of the society and of misuse of the political power in order to reach political decisions. Namely, on that day, by order of the President of the Parliament to restore the order in the Parliament, the journalists and all oppositional MPs, except the MPs from the Albanian opposition party DPA, were by force expelled from the plenary hall of the Parliament by the parliamentary security supported by the special tasks police units. Then the par-

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[4]   See more on HLAD: http://www.eu-un.europa.eu/articles/en/article_11969_en.htm.
[5]   Spring Progress Report 2013: http://ec.europa.eu/enlargement/pdf/key_documents/2013/mk_spring_report_2013_en.pdf.

liament, clearly breaking the Rules of Procedure, without any debate, voted the Annual Budget of the country for 2013.[6]

The violent events followed after a tensed and intensive debate that lasted for two weeks in the parliamentary commissions on budgeting and finance and on legal affairs. The parliamentary opposition claiming that is trying to prevent further budget expenditures, mainly for the so called Project Skopje 2014, submitted over 1000 amendments to the proposed budget by the Government. Using the Rules of Procedure, that were voted in 2011 by the ruling majority (the VMRO DPMNE party) without consensus with the opposition, the opposition MPs used the opportunity to extend the debate as long as possible in order to push and hopefully convince the majority to accept the budget cuts. The Ministry of finance reacted by accepting cuts of around 3 mil. Euro compared to the demanded cuts of over 200 mio Euro.

The opposition did not accept the proposal and the debate continued and seemed that will last for another 1-2 months. Breaking the rules of procedure, the President of the Parliament suspended the work of the commissions (which is obligatory before the proposals are transferred to the plenary session) and called for a plenary sessions where the discussions are limited up to max. ten min for every MP. The intention was to pass the budget in 3-5 days following the call of the government that claimed that the state will bankrupt in opposite case (which is not exactly true because there are rules on interim financing that are applicable in such cases). When part of the opposition tried to block the plenary by "occupation" of the speaker's chair, special police units entered the hall and by force expelled the MPs (even those that were sitting in their chairs and did not disturb the session). Prior to that event, the police forces expelled all journalists from the journalist's gallery in the plenary hall in order to avoid any personal evidence and reports from the present journalists. Following this events, the opposition decided to boycott the work of the Parliament and started every day protests called "otpor" or resistance. The second decision of the opposition was to boycott the forth-

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[6]   See more on the violent incidents: Reuters 2013: http://www.reuters.com/ article/2012/12/24/us-macedonia-protest-idUSBRE8BN0EX20121224.

coming local elections since the ruling majority did not offer reasonable solution to the crisis and tried to blame solely the opposition or to deny or minimize the events in the parliament. The EU, more precisely the Enlargement Commissioner Stefan Füle, showed readiness to help in resolving the political crisis and started an initiative to bring the opposition and the government on the negotiations table. Under strong pressure and statements that the candidate status of the country is in danger, the both parties reached an agreement that the opposition will take part in the elections, and that an expert commission on the events will be established with mandate to verify the facts and give legal and political assessment of the events.[7]

Furthermore, the government promised that will include the recommendations by OSCE/ODIHR in the electoral code right after the elections. The elections were followed by a much tensed campaign and several irregularities before and on the election days in the first and second round of the elections. The observers from the OSCE/ODIHR mission, supported by US and EU observers described the elections as "competitive and efficiently administered" but followed by "continued partisan media coverage and blurring of state and party activities" that resulted in "a lack a level playing field for the candidates".[8] The OSCE/ODIHR mission repeated the recommendations for amendments of the electoral code from the last elections in 2011. Almost a month after the elections are finished neither the expert commission on the events from 24. December is established nor there an initiative to amend the electoral code.

The Progress Report issued by the EU Commission on 16 April 2013 marked the technical progress that is result of the High Level Accession Dialogue (a useful and innovative instrument serving as platform for continuous dialogue on the reforms and as a temporary substitute for the negotiation talks that are unilaterally blocked by Greece that puts a veto because of the name issue whenever the proposal for talks comes to the Council of Ministers). However, the Commission clearly criticizes the

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[7] See more: European Voice 2013: http://www.europeanvoice.com/article/2013/march/eu-ends-macedonian-deadlock/76563.aspx.
[8] See more: OSCE 2013: http://www.osce.org/odihr/elections/100554.

lack of political dialogue and the media situation in the country. The report includes critical remarks for the country for the position of the journalists and the media situation in general.[9] Parallel to the critics, the government proposed a new Law on the Media that was negatively assed by the professional Association of the Journalists of Macedonia, the trade union of the journalists and several CSO dealing with media issues. The law is still just a proposal but the debate does not give much hope that a compromise can be reached.[10, 11]

The inter-ethnic relations, after a longer period of relatively peaceful cooperation of the partners in the government, VMRO DPMNE and DUI, stared heating up in the spring last year. There were several attacks and revenge attacks on students in the public busses committed by violent groups both from the ethnic Macedonian and ethnic Albanian community. The police reacted mild. Second very important event was the "paying a tribute to the UCK rebels" by the former Minister of Defense (and now Minister for European Affairs), the ethnic Albanian Fatmir Besimi. As a reaction to this, the VMRO MPs immediately proposed the so called "Law on the social rights of Defenders" that was offering social privileges to the members of State security forces that were involved in the conflict in 2001. This proposal was against DUI previously declared demands to offer the same rights to the illegal UCK rebels. The

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[9] The Commission expresses concerns because of the existence of "continued concerns about self-censorship, poor labour rights of journalists, and the public's access to objective reporting. Moreover, during the local elections in March, observers noted a lack of balance in coverage by the public broadcaster and the private stations" (spring Progress Report 2013: 4).

[10] See more: SETimes 2013: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/ features/setimes/features/2013/04/16/feature-04.

[11] The official position of the Association of the Journalists of Macedonia is that "the Law on the Media that is to be presented to the public was drafted in a totally different climate. It was prepared, in its entirety, by the Government and is offered today to the public to give its comments and suggestions as a final and closed concept" and therefore "the Government should publish the draft-text of the Law on the Media and postpone the deadline for adoption for three to five months" and "in the meantime, a serious public debate on the bill should take place and the conclusions of the debate should be incorporated in the bill" (AJM 2013: http://www.znm.org.mk/drupal-7.7/en/node/585).

MPs from VMRO refused the demands and MPs from DUI submitted 15000 amendments to the law and with endless discussions in the parliamentary commissions blocked the decision on the proposed legislation. The proposed law is still in procedure.[12] Further two events negatively influenced the inter-ethnic relations. Prior to the local elections the ethnic Macedonian parties VMRO-DPMNE and SDSM formed an "ethnic coalition" and proposed a single candidate and council list for mayor's offices and councils in the Municpalities of Struga and Kičevo. The ethnic Albanians are ethnic majority in Struga after the new Law on territorial division of municipalities from 2004 entered into force in 2005 and since 2013 also in Kicevo (the law was later applied for Kicevo as a result of political compromises in 2004 and 2009). DUI and DPA reacted to this coalition.[13]

Introducing the practice of ethnic instead of ideological coalitions can seriously harm the peace process and reconciliation in Macedonia and can negatively for a longer period of time influence the ethnic relations.[14] The last thing was the "state reception" organized by the government to mark the return of the single sentenced Macedonian citizen in the single case from the conflict in 2001 initiated by the prosecutor Mrs. Karla del Ponte in front of the ICTY. The former minister of interior Ljube Boskovski, also accused, was found not guilty due to a lack of evidence and the second accused, a former special police units commander, Johan Tarčulovski was found gulty for murdering civilians in a revenge action in the village of Ljuboten near Skopje, and was sentenced to a 12 years long prison sentence. After 8 years, due to a "good behavior" he was release from the prison in Germany. The Government, pre-

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[12]   See more: SETimes 2012: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/09/15/feature-01.

[13]   See more: Balkan Insight 2013: http://www.balkaninsight.com/en/article/macedonian-election-turns-into-bruising-battle.

[14]   The EU Commission also noted in the spring Progress Report that "in the context of the first round of the local elections on 24 March, the OSCE/Office for Democratic Institutions and Human Rights (ODIHR) noted that ethnically divisive rhetoric heightened tensions in some municipalities". (spring Progress Report 2013: 6).

cisely its Macedonian part, organized a spectacular reception on the main square in Skopje, celebrating him as a "war hero".[15]

It must be marked that the ICTY Prosecutor decided not to prosecute the other four cases of suspected war crimes, three of them against civilians, and transferred them to the Macedonian judiciary. The judiciary in Macedonia lacked capacities to prosecute the cases and deliver a justice for the victims and fair and just trial for the accused. The absence of capacity, but also of political will to deal with the past, was technically solved by the Parliament, that voted on a so called "Law on Amnesty", under significant pressure by the ethnic Albanian parties.[16, 17]

Last, but not least, is the "name issue", or the dispute with Greece over the constitutional name of the Republic of Macedonia that started right after the independence in 1991. As you know, the name issue, although not directly connected to the European and NATO integration, has strong impact on the both processes and practically stopped them. Despite the irrationality of the dispute and the lack of argumentation in the claims by Greece that "Macedonia has and can realize territorial aspirations" towards the northern Greek province named also Macedonia, this dispute is strongly influencing both our EU ambitions but also the domestic politics especially the democracy. Since 2008 the Government

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[15] See more: Balkan Insight 2013: http://www.balkaninsight.com/en/article/macedonia-thorws-hero-s-welcome-for-tarculovski.

[16] See more: Balkan Insight 2011: http://www.balkaninsight.com/en/article/macedonia-slammed-over-controversial-amnesty.

[17] Amnesty International negatively assessed the so called Law on Amnesty calling the Parliament to "reverse immediately a parliamentary decision which will have the effect of denying justice, truth and reparation to victims of the 2001 armed conflict in the former Yugoslav Republic" and stated that "The parliament's decision is clearly inconsistent with international law and will leave the victims and their relatives without access to justice" and that "Macedonia has to comply with its international obligations. Its authorities must thoroughly and impartially investigate all cases returned from the ICTY and ensure that all those allegedly responsible for violations of international humanitarian law are brought to justice. The survivors and victims must also be provided with full reparation." (Amnesty International 2011: http://www.amnesty.org/en/for-media/press-releases/macedonia-time-deliver-justice-victims-war-crimes-2011-09-01).

started, using the Greek veto in Bucharest, a massive campaign "to raise national self confidence and to celebrate the national history". As a result of the constant campaigns till nowadays, the nationalism significantly raised and the space for a compromise became very narrow. Visible result of these campaigns is the so called "Project Skopje 2014" that included massive building of monuments celebrating events and personalities from the ancient time till the newest history and building of buildings for public offices in an eclectic style, namely a combination of antique, baroque and neoclassicism.

The whole project costs between 210 Mio Euro declared by the Government and around 500 Mio Euro estimated by some experts and the opposition.[18] Nevertheless, the project and especially the giant monument of Alexander the Great gave arguments to Greece for their claims and increased the tensions. Recently, the special envoy of the Secretary General of the UN proposed a set of solutions to the name issue. The both sides remain silent, although the leader of DUI Ali Ahmeti tried to push the Prime Minister Nikola Gruevski to take the proposal into consideration and find a solution in near future. On the other hand, the ruling VMRO DPMNE refused the statements of Ahmeti and stated that "they will not decide under pressure". Although, the international community is involving intensively in the negotiations after a longer period of time, no visible exit from the problem is present. The period from June till December is considered as "decisive for a solution" by many political analysts in Macedonia.[19], [20]

As a conclusion I would like to propose following policy recommendations:

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[18] See more: Balkan Insight 2012: http://www.balkaninsight.com/en/gallery/skopje-2014.

[19] See more: Independent Balkan News Agency 2013: http://www.balkaneu.com/chairman-dui-pressure-gruevski-dispute-time-nato/.

[20] See more: Balkan Insight 2012: http://www.balkaninsight.com/en/article/ahmeti-favors-2%C3%A5aa3-for-macedonia-name-solution.

- The politicians should reaffirm the dedication towards the European integration avoiding second thoughts or advocating other "perspectives".

- The governing majority should retreat from putting a direct or indirect pressure on the political opponents, the civil society organizations and the critical media by showing will and capacity to offer effective political dialogue.

- The governing majority should accept broader public control over the budget spendings especially on non productive investments and ethno centric projects like "Skopje 2014".

- The opposition should try to overcome the frustrations after the recent events and should actively participate in the "Commission on verification of the Facts for the events on 24 December 2012" once it is established in a constructive way.

- The governing ethnic Albanian party should leave the ethno centric political agenda and broaden the focus from issues that are of special interest for the Macedonian Albanians towards issues that are of importance for all citizens of Macedonia.

- All parties should avoid any misuse of always fragile inter ethnic relations in order to gain short term popularity and profit by direct or indirect involvement in the raising of ethnic tensions.

By redirecting the political agenda towards fulfilment of the above mentioned priorities, Macedonia can start a process of normalization of the functioning of the democratic institutions, reaffirmation of its national priorities (EU and NATO integration) and above all, the country will start a process of internal reconciliation, along both political and ethnical lines of division.

Reconciliation, Cooperation and European Integration: Developments in the Western Balkans and in Particular in Montenegro

Daliborka Uljarević

When it comes to the regional cooperation and bilateral relations between the countries of the former Yugoslavia, facing with war-time past has always been one of the most sensitive issues. Today, 20 years since the war ended, after number of formal apologies that came from different sides, we are still missing considerable progress in this respect. Declarative statements are not producing substantive changes, even though our political elites would prefer to leave it at that stage. Intolerance and heated feelings when talking about crimes continue to exist amongst the people of individual countries. There were great expectations of the International tribunal in Hague, in this context, followed by the hope that it will adequately punish all the perpetrators and bring justice for all victims. Unfortunately, such justice is still absent, and after the announcement of the latest judgments before the ICTY, intolerance among people in ex-Yugoslav countries is perhaps further increased, as a reminder on systematic misunderstanding and lack of compassion regarding crimes committed on all sides between the people of this region.

However, I think it did not endanger regional cooperation and bilateral relations, because the countries of the former Yugoslavia are connected with a common strategic goals related to their path to the European Union. That process, characterized by many challenges for each country, may be easier to pass by joint efforts. Therefore, it is actually a big chance and test of democratic maturity of the entire region to find a mechanism for making the process of facing the past successfully implemented, regardless some of the controversial judgments of the ICTY.

Like mentioned before, public perceptions of the ICTY as a potential source of justice for all victims of the recent Balkan conflicts have been

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shaken. For many years, civil society in the Balkans has looked to the ICTY as one possible tool for reconciliation. In this respect, certain verdicts represent a demoralizing setback. The divergent public reactions illustrate the continued challenges confronting those struggling to bridge divides and indicate a need to further investigate complementary opportunities to overcome mistrust and differing interpretations of recent history, as well as to foster cooperation.

Thus, it is no coincidence that civil society organizations from ex-Yugoslav countries adopted a more moderate and conciliatory response, urging that the acquittals not overshadow the continued need to work toward justice and recognition for the victims of the war. Civil society organizations insist that the states should be more devoted and directly participate in the process of establishing transitional justice at all levels. Irrespective of international courts, domestic ones are required to process each of war crimes cases in order to bring to justice the perpetrators, who should be in a continuation of the process punished, and to provide justice for the victims. However, we are witnesses that these efforts of the domestic courts are weak, often burden with political influences and that it is necessary to establish additional mechanisms. In this regard, I would like to emphasize the importance of the already mentioned Initiative for RECOM – Regional commission for establishing the facts on war crimes and other serious violations of human rights in the former Yugoslavia in the period 1991-2001. This initiative came from civil society in 2006 and during years has been opening the widest regional debate on dealing with the past. It is bringing together representatives of all stakeholders to talk and discuss the foundation of an inter-state, independent regional body whose primary objective would be to bring justice for the victims through the establishment of the facts on all those affected, regardless of their religious, ethnic, national or any other affiliation.

This approach is necessary in countries that 20 years after the war are still looking for about 15,000 people missing. This approach is necessary because we still have attempts to deny the crimes, slave perpetrators, minimize the suffering of others and exaggerate their own. This must be put a stop to and this is something that the states should have been deal-

ing with at the institutional level. Civil society has all these 20 years played a leading role in the process of facing the past, reminding of the crimes that occurred, warning that what happened must not be forgotten, collecting information on the ground to establish an archive in which each victim would have a name, commemorating the places and dates of the crimes and people's suffering – and all that in order to send a joint message to the parties that were confronted during 90' – that today they can and must commonly remember all crimes that have happened. In this approach there are numerous opportunities for cooperation at the regional level and it remains clear that the main burden for moving Western Balkan societies forward on their path to fully embracing European values and principles rests on the shoulders of the citizens of the region.

Regardless of the perceptions of the ICTY, no outside authority may provide any greater legitimacy to the process of dealing with the recent past than what the leaders of the region may bring to it themselves. Hence, the fact that the trial of war crimes didn't bring expected justice for victims, should be the driving force to improve and fast forward these processes and end up with the practice of impunity of war crimes in the countries of the former Yugoslavia.

The process of reconciliation is a process that can never be stopped. War crimes do not expire and in this direction must not expire the determination of societies that this process is carried out to the end.

Since the end of the Yugoslav wars, governments have been struggling to truly break with the regimes that were in power in the 1990s. In Montenegro for example, the ruling party is still the one from the 90', with the same people who were making decisions to participate or commit war crimes. This is a limiting factor also for the facing with the past process. Therefore, dealing with the past has been systematically denied as process for a long time. However, civil society organizations in Montenegro, as well as in other countries, have been cooperating and fighting together against war even while it was still raging. From that period, we have organizations working for justice and truth which didn't let anything to stand in the way of them collecting evidence for crimes. There was always a small group of those who were focused on this unpopular

topic, but the first, still insufficient, results we got upon the regional networking and cooperation. There I point again the importance of the Initiative for RECOM that qualitatively moved this process forward in Montenegro.

Unfortunately, Montenegro is the only country in the region to live the paradox that there are crimes, victims of these crimes but not its perpetrators. There is not a single final verdict although there are recognized cases of war crimes, and the main reason for that is the lack of political will to bring to justice inspirers and commanders. So far, the court proceedings proved that Montenegrin institutions and authorities are not ready to establish the facts about the committed crimes and to prosecute, according to the law, those who are responsible. Some of these proceedings became a farce, which had as a consequence that those victims who believed at the begging of the process that the truth will be established are today deeply disappointed and without any trust into Montenegrin judiciary. This is a matter for serous concern, since it indicates that it will take a lot more time for Montenegrin society to mature in civic and democratic sense and to understand the interest and need to investigate war crimes.

An Overview on war crimes trials before the courts in Montenegro

Prosecution of war crime cases in Montenegro undoubtedly indicates deliberately and consciously delay, intention of relativization of crimes and failure to establish objective and professional proceedings that would lead to responsible for the crimes that have occurred and justice to victims.

In this context of great importance would be establishment of the RECOM. Yesterday, you have been briefed in detail by Mr Golcevski about the state of affairs concerning RECOM and where the process stands nowadays. It is in the hands of the authorities in the region. The Centre for Civic Education, the organization I represent and which is a referent organization for this Initiative in Montenegro, believes that because of devastating outcome of the trials, and the absence of other mechanisms, such a commission would led to what is the essence of the

process of dealing with the past: healing society, developing a culture of remembrance and compassion and ensuring lasting peace in the region.

Silence about the crimes is also a crime. Saying that the past should be left behind and societies should turn to the future is cowardly, selfish and irresponsible, because the past is not something that only happened in the past. The past has designated space in which we live today, and defines a space in which future generations will live. Civil society organizations, politicians, and citizens in general are the ones who owe to the future generations clear past based on facts. They should not be left to cope with the burden of the past war in whose creations have not participated. This must be recognized especially by politicians who are policy and decision-makers, even though in case of Montenegro this seems to be sometimes even cynical to think about, taking into the account that most of the warlord structure is still in power. Process of EU integration could be also helpful in this regard and I believe that dealing with the past is certainly one of the biggest challenges within this framework since this is also issue of rule of law – one of the founding principles of the EU.

The main characteristics of war crimes trials in Montenegro are unacceptable long duration and results that are further damaging trust of the victims in the Montenegrin judiciary. In the previous three years four trials were conducted, publically known as: "Deportation", "Morinj", "Kaludjerski laz", "Bukovica". In these cases three first instance verdicts were adopted, one conviction, in the case of "Morinj", and two acquittals for all defendants in cases "Bukovica" and "Deportation of Refugees".

The Court of Appeal on 25 November 2011 quashed the first instance verdict in the case of "Morinj" and remanded the case for retrial. In the case of "Morinj", the High Court on 26 January 2012 issued a judgment (convicted four accused, and released two), but the Court of Appeal in July 2012th annulled the judgment for four and upheld the acquittal of the two accused. The proceedings continued re-reading the statement damaged in their absence on 19 March 2013.

In the case of "Bukovica", the verdict was revoked in June 2011 and the case was remitted for a new trial, but the case was closed in the same year in October, so it is again a judgment of acquittal.

In the case of "Deportation" Court of Appeal on 17 February 2012 quashed the acquittal of the High Court and remitted the first instance court for retrial. The final outcome of this case was the acquittal rendered on 22 November 2012. Especially characteristic and troubling in this case was the Appellate Court, which, abolishing the first instance verdict, gave the explanation that it was to the extent contradictory, confusing and illogical that could not be examined. If, seven years after the commencement of the indictment process a case is being assessed so, someone has to bear the responsibility.

The trial in the case of "Kaludjerski laz" before the High Court in Bijelo Polje has not yet been finalized. After four years of proceedings, the judge who is handling the case resigned and the case was assigned to another judge. The trial resumed on 27 March 2013, when the trial was again delayed due to absence of the accused and was scheduled to continue on 26 April. After the announcement of the changes to the law, according to which, if adopted, would be lifted to a special department for war Higher Court in Bijelo Polje, the case will be transferred to the High Court in Podgorica, and thus returned to the beginning.

Taking into account this situation in terms of the trial, the state is obliged to dedicate more to defining additional mechanisms for the establishment of transitional justice, because war crimes will not expire and further delay in the process makes it only more complex and difficult to implement, especially having on mind the fact that dealing with the past is a necessary step on the path of the democratization of Montenegro and building a sustainable future in the region based on cooperation.

The history of Montenegro from its independence in 2006 may be seen from many sides as a history of success in the region for several reasons.

First of all, the country reached independence through the instrument of the referendum assessed by international and domestic observers as a democratic process:

> The 21 May 2006 referendum on the state-status of the Republic of Montenegro provided its citizens with a genuine opportunity to determine the future course of Montenegro as an independent state. This was achieved through a referendum process that ensured this longstanding issue could be determined peacefully, with legitimacy and certainty. Overall, the referendum was conducted in line with OSCE and other international standards related to democratic electoral processes.[1]

As the report of the OSCE mission states, the instrument of the referendum allowed a smooth and democratic passage to independence, fully supported by the results of the 55.5% of consensus among voters for the independence of the country and stated by the 86.5% of turnout of voters. The rapid recognition and acknowledgement of Montenegro's sovereignty came straight after its proclamation of independence, also by countries of the region: Croatia recognised Montenegro on 12 June 2006 and diplomatic relations were established on 7 July 2006; Bosnia and Herzegovina recognised Montenegro on 21 June 2006, followed by diplomatic relations on 14 September 2006 and acknowledgment of independence came from Serbia on 15 June 2006.[2]

The full legal basis for the independence of Montenegro had indeed already been established in the Belgrade agreement in 2002 and in the Constitution of the State Union of Serbia and Montenegro in 2003, thus envisaging already space for a following "departure" of one of the two states from the State Union. From the point of view of Europeanization, since 2006 Montenegro continued in this aspiration, achieving in less than four years upon its submission of candidature for EU membership the opening of the accession negotiations. The candidature for member-

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[1]   OSCE, 4.08.2006. Republic of Montenegro-referendum on state-status. 21 may 2006. OSCE/ODIHR – Referendum observation mission final report, Warsaw, p.1.

[2]   Information about bilateral relations between Montenegro and the other sovereign countries can be found on the official website of the Ministry of Foreign Affaris and European integration of Montenegro: http://www.mip.gov.me/index.php/Bilateralni-odnosi/.

ship was submitted in December 2008 and in 2010 the European Commission issued its *Opinion on Montenegro's application for membership*, granting the candidate status to Montenegro. After two years, the green light for opening accession negotiations was given in June 2012.

But the process of Europeanization – as we need to remember – is not separated and cannot disregard the establishment of good relations with the neighbouring countries, an element that is undoubtedly fundamental for the countries of the region torn apart by wars which many may evaluate as civil wars.

The European Union institutions follow the maintenance of these relations: on one side, it is fundamental to flourish relations with neighbouring countries, in the view of the importance that this plays for the European Union itself. Indeed, the EU commitment on the enlargement towards Western Balkans and their full membership within the "European family" had been already assured in the Thessaloniki summit in 2003, where it was stated that the future of the Balkans is within Europe. Therefore, in the light of this, it is a key that no tensions exist among the countries in the view of their future membership. If it is true that the states of the region are at different stages in the enlargement process, in this spirit they all must cooperate to a common results and we cannot allow that previous tensions endanger the process. Therefore, the European Commission in its progress report assesses the level of regional cooperation and neighbourly relations.

The 2012 report states that they form an essential part of Montenegro's process of moving towards the European Union. Montenegro continues to be strongly involved in developing regional cooperation.[3]

In its assessment, the European Commission also takes into consideration the cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). This was and is particularly true for Serbia,

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[3]   European Commission, Commission staff working document. Montenegro 2012 progress report accompanying the document Communication from the commission to the European Parliament and the Council, COM(2012) 600 final, Brussels, p.16.

Croatia and Bosnia and Herzegovina. The negotiation process of Croatia to the European Union was indeed subject to and dependent on maintenance of full cooperation between Croatia and ICTY.

A restrictive clause imposed, indeed that the EU recalls that full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) remains essential, in line with the negotiating framework. Moreover, the EU recalls its conclusions of 3 October 2005 that less than full co-operation with the ICTY at any stage would affect the overall progress of the negotiation.[4]

However, as far as Montenegro and its relations to the ICTY are concerned, the country never received requests for assistance nor had cases sent back to the national judiciary for further investigations.

For the reasons explained above, i.e. good relations with neighbouring countries, democratic establishment of its sovereignty and recent success in the EU integration process, we may be tempted to see Montenegro as a full democratic country where the process of transition from the Yugoslavian period has been accomplished without mayor challenges and, overall, with good results. However, if we look closer we will discover details that would pass unnoticed from a non-expert eye, which, however, are under the close monitoring of the European Union institutions.

Here, I am referring to a pandemic and widespread corruption at all level of society, regarding local level, judiciary and state administration, which hinders and slows down a sound implementation of all reforms needed and requested within the EU accession negotiation of Montenegro.

Present problems are acknowledged by the EU as the new approach in the negotiation process shows: chapter 23 and 24 of the *EU acquis*, i.e.

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[4] Conference on accession to the European Union – Croatia-. 29.06.2011 *European Union Common position*. Chapter 23- judiciary and fundamental rights, CONF-HR 16/11, Brussels, p.12, available at http://www.mvep.hr/custompages/static/hrv/files/pregovori/ZSEUEN/23.pdf.

Judiciary and fundamental rights and Justice, freedom and security, are to be tackled as a priority in the process and temporarily closed only at the end of the negotiations. Throughout the process, after the opening of the chapters expected by the end of this year, the EC will issue every six months a report assessing the level of progress in these areas. And, in particular, chapter 23 deals with topics that are key for a future stabilization of the country: it calls for a solid independence and efficiency of the judiciary, which we saw presents lacks also regarding the four war crime cases of Montenegro in front of national trials (two of them completed with a sentence of acquittal), and demands a sound implementation of the anti-corruption legislation. Furthermore, it tackles also the issue of fundamental rights, their effective protection and the putting in place of anti-discrimination measures. Cases of corruption have been recently brought up by the affair *Recording* that has shown to the foreign audience informed of the case (EU institutions, EU member countries, etc.) a reality that, unfortunately, is no news for the domestic audience, but it represents only an umpteenth case of misconduct.

The stricter look of the European Union may, therefore, represent a good chance for changes to happen in a country that has been ruled for more than twenty years by the same political elite. Controls and involvement by the European Union is fundamental to allow the democratic change that the country has recently shown to be looking forward to. The recent parliamentary elections in autumn 2012 and the presidential elections of April 2013 proved that the decade consensus around the figure of Đukanović is faltering and that there may be room for changes.[5]

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[5] In the parliamentary elections of October 2012, the DPS-SDP coalition leaded by Milo Đukanović obtained 39 seats in the 81-seats Parliament of Montenegro, i.e. for the first time the coalition did not obtain the ruling majority at the elections. Partnership with the Bosniak party, which obtained three seats, historical supporter of the coalition, allows a DPS-SDP ruling majority. The presidential elections in April 2013 were concluded with the winning of the DPS representative and current President, Filip Vujanović, supported by DPS (noteworthy is the refusal of SDP to support the candidacy of Vujanović seen by them as unconstitutional); however, the candidate Miodrag Lekić obtained 48.8% of votes, according to the State Election Commission, but the results are being currently opposed by the candidate, who is blaming for irregularities occurred in several election polls.

The EU history is a history of success because the countries committed themselves to go beyond the discrepancies and tensions that had brought to the two world wars, linking themselves and their economies in a process that would have led to a total failure, in case of tensions may arise. A regional cooperation of six countries is now a European cooperation of 28 states: the Western Balkans, along with pursuing their European aspiration alone, should take as example the previous experience of Europe and promote, without delay, a regional exchange of experience and of help to fulfill the European goal that is rooted in the history and origin of these countries.

Regarding Montenegro, the EU integration process of the country is fast proceeding, but this does not seem to be accompanied by a sufficient level of support by the citizens. In particular, the level of knowledge of the citizens on the European integration and the EU as a whole still lies far below an adequate degree, jeopardizing the overall outcome of the process. Indeed, since the last enlargements of 2004, 2007 and 2013 in the case of Croatia, citizens shall provide their final response in a referendum for EU membership to be held at the end of the negotiation process. In Montenegro, generally speaking, the citizens support the EU integration process of the country, but reasons for the support are not profoundly rooted.

May this be the case, changes in their opinion can therefore rapidly occur, putting at stake the result and giving space to anti-integration positions. The Centre for Civic Education carried out in 2011[6] a survey that analysed current trends regarding support to EU in nine municipalities of Montenegro. The results that emerged portrayed a picture that is really diversified and vary in the different municipalities and, in particular, it seems that there is a link between EU and NATO integration, thus showing a gap in the knowledge of citizens that assimilate European Integration with NATO integration. For instance, the vote of citizens of Herceg

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[6]   All results of the survey are to be found in the publication *Evropa u mom gradu* produced within the EU funded project "Europe in my town" and carried out by the Centre for Civic Education in cooperation with the Centre for Monitoring (CEMI) and the Belgrade based NGO "Civic Initiatives".

Novi would go only for 51.4% in favour of EU membership and only 46.6% in the case of citizens of Kolašin.

Among the municipalities that show higher support to the EU membership of Montenegro, there are Pljevlja (83.2%), Bijelo Polje (81.0%) and the municipality of Ulcinj (80.2%). The same can be said for the answers related to a possible membership of the country in NATO; respondents share a similar trend. The municipality of Ulcinj has the highest positive result concerning NATO membership, along with Pljevlja, while the municipalities of Herceg Novi and Kolašin have among the lowest results (56.7% and 54.4% respectively). This, inter alia, may reflect the internal ethnic composition of the municipalities, which, despite the fact that Montenegro is a country based on the principle of citizenship and not on nationality, still plays an important role in the shaping of the future of the country.

The municipality of Ulcinj is the one with the highest percentage of Albanian population:[7] EU membership would allow better protection of ethnical minorities and more conspicuous funds will be made available through EU programmes for the support of less developed areas. Concerning NATO, the Albanian minority, generally and reductively speaking, does not seem to be too critical on the NATO's bombing in 1999 to stop gross violation of human rights in Kosovo. On the other hand, if we take the municipality of Herceg Novi, we will see results diametrically on contrast: according to the census of 2011, citizens of Herceg Novi define themselves in 15,090 units as Serbs, the majority of them of Orthodox religion, followed by 10,395 respondents that define themselves as Montenegrin. This may lead to explain why the answers related to NATO and EU integration are not in favour of a future membership of Montenegro.

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[7]   According to the 2001 census carried out by MONSTAT, respondents in Ulcinj defined themselves as follows: 14,076 units as ethnic Albaninas, 2,478 as Montenegrins and 1,145 as Serbs. For more information, please consult the official website of MONSTAT : www.monstat.org.

Even though relations between ethnic affiliation of the population and their response to possible EU or NATO integration cannot always be applied as it is too reductive and does not take into consideration other elements crucial for a full understanding of the situation in Montenegro, this can offer a simplified but still useful picture of the support (or lack of it) to the two processes. In this view, the responses of the ICTY to the war crimes committed during the Balkan wars can exacerbate the positions of the minorities on both sides and have effect on the level of support by citizens to the EU or NATO.

Albania: Political and Economic Challenges in the Context of European Integration and Regional Co-operation

Andi Balla

Introduction

Albania sees European integration as its top national priority. As a result, it views regional cooperation through the lenses of European integration, and it sees other countries of the Western Balkans as companions and partners in a joint journey toward membership in the European Union. In addition, as the only country in the Western Balkans that was not part of the former Yugoslavia, Albania views regional reconciliation through the prism of ethnic Albanians in the former Yugoslavia – chiefly through Kosovo – but also though the rights of ethnic Albanians in Macedonia, southern Serbia and Montenegro.

At this time, Albania's EU progress is being shaped by internal developments in the country, such as political competition related to the June 23, 2013 general parliamentary elections[1] as well as a growing sense of unease with the economic effects of the European crisis, chiefly in Greece and Italy, are having in Albania.

The political climate for 2013 has seen its ups and downs, but it has been shaped primarily by the need to hold general parliamentary elections that meet the best international standards, a key requirement not only for furthering Albania's EU bid, but also to end a prolonged transition to a well-established democracy. These elections are key to Albania's progress toward the European Union, as the country has made little progress since it officially applied for membership in 2009, primarily because of a

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[1] This paper was written roughly one month ahead of the parliamentary elections, so it discusses the situation ahead of the elections without information on the results and the quality of the process itself.

lack of political consensus among the key actors in government and opposition.

As Albania goes to the polls in June, the economic climate in the country is top of mind. The economy and jobs are the issues that Albanians overwhelmingly want the next government to address, leaving far behind as insignificant issues relating to nationalist rhetoric, which saw an increase during the celebrations of Albania's 100 years of independence in late 2012 and the establishment of the country's first modern nationalist party ahead of the 2013 parliamentary elections. Such increase was only temporary, however, and it did little to steer Albania away from its traditional constructive approach to regional issues.

Rhetoric aside, Albania continues constructive regional approach

On 28 November 2012, Albania marked 100 years since the declaration of independence from the Ottoman Empire. The centenary celebrations marked a rise in national pride and were celebrated across Albania as well as by ethnic Albanians in the region and in the diaspora. However, in addition to congratulatory messages, there was also some concern in the region in regional, EU and U.S. circles due to rhetoric perceived as nationalistic among political actors in general and elected leaders in particular. There were fears that Albania would shift its policies toward a more aggressive nationalist stands, however, in the long run, those fears proved unfounded.

During the celebrations, the then Prime Minister Sali Berisha made remarks that angered the neighbors – referring to "Albanian lands" in Greece, Macedonia, Kosovo, Montenegro and southern Serbia. Greek and Macedonian top officials canceled visits to Tirana as a result, saying such comments do not help friendly ties in the region. Berisha's spokeswoman later explained he was speaking in a historical context and the prime minister and other Albanian leaders, including President Bujar

Nishani have reiterated Albania's official policy of "uniting all Albanians inside the EU" not through border changes.[2]

One of the reasons the prime minister turned to nationalist rhetoric was largely for electoral purposes ahead of the parliamentary elections, after seeing a threat in the polls of the Red and Black Alliance (RBA), a new party set up as a classic protest movement with nationalist overtones to take votes from Berisha's Democratic Party and other established parties. As Albert Rakipi of the Albanian Institute for International Studies points out in a recent newspaper interview,

> "This increase in nationalist rhetoric should be seen in the context of the next parliamentary elections. For 20 years, the Democratic Party and Berisha himself have claimed a monopoly on the national cause. With the emergence of Red and Black Alliance, that perceived monopoly and the votes that come with it are no longer safe."[3]

The alliance is a radical, centrist group of mostly young people who have not been involved in politics in the past and see nationalism as a means to show their anger at the political establishment. While it campaigns on a series of social issues, nationalism is at the alliance's core, and it has sought to hold a referendum for joining Albania and Kosovo and offer citizenship of the Republic of Albania to any ethnic Albanian anywhere in the world who wants it – a move chiefly aimed to benefit ethnic Albanians in Kosovo who cannot travel to much of the European Union visa-free as can the rest of the region. Berisha made a similar proposal on the passport offer, leading some analysts to point out he was using the alliance's ideas to get more votes.[4] However, months after the prime minister made the remarks, it became clear there would be no official action on the matter, as it would hurt Albania's own commitments to the EU.

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[2] *Koha Ditore* quoting President Nishani's interview in a Kosovo radio station http://www.kohaditore.com/index.php/repository/docs/10FARUK.pdf?page=1,14, 126467.

[3] "Newly nationalist prime minister stirs worry" *Tirana Times*, Dec. 6, 2012.

[4] "Albanian Passport Offer Makes Waves in Balkans" Balkan Insight, Dec. 10, 2012 http://www.balkaninsight.com/en/article/albanian-citizenships-stirs-regional-interest.

It also appears that just one month ahead of the general elections, the RBA has lost much of its steam as there has been a departure of core leaders after coalition negotiations with the opposition Socialist Party failed.[5] Though the Socialist and the RBA have incompatible political aims, the Socialists say they were hoping to create the largest opposition front possible. Regardless of the outcome of the elections, the RBA was a new element is Albanian politics, and it made a mark by forcing some debate on what Albanians refer to as the "national issue."

European and American officials have urged all Albanian political actors to shelve the nationalist talk in favour of the type of patriotism that aims to improve quality of life and development, pointing out that nationalism is inherently contrary to the EU project.[6] In fact, Albania's official policies never changed during the period in questions, and as the approach of the general elections, it appears the nationalist rhetoric has diminished, and Albania has in spirit, as well as on paper, returned to its previous position of a constructive role in the region, seeing the Albanian national issues in line with EU priorities. However, depending on the election results, the RBA and other parties such as those representing the Cham community,[7] will continue to create headlines on issues that might cause concern among Albania's neighbours.

As it pertains to the specific issues of regional reconciliation discussed in this workshop, in light of recent verdicts the International Criminal Tribunal for the former Yugoslavia, Albania is a special case, because as the only country it is the region not to have been part of Yugoslavia.[8] As

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[5]   Several privately-funded polls have shown the Red and Black Alliance might not get any seats in the Albanian parliament, however pre-elections survey polls in Albania have often been proven to be unreliable.

[6]   "Germany, U.S. tell Albania to shelve nationalist talk", *Tirana Times,* Feb. 22, 2013 http://tiranatimes.com/news.php?id=14822&cat=1.

[7]   Chams are ethnic Albanians expelled from Greece after the end of the Second World War. Their party had two members in the 2009-2013 parliament and pushed for a resolution seeking property rights for the Cham Albanians who were forced to leave their lands and homes in northern Greece, accused of cooperation with Fascist forces during the war.

[8]   A largely ethnically homogeneous country, where four religious communities have lived in harmony for centuries, Albania was not itself affected by the sort of

such, regional reconciliation in Albania is mostly seen through the prism of Kosovo[9] as well as ethnic Albanians in Macedonia.

EU hopes shaped by political climate, elections outlook

Albania held parliamentary elections on June 23, 2013 in a process that marks the seventh consecutive general parliamentary elections since the fall of the communist regime. Despite implemented reforms and general progress the country has made over the years, these elections were a test of the willingness and ability of the country's political elite to leave behind a legacy of political conflict and accusations of rigged elections.

The June parliamentary elections, which decide the composition of Albania's 140-member parliament, were also a test for the Albanian society in general, measuring the extent of its modernization and democratization. Moreover, the elections were crucial for the country's well being and economic development at a time when Albania is increasingly feeling the effects of the European economic crisis.[10]

The climate ahead of the elections proved uneasy. The Central Electoral Commission, for example, lost some of its functionality for weeks ahead of the elections with three out of seven members resigning after parliament replaced a member of the commission when a government party defected to the opposition. In turn the opposition urged its remaining members to resign. The commission cannot certify the elections unless a consensus will be reached. Observes called for a solution so there would be a proper election process, where laws are respected and international standards met.[11]

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conflict seen in the former Yugoslavia, with the exception of hosting a large number of Kosovo refugees during war.

[9] "Albania and Serbia: Perceptions and Realities" 2013, Albanian Institute for International Studies/Belgrade Center for Security Policy.

[10] "Elections and political parties in Albania since 1991" 2013, Tirana Centre for Journalistic Excellence http://tcje.org/en/wp-content/uploads/2013/05/Elections-2013-Executive-Briefing-ENGLISH.pdf.

[11] "CEC remains at impasse, as internationals warn they won't play arbiter" May 15, 2013, *Tirana Times*, http://tiranatimes.com/news.php?id=15161&cat=15.

The outcomes of the elections were very important for Albania in every aspect. However, having another problematic process would constitute a setback that would be very detrimental to the aspirations and expectations of Albanian society. On the other hand, if the elections process goes smoothly and its outcome is accepted by all actors, it would mean a new start for the country which has been paralyzed for much of the past four years due to a political stalemate between the two major political parties.

Despite the concerns over the elections in which the Socialists of Edi Rama prevailed against Berisha's Democratic Party, Albania has come a long way in the past few years. The country became a NATO member in April 2009 and since 2010, along with the rest of the Western Balkans,[12] Albanians citizens have been able to travel without visitor visas to the Schengen Area, which encompasses most of the European Union and some allied states like Switzerland and Norway.

These successes notwithstanding, Albania's EU bid has not moved forward as quickly as most Albanians would like.[13] The country applied officially for membership in the European Union in 2009, but the European Commission has been reluctant to grant the country candidate status, a first step in this process, because of failing to meet criteria requiring political consensus. As a result, Albania has received three negative answers in a row on its application to advance the EU bid.

Albania's government and opposition blame each other for failing to obtain candidate status. Both the ruling and opposition parties see European integration as a major objective for Albania, yet the government and opposition have failed to work together to speed up the process. The elections were seen as a key test that could help advance the EU bid through holding consensual processes.[14]

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[12]   All of the Western Balkans have visa-free arrangements with the EU with the exception of Kosovo.
[13]   "The European Perspective of Albania: Perceptions and Realities" 2012 Albanian Institute for International Studies.
[14]   "EU's Fule: Elections are key to progress" May 5, 2013 *Tirana Times,* http://tiranatimes.com/news.php?id=15144&cat=1.

Albania's progress in preparing for EU membership also depends on the success of domestic reforms, starting with the normal functioning of the political system and institutions. In this context, a normal election process that is legitimate and based on the legal framework would be an investment that will help the country move in the right direction.

However, if there are problems during the 2013 elections, it would not merely mean that Albania would maintain the *status quo*. A controversial election process, in which the laws are not respected and international standards are not met, would actually constitute a setback that would be very detrimental to the aspirations and expectations of Albanian society. Unfortunately, consensus is rare commodity in the political life of post-communist Albania. A lack of will and an inability to assert legitimate power through democratic election processes is at the core of the ongoing deep political disagreements and a permanent clime of political conflict of the past two decades.[15] The next period will show if Albania is ready to leave these negative trends behind.

Economy now the chief concern

Despite the political conflict and nationalist rhetoric, it is concern about the economy and jobs that actually lead Albanians' list of worries, according a countrywide study recently released by the Albanian Institute for International Studies.[16] The survey indicates that Albania is clearly at the height of its own economic crisis, so the findings are not surprising, as the country is feeling the worst effects of the European economic crisis.

Two thirds of the Albanian citizens asked described the economic situation in Albania as either bad or very bad followed by 22 percent which said it was average and a small group of 7 percent that said it was good. Virtually none described the economic situation as very good. As for

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[15]   "Elections and political parties in Albania since 1991" 2013, Tirana Centre for Journalistic Excellence http://tcje.org/en/wp-content/uploads/2013/05/Elections-2013-Executive-Briefing-ENGLISH.pdf.

[16]   "The State of the Albanian Democracy on the Eve of the 2013 General Elections" 2013 Albanian Institute for International Studies.

future expectations the majority, 32 percent, expects no change in the economic outlook, 29 percent say that it will improve and 21 percent expect deterioration. Against this grim economic reality and picture of concerns, a staggering number of 61 percent of Albanians would leave their country if they had an opportunity to do so legally.

But the nearly one third of Albania's citizens who have already immigrated in the past two decades are part of the equation as well. Albanian workers abroad and the remittances they send to their families play a huge role in the economic well-being of Albania. With many Albanians in Greece and Italy unemployed, the effects on those who rely on their financial support has been very hard in many cases. But beyond remittances, there are indications the migration flows themselves might be changing due to the crisis. About 1.1 million Albanians live in the EU, with Greece and Italy holding the lion's share. These are also two countries that are suffering most from the crisis. Many Albanian migrants who have not been able to find work abroad are either returning home or thinking about doing so.[17] But they are also coming home to a place where unemployment is already very high and where the economic crisis is now at its highest point. Some of them have been able to set up work for themselves in agriculture and small businesses, but the jury is still out on how well they will do reintegrating in the Albanian society and market.

In the past few years, Albania was showcased across Europe as an example of economic success, because the country appeared to weather the economic crisis better than the rest of the region. The different picture seen now is a result of Albania's lack of integration with global markets and the low starting point of development. As a result, effectively, there is a lag from the time the crisis hit the rest of the continent to when it hit Albania, which is now seeing its worst effects, even as recovery is underway elsewhere.

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[17] "Hard times in Greece prompt Albanians to return home" Reuters: http://www.reuters.com/article/2010/06/01/us-albania-greece-migrants-idUSTRE6503WB20100601

With that backdrop, it is understandable, why economic concerns trump everything else – particularly nationalist causes, for which there appears to be little appetite in Albania. According to the same AIIS survey quoted above, nationalist agenda issues are being mentioned by only 2.2 percent of people in Albania who pick unifying Albania with Kosovo as a priority while only 1.8 percent speak about protecting the right of Albanians living outside the borders of Albania as top priority for the next government. To give a sense of how low that number is, 3 percent was the error margin of the survey.

The study's authors point out that both these questions' answers underline the fact that Albanians have pragmatic rather than high-cause nationalistic priorities and focus their interests in measures for economic development, fight against poverty and new job openings. Very few citizens seem to want the next legislative and executive undertaking nationalistic endeavours of any kind. However, despite the insignificant number of Albanians who saw nationalist issues as a key priority, when asked whether they would vote for unification with Kosovo would be a positive or negative thing, 60 percent say it would be positive.[18]

Conclusions

Despite the recent spike in nationalist rhetoric in Albania, which caused concern among its neighbours as well as Albania's strategic partners – the European Union and the United States, the country never shifted away from its policy of being a stabilizing factor in the region. Much of such rhetoric was related to the celebration of the 100 years of Albania's independence and was done in the historical context – quickly subsiding in the following months. The general elections campaign also provided some of the fuel for Albania's newly-found focus on the national cause, however there is clear evidence that there is very little support for na-

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[18]   AIIS experts presenting the findings noted that the discrepancy between the little interest in a union between Albania and Kosovo and the high number of those saying they would vote for one is likely a matter a those responding to the survey wanting to be "patriotically correct" in their answer rather than an indication of actual support.

tionalism in Albania, and the country continues to place EU integration ahead of any other philosophy.

Albania does care about and does support the well-being of ethnic Albanians in the former Yugoslavia, but it does so within the bounds of its EU perspective. Furthermore, as it pertains to reconciliation in the region, the relationship between an independent Kosovo and Serbia and good inter-ethnic relations in Macedonia are of particular interest to Albania, which has stated repeatedly its official policy of not seeking to enlarge Albania but rather aiming to have all Albanians come together as EU citizens when all countries of the region join the European Union. As a result the country's role in the region should be seen as very constructive, as one of the companions in the joint Western Balkans path toward EU integration.

The 2013 parliamentary elections marked an opportunity to depart from the negative practices of the past and create a new, healthier climate with clear results and parties that accept each-other as winners and losers and then go on working together for a better country. As such the key political actors must end the friction that is negatively affecting the work of the top official elections managing body or risk undermining the legitimacy of a process and live up to the country's poor reputations with elections.

Despite the political situation, it is actually concerns about the economy and jobs that lead Albanians' list of worries as the country approaches general parliamentary elections. The next Albanian government will have to work hard to bring the country back to strong economic growth. Albania's should continue to focus on the achievements of the past decade – clear improvements in order and safety, infrastructure, energy supply and property rights – while making sure that the political climate assist in fostering a better business climate.

Last, but by far not least, the European Union needs to push harder and smarter in helping move Albania's bid forward so the country can be granted official candidate status and start membership negotiations. While Albanians overwhelmingly support EU membership and the

stalled bid has been so far billed to Albanian political actors not doing their homework, if EU membership keeps staying as far in the distance as it currently is, it cannot exert as much gravity as Albania's society needs to affect the cultural and developmental shift needed for eventual membership.

Final Farewell Remarks

Johann Pucher

Your Excellencies,
Ladies and Gentlemen,
Dear Friends of the PfP Consortium Study Group
"Regional Stability in South East Europe",

Everything has an end.

This also applies to my professional career as an officer in the Austrian Armed Forces. My presence today will be my last official contribution in active service to the PfP Consortium Study Group Regional Stability in South East Europe.

Since my first participation some eight years ago, I have always found the discussions and inputs during the workshop enriching and inspiring.

They helped to deepened my understanding of the complexity in the region.

It is with great sympathy and with some direct support that I have followed the work of this distinguished Study Group. I commend all those that have engaged themselves so deeply in the Study Group, LTC Ernst Felberbauer, Mr. Andreas Wannemacher, Dr. Sandro Knezović and Dr. Filip Ejdus and in particular Dr. Predrag Jureković, the chairmen of the Study Group.

This shining example of an inclusive series of seminars of this Study Group has paved the way for a similar initiative for the Southern Caucasus region: the re–vitalized Study Group on Regional Stability in the South Caucasus for that particular region. Congratulations also for having achieved that.

Dear participants, the organizers found it appropriate to invite me and give me the opportunity to share some general reflections with you during this dinner.

My Balkan engagement started with my function as the Director of the regional confidence-building centre RACVIAC, followed by a Balkan desk task in connection with the Austrian EU Presidency in 2006 and then as Director for Security Policy in the MoD since 2008.

During the last ten years, the ambition to develop projects which might contribute to the consolidation processes in South East Europe has played an important role in my portfolio. Be it through the establishment of bilateral cooperation or through the promotion of regional activities.

In RACVIAC, ten years ago, I could feel a rather tense atmosphere in the seminar rooms. Often statements were read out only by participants from the regions; to stimulate a discussion was not easy.

This has changed significantly. The atmosphere has become more open and goal oriented. Also the strengthened influence of the civil society can be noticed. Serious different opinions still exist with regard to various open issues.

However, I do not have the feeling that such differences might lead to open hostilities or use of force anymore. But limited local clashes cannot be excluded.

The area of stability in the region has grown.

In general, the political processes generate a feeling of optimism inside me. Bilateral relations are improving steadily. Difficulties remain, you know them all. But the region demonstrates that former conflict constellations can be replaced by a cooperative relationship based on a win-win-situation.

In this context I would like to refer in particular to the most recent visits of the Serbian Deputy Prime Minister Aleksandar Vučić to Zagreb and

of two members of the Presidency of Bosnia and Herzegovina to Belgrade. Or the invitation to President Nikolić and Prime minister Dačić to the celebrations, marking the full membership of Croatia in the EU.

In the course of the last thirteen years, some degree of common understanding has developed among most leading politicians in the region. It is, to gradually find solutions on the basis of compromise and to exclude violent means.

From my perspective biggest progress can be attached to one single word:

Compromise has been incorporated into the terminology of the languages in the region gradually.

Striving for compromise is true European spirit, and it will permanently be on the agenda. Ten years ago, it was predominantly a zero-sum-game, I had to recognize – the winner takes it all and compromise was seen as defeat. If leaders and the population in the region internalize such a new constructive approach, we may be even more optimistic.

We see encouraging signals for regional consolidation and for the credibility of the EU enlargement perspective.

However, the run-up to the Albanian elections and the cemented positions of the two major parties do not augur well. Progress in the dispute between Macedonia and Greece is not yet in sight, Bosnia and Herzegovina is falling behind dramatically.

Croatia is on her own way to access the EU in two months, Montenegro has opened the negotiation process and Serbia is close to opening membership negotiations with the EU. Macedonia also has made some significant technical reform steps.

Notwithstanding the positive trends in regional peace-building and European integration, risks for security lie in the details. Most disturbing is lack of implementation of arrangements reached. This reminds the

partners from the Western Balkans as well as the international side that a demanding job still has to be completed. Support and mediation will still be required.

The engagement of the European Union together with NATO and other international organisations has been a very important pillar in the regional process of consolidating peace. EU integration as promised in the Thessaloniki Declaration 2003 has been the most relevant trigger for reform in the region as a political top priority. Some doubt is being cast on the pull factor of the EU.

It can be noticed that the aspirant or candidate countries and their citizens see the EU less euphoric and more pragmatic nowadays.

But, it is reassuring that regardless the rather deep crisis the EU is in since some time, the perspective of integration still has relevance for most countries in the region obviously. The Serbia-Kosovo agreement is the best shining example, can be a game changer, if implemented in true spirit.

Therefore it will be of tantamount importance for the region how the EU will overcome the present crisis. And at the same time it will be utmost relevant whether coherent or split signals the as a whole will send to Brussels.

I would like to stress at this moment, that also in this ambiguous situation, Austria as an EU member and the Austrian Ministry of Defence will continue to ensure further substantial engagement in the integration process. Be assured that Austria will stick to the Thessaloniki goals. Each country based on its own merit shall have the opportunity to become a full member of the European Union.

From my personal point of view, the EU cannot pretend to be a respected global player also in the field of security, if the case of Western Balkans is not solved as foreseen. It is my strong expectation that at the upcoming European Council 2013 in December, regional security as-

pects will play a role. The summit might send a strong signal also to this region from a security and defence perspective.

However, nobody can exclude that the internal cohesion of the EU might be weakened, to a substantial extent. Totally new set ups in Europe in a form of variable geometry or different layers of integration might be the result.

Even in an era of globalization, geography is still important to quote the European Security Strategy.

Consequently and in that spirit I am profoundly convinced that further deepening of collaboration in the region will be absolutely relevant. I am optimistic because the partners in South East Europe have already learned a major lesson about advantages and indispensability of cooperation.

Although Austria herself is not planning to become a member of the NATO alliance we understand that NATO integration is regarded as an important factor to increase security and stability by most of the countries in the region. Therefore we welcome Croatia's and Albania's membership in NATO. As well as the steps made by other countries towards MAP and IPAP. Also in that context the Austrian MOD stands ready to support. Similarly regarding international operations

The item of this workshop is reconciliation. One might ask oneself - is the time ripe to tackle the difficult legacy of past wars? Has the situation matured enough to explore common understanding also in this sensitive domain?

My position is the following: it will be difficult to start new chapters in the bilateral and regional relations without gradually, locally, perhaps bilaterally, entering also that area. The appropriate methodology still has to be developed. There is room for creativity.

It will be a long and stony way to guarantee dignity and humanity for alienated and affected parts of the peoples in the region. However, every

journey starts with the first mile. But it is possible; see for example the recent apology of president Nikolić.

In this regard your workshop could become an important step in that sense. Transitional justice is essential for improving relations substantially. You need a certain degree of mutual trust. In order to be able to co-operate you need to have confidence in your partner. This will be the basis for transnational investments in infrastructure, in the field of security in a broad sense or to make yourselves heard on the European level.

People deserve a decent living. It is all about that in addition to making sure that the best educated and most creative young ones stay in the region to avoid a further brain drain.

My hope can be summarized in these words: Find common approaches in substantial issues. Do this based on growing trust, otherwise you run risk to be overlooked on EU level. A lot remains to be accomplished, in particular to overcome the heritage of past wounds.

Let us be optimistic.

I wish the politicians and the citizens I South East Europe all the best to overcome the remaining obstacles. I hope that this workshop will be another one of an impressive series where participants found it interesting, worth while to come and enjoyed the stay here in Reichenau.

Kindly allow me, as we are among friends, to close with a very personal message:

Part of my heart will always belong to South East Europe, also in the next phase of my life.

Thank you all for your rich contributions!

MG Johann Pucher retired as Austrian Security Policy Director on 31 July 2013.

PART V

POLICY RECOMMENDATIONS

Policy Recommendations

Predrag Jureković

Situation Analysis

From Political Normalisation to a Difficult Reconciliation

Several verdicts of the International Criminal Tribunal for the former Yugoslavia (ICTY) decided in late 2012 and early 2013 – in particular the acquittals in the cases of Gotovina/Markač, Haradinaj and Perišić – have led to new controversies in the region about past wars, the issue of justice and the conditions for regional reconciliation. So far, there have not been tremendous repercussions of the recent ICTY verdicts on regional stabilisation and the political relations, however, the remaining legacies of the past wars continue to be a hurdle for the region's efforts to consolidate. The diverging narratives on the past wars and the contradictory perceptions regarding the roles of the main victims and perpetrators still constitute a huge gap between the different peoples in the Western Balkans. It is obvious that from the angle of "ordinary citizens" in South East Europe, the issue of implementing conditions set by the EU and their overall attitude towards EU and NATO integration policies is strongly influenced by and linked to the progress made in regional relations and reconciliation. Both Euro-Atlantic integration processes as well as regional relations still go through turbulent and sometimes regressive phases in South East Europe.

The region has passed through different stages of political normalization in the previous 13 years. Notwithstanding the various excuses made by regional politicians for war crimes committed by their co-nationals social reconciliation still seems to stand at its beginning. So far, the international side as well as the human rights community in South East Europe have been focusing too much on the ICTY as the main tool for reconciliation. Despite the criticism regarding several verdicts by the ICTY, this tribunal in the 20 years of its existence has its merits. These

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include contributions to criminal justice, support for installing national courts for war crimes in the region and contributions to a "new beginning" in the political relations by withdrawing some of the most responsible persons for the escalation of the wars during the dissolution of the Yugoslav state. Furthermore, the ICTY could play a positive role for truth seeking, once free access is given to its enormous collection of data on the Balkan wars.

However, the ICTY is dealing primarily with criminal justice and not with restorative justice, which follows a more victim-centred approach. Finding ways to strengthen restorative justice to compensate the victims and their families as well as to diminish the big gaps between the narratives on war is the crucial challenge lying ahead regarding reconciliation. The politicians in power play an important role as catalysts for or preventers of reconciliation. With their positive or negative rhetoric, they can widen or narrow the space for reconciling initiatives of civil society groups. Most of the leading politicians in the post war territories in South East Europe are dedicated to the "European mainstream" in the meantime and therefore are sending positive signals to their former opponents. This applied most recently to the Serbian President Tomislav Nikolić, a former nationalistic politician, who apologized in April 2013 to the Bosniaks for the crimes committed by Serbs in Srebrenica.

However, by far not all leading politicians in the region are using peaceful rhetoric. Milorad Dodik, the President of the Bosnia and Herzegovina entity Republika Srpska, is continuously stirring up nationalistic feelings for the purpose of promoting separatist policies rather than sending reconciling signals to the non-Serb citizens of Bosnia and Herzegovina. As dedication to real reconciliation and overcoming preserved national and religious barriers is lacking, criticism has also been directed partly at religious representatives. The same applies to some of the influential media from the region, whose role in the reconciliation process could be crucial.

The Impact of Regional Initiatives

Currently, the most valuable regional initiative for supporting processes of reconciliation in South East Europe is the "Regional Commission to

Determine and Disclose the Facts about War Crimes Committed in the former Yugoslavia – RECOM". This initiative was launched in 2006 by the Belgrade based Humanitarian Law Centre and other human rights NGOs from the region. For the supporters of RECOM, which has developed to a regional network including the most important civil society groups and victims associations over the past seven years, real reconciliation can only begin when all the victims have been identified and have been given concrete names and biographies. Such an endeavour is highly accepted also by most of the political leaders in the region and could be a first important step to jointly clear the difficult past.

The Regional Cooperation Council (RCC), which replaced the former Stability Pact for South East Europe in 2008, could also become a forum to build trust in the region. Critics of this regional platform for the coordination of projects, however, find fault with the lack of visibility.

Political and Security Developments

The dialogue between Belgrade and Prishtina reached a new positive momentum in Brussels in April, when the two sides agreed on a 15 points plan for the Serb community in Kosovo brokered by the EU. Its intention is to abrogate "parallel" political, judicial and security structures of the Serbs in North Kosovo and to integrate the Serb community as a whole into the Kosovo system by enabling broad local self governance in the frame of the newly to be established Community of the Serb Municipalities. The first euphoria shown by EU representatives after the acceptance of the Brussels agreement in the following weeks has been somehow relativized by concrete problems of implementation. Serb mayors in the North of Kosovo – unlike the Serbs South of the river Ibar – demonstrated clearly their rejection of the Brussels plan.

First attempts by the government authorities in Belgrade to "convince" their rebellious co-nationals of the benefits of implementing the agreement proved to be difficult. Another critical point is the issue whether the incentives of the EU will be credible and comprehensive enough to push Belgrade and Prishtina to support the implementation of the recently achieved agreements substantially. As a consequence of intensi-

fied Western policies to end the security vacuum in North Kosovo by establishing a stable political framework, extremist forces in that very territory could be "provoked" to react violently.

Since the last elections took place in Bosnia and Herzegovina in October 2010, there has not been any significant progress in regard to internal political consolidation as well as to the integration into the EU and NATO. Neither the conditions set by the EU (e.g. the Sejdić-Finci case et al.) nor the conditions set by NATO (regulating army property et al.) have been fulfilled by the national authorities. Nepotism and nationalistic manipulation characterise the political communication and interaction. Through its rather technical approach, the EU will most likely not effect a positive trend reversal for the time being.

Amongst the other countries in the Western Balkans, Croatia as NATO member can be regarded as a positive special case, and has gained importance by becoming EU member in July this year. Montenegro is generally performing well in the EU and NATO integration processes. Despite this, in certain fields shortcomings are highly visible, in particular when it comes to corruption and freedom of the media. According to the information of the Montenegrin human rights sector, the judiciary system has not yet done enough to punish war criminals. Macedonia recently has faced setbacks in the process of democratic and interethnic consolidation. The unresolved name dispute with Greece, the subsequent blockade in the EU and NATO integration processes as well as the overall negative economic development have fostered authoritarian tendencies and ethno-centric thinking within the ruling Macedonian party. The NATO member and EU aspirant Albania still has to demonstrate that it is willing and able to fulfil international standards of democracy, which include the mutual acceptance of election processes and cooperation between the ruling and opposition parties.

Summary of Recommendations Regarding Transitional Justice and Reconciliation

The ICTY is still needed as a reliable court to bring criminals to trial. In order to achieve or to regain reliability, the tribunal in The Hague should

reconsider in particular the legal principle that commandants or political leaders – in cases of passiveness or encouragement – are jointly responsible for war crimes committed by their subordinates. The Euro-Atlantic partners and the ICTY should admonish the regional prosecutors and courts to continue where the international tribunal stopped with its activities.

In addition, by opening all its archives for the public the ICTY could contribute substantially to the process of truth seeking for the purpose of supporting the process of transitional justice.

More restorative justice is necessary which needs to primarily focus on the victims of war crimes respectively their families. The material dimension of restorative justice is to restore the normality of life of communities that were affected mostly by the previous wars and which still belong to vulnerable groups (returnees, permanently displaced persons). In this regard, all regional initiatives should be welcomed and supported by international partners to orchestrate joint efforts enabling a sustainable return of former refugees or a sustainable new beginning of life on a different territory.

In order to avoid that former hot spots from the war period, like e. g. the hinterland of Dalmatia in Croatia, permanently remain a devastated area and a symbol of bleakness, substantial economic initiatives should be directed there. Economic recovery and a joint future perspective could help to overcome ethnic distrust.

On the immaterial side, healing processes could be fostered if most of the perpetrators were ready to confess their guilt and if the victims were ready to forgive once the perpetrators were put in court. Establishing joint places for memorialisation of crimes could help to spread empathy for the victims from different ethnic communities. A crucial element for reconciliation and for preventing new violent conflicts is the education of the youth.

The post war societies in South East Europe could learn in particular from the positive experiences in the German-French relations after

World War II: During the past decades, much effort has been invested from both sides to strengthen the friendship of German and French youngsters. Through joint history book and exchange projects, France and Germany have tried to avoid that national narratives about the past wars lead again to negative stereotypes on the neighbouring people.

The political leaders in the region should be encouraged by their international partners to continue with reconciling statements. Hate speeches of politicians which undermine reconciliation should be politically condemned and if necessary sanctioned.

International stakeholders should encourage the decisive politicians in the region to support RECOM not only vocally but also through concrete actions. Thus RECOM could develop into a transmission belt for other regional initiatives which support reconciliation. The RCC needs to be more open and transparent. It should be visible that this organization is potentially the most important regional initiative for promoting regional cooperation. Its projects should become accessible to the "average citizen" in South East Europe.

Regarding the Dialogue between Belgrade and Prishtina

Close cooperation is needed between Brussels and Washington in order to secure the necessary Western backing for the implementation of the latest Brussels agreement and technical agreements formerly achieved.

Incentives provided by Brussels to foster the agreements achieved in Belgrade and Prishtina should be credible and substantial. That concerns in particular starting accession talks between Brussels and Belgrade. In regard to the talks with Prishtina on the goal of achieving a Stabilisation and Association Agreement as a first step in Kosovo's integration into the EU, Brussels will need to bear in mind that different views inside the Union on Kosovo's political status will not impede this process.

Since it will be psychologically difficult for the Serbs in North Kosovo to give up their previous parallel system the Western stakeholders and Prishtina should give the Belgrade authorities some reasonable time to

soften the radical positions of their co-nationals in North Kosovo. Otherwise, political conflicts between Belgrade and the Mitrovica-Serbs could deepen. Such a development would additionally complicate the implementation of the Brussels agreement.

For the sake of this goal, the involvement of the Serb Orthodox Church (SOC) in the process of internal Serbian confidence-building could be supportive. Beyond doubt the SOC enjoys much confidence amongst the Serb community in Kosovo. On the other hand, Brussels and Washington are responsible for seeing that Belgrade's efforts at persuading the Mitrovica-Serbs will not lead to a total disregarding of the agreed time frames for implementing the 15 points plan. Furthermore, it should be considered that the implementation of this plan and the concentration on North Kosovo will not harm the interests of the Serbs in other areas of Kosovo, where integration processes already have started in 2009.

KFOR's presence in Kosovo is still of tremendous importance, in particular in regard to the still fragile security situation in the north of this country. In addition, preparing the Kosovo Security Force (KSF) for a future cooperation in the NATO PfP framework could become a major new task for KFOR. As far as possible the international side should ensure that the principle of ethnic diversity is respected inside the KSF. Since the Brussels agreement covers also issues connected to the judicial and police system the EU Rule of Law Mission (EULEX) will be challenged to support substantially the process of implementation.

Regarding Bosnia and Herzegovina

In order to counteract the long standing political crisis in Bosnia and Herzegovina the EU should retake a stronger political role and be less technical vis-à-vis the political forces in this country. Important EU principles which are linked to the Copenhagen criteria, to the strengthening of the functionality of Bosnia and Herzegovina as a state and to regional cooperation should not be relativized.

As the ruling political parties in Bosnia and Herzegovina have deepened without doubt the political crisis since 2010, it is up to the citizens to

generate new constructive ideas through active democratic participation in view of the 2014 elections.

The continuation of the peace operation EUFOR Althea and of OHR's presence is necessary as long as the political subjects in Bosnia and Herzegovina will not prove clearly that they are ready to cooperate for the collective good of their citizens and as long as nationalism is used as a tool by relevant political parties.

Regarding Albania, Macedonia and Montenegro

Albania has finally to pass the test of fair democratic parliamentary elections and afterwards of a mutually accepted division of governing and opposition role in order to become a credible aspirant for EU membership.

The political parties in Macedonia should reaffirm their fully dedication to Euro-Atlantic integration policies. Previous antagonist policies of the government which led to increasing pressure on the media and the civil society sector have to be replaced by cooperative policies. By supporting projects that are of benefit for all Macedonian citizens and by avoiding further ethno-centric projects like "Skopje 2014" the widening of ethnic gaps could be prevented.

Similar to Bosnia and Herzegovina the role of the EU – regarding the obstacles for Macedonia in the European integration process (name dispute with Greece etc.) – should be more political than technical.

Montenegro which has made remarkable progress in approaching EU and NATO membership should make stronger efforts to deal with unresolved cases of war crimes that have been committed on the Montenegrin territory during the 1990ies and which were connected with the wars in Bosnia-Herzegovina and Kosovo.

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