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Legacy Issues in the Western Balkans

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A Guide for Good Neighbourly Relations in the Western Balkans – Civil Society’s Standpoint

Summary

Resolution of bilateral disputes between the Western Balkan (WB) countries and with the European Union member states, besides the establishment of reconciliation and overcoming the heritage of the past, is key for good neighbourly relations and faster integration of all WB countries into the EU. If we take into consideration the new momentum in the enlargement process and the indicative framework for moving from one to the next integration phase until 2025 offered by the 2018 EU-WB Strategy,¹ the fulfilment of the preconditions for this is becoming increasingly urgent. A group of non-governmental organizations, individuals, and nearly 600,000 citizens of the region believe that the process of reconciliation would accelerate the establishment of the regional truth and reconciliation commission, whose work and findings would enable the strengthening of other elements that would lead to reconciliation (criminal justice, education, and civil society and media engagement). As far as bilateral disputes are concerned, each of them requires special approach and instruments, but EU-level support, efficient monitoring and reporting tools both at national and regional level would certainly speed up their resolution.

This paper has the goal to map out the existing problems which stand in the way of resolution of bilateral disputes and prevent accelerating the process of reconciliation, to identify all existing initiatives and efforts of various actors which have the potential to help in overcoming challenges and barriers in efforts to resolve them, as well as to acknowledge the shortcomings of the approaches that have been used so far by all observed actors. **The information from already available researches conducted by civil society organisations and academic community from the region, as well as by the experts who specialise in this region was used in the preparation of this paper. By doing so this paper represents an overview of all the issues that the civil society wishes to prioritise and point out as in need for urgent resolution.**

Bilateral disputes: an issue that needs urgent resolution – not a powerful mechanism for blocking neighbours’ EU accession

⌘ **What have we learned about the resolution of bilateral disputes so far?**

✓ **The Western Balkans integration is increasingly hampered by bilateral disputes and limited appetite for compromise in regards to these issues;**

¹ ”A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, p. 7, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf (last accessed 18/04/2018)

Bilateral disputes between the Western Balkan countries and between the WB6 and the EU member states relate to various issues from demarcation (border disputes), as well as issues regarding minority rights, status and identity, non-recognition of church, all the way to country name disputes.² **These disputes are extremely sensitive since they often dig into the very foundation of statehood and identity of the Western Balkan countries. That is why disputes are an easy target for politicising.** Hence, political leaders that are afraid of the reactions of the public opinion (most importantly of their electorate) do not want to deviate from their starting positions. That kind of approach leaves the bilateral disputes frozen and consequently slows down or blocks the integration process of the country. **The lack of will for compromise indicates that the chances for the issues to be resolved are less if the Western Balkan countries are solving them alone and without mediation.** Furthermore, the resolution or the beginning of resolution of most bilateral disputes hitherto would not have been possible without the active role and “bona fides” of third parties (e.g. the beginning of the dialogue between Belgrade and Pristina on the normalisation of relations).

The EU’s stability export-import logic is not consistent and sustainable;

Even though the European Commission puts the bilateral disputes, together with the reconciliation process, in the core of the “conditioning” policy (without the resolution of these issues there is no accession), it prefers disputes to be resolved bilaterally or via a third party.³

For some disputes, such as border demarcation, the EU does not have legal competence to deal with it, and therefore it does not recognise and include these issues in the “standard agenda” of the negotiation process. On the other hand, **even though the 2018 EU-WB Strategy foresees that the EU will “provide support as appropriate”, the EU still has to develop an efficient policy to support the resolution of bilateral disputes.**

The EU approach and stance by which the enlargement policy exports stability and does not import disputes is not consistent given the fact that the EU has already imported them (Cyprus), or it faced them just after a country entered the EU (Slovenia–Croatia). It is not sustainable either. Namely, **if bilateral disputes are not resolved at all, or not resolved in a satisfactory way, they present a threat to the regional stability in the long run.** Any new potential conflict would weaken the EU’s transformative power and its capacity to strengthen the stability in Europe.

2 Nikola Dimitrov, et al, “Removing obstacles to EU accession: Bilateral disputes in the Western Balkans”, BiEPAG, 2015, http://www.puneteshastme.gov.al/files/userfiles/Policy_brief_-_Bilateral_Disputes_study.pdf (last accessed 18/04/2018)

3 “Where border disputes are not resolved bilaterally, parties should submit them unconditionally to binding, final international arbitration, the rulings of which should be fully applied and respected by both parties before accession and taken into account in preparation of Accession Treaties”.

✓ **A view to a dispute is different from the outside and inside;**

In relation to the bilateral disputes between the Western Balkan countries, where the European Commission has a wider room for manoeuvre, when a member state is a side in the dispute it can and it mostly does use the membership status as conditioning for the resolution of the dispute (or for insisting on avoiding a compromise).

26

Years since the name dispute between Macedonia and Greece started.

Croatia, for instance, used its membership status in 2016 when it didn't give the "green light" to Serbia to open Chapter 23.⁴ The duration of the name dispute between Macedonia and Greece clearly illustrates to what extent can the position of a member state influence the accession dynamics of the non-member state. **Therefore, the EU institutions should create a platform from within they can facilitate compromise between an EU member state and the WB countries.**

✓ **There is no one-size-fits-all approach in bilateral disputes resolution;**

Even though the bilateral disputes are linked in terms of the consequences they can have on the regional stability and pace of integration, they differ when it comes to approaches and instruments that should be used for their resolution.⁵ States adopt different strategies, and some of them are **national coordinators for resolving open disputes, mediation by the UN, OSCE or other specialised agencies/organisations. Where it is harder to decide which one to select, the EU could facilitate the selection. Also, the EU could come up with a different approach in relation to the integration phase which the country is in.**

3

(Almost) years the signing of the demarcation agreement between Montenegro and Kosovo till the ratification in both parliaments.

✓ **The contribution of interested parties in resolving disputes and securing wider societal support for the suggested resolution and compromise is weakened by the lack of publicly available monitoring and reporting tools on both national and regional level;**

By signing the Declaration on Regional Cooperation and the Solution of Bilateral Disputes at the Vienna Summit in 2015,⁶ the Western Balkan countries have made a commitment to prepare the annual report on the progress in bilateral issues resolution. **However, these reports are not available to the public, nor has an adequate mechanism for tracking and reporting at the highest level been offered. Such a mechanism should exist at the ministerial level, especially if taken into consideration the already existing tendency of politicising of conflicts.**

4 Judiciary and Fundamental Rights

5 Marika Djolai, Zoran Nechev "Bilateral Disputes Conundrum: Accepting the Past and Finding Solutions for the Western Balkans", BiEPAG, April 2018

6 Summit EU - Western Balkans within the Berlin Process framework.

✓ “Permanent” solutions for bilateral disputes are not always permanent⁷

Even the implementation of the agreements already signed, on which both conflicted sides had to agree on before signing them, could become the subject of new disputes. Almost three years passed from the signing of the border agreement between Kosovo and Montenegro until its ratification in both parliaments, because of the deep political crisis in Kosovo which brought the downfall of its government in May 2017. **The example of the border demarcation between Kosovo and Montenegro indicates that wider societal support for solution should be secured before the agreement is signed. Also, the time frame for resolving all phases in disputes should be stricter.**

⌘ What can the civil society do in the resolution of bilateral disputes?

Civil society is becoming intensively involved in the tracking of bilateral disputes since the Vienna Western Balkans Summit in 2015 and is partly responsible for putting this topic on the agenda of this summit in the first place. However, **the number of organisations, which analytically or through advocacy activities contribute to the resolution of these issues, is still very limited and it is mostly done through regional approach. The organisations are not interested in monitoring the work of international, expert or border commissions (monitoring of processes at the technical level), nor are they implementing advocacy activities which could influence the public opinion in individual WB countries.**

Indicators:

- Efficient policy at the EU level to support the resolution of bilateral disputes established (tools and mechanism for monitoring and providing support in resolving disputes);
- Mechanisms for monitoring and reporting on progress in the resolution of bilateral disputes at regional level are efficient;
- Reports on bilateral disputes resolution prepared, publicly available and presented at the annual Western Balkans summits (within the framework of the Berlin process or through a special format);
- Negotiation between the Western Balkan countries carefully planned and designed for one-year period. Reports of “technical commissions” are regular and publicly available;

⁷ Marika Djolai, Zoran Nechev “Bilateral Disputes Conundrum: Accepting the Past and Finding Solutions for the Western Balkans”, BiEPAG, April 2018

The stalled reconciliation - how to give it a boost?

Reconciliation is a positive process and as such it should be supported by all parts of the society in the Western Balkans, and especially by political leaders and institutions, which has not been the case so far. On the contrary, the negation of genocide, glorifying of war crimes and criminals, and revisionism are present in everyday life of the region. Furthermore, countries are reserved in accepting responsibility for their role in the conflict. Challenges still exist when it comes to convincing all the Western Balkans' political leaders⁸ that "reconciliation means working together to correct the legacy of past injustices."⁹ Also:

- ✓ **Reconciliation process is not one of the main priorities in the Western Balkan countries;**
- ✓ **Different narratives of the past conflicts are used as tools of manipulation for short-term political gains and in the education curricula, and differ from country to country; hence a uniform and regional approach to this issue is needed;**
- ✓ **Because of the false presentation of the role(s) of countries in conflicts the youth gets a distorted image of some of the most gruesome war crimes in the region;**
- ✓ **Implementation of the reconciliation policies, especially when it comes to the prosecution of war crimes cases, is not satisfactory, i.e. it is done slowly and selectively, with a small number of verdicts reached,**
- ✓ **There is a lack of experience in conflict resolution in the WB;**
- ✓ **There is no true will in the region to accept the facts about the atrocities committed;**
- ✓ **The flow of time from the war events is negatively affecting the public discussion about the culture of remembrance in the region, and therefore these topics are less in the focus;**
- ✓ **Even though the European Commission in the 2018 EU-WB Strategy prioritises the reconciliation process and offers new instruments for the acceleration of this process, it does not offer indicators to follow the progress;**

⁸ See: Erwan Fouéré, The EU's re engagement with the Western Balkans – a strong message for Reconciliation, The Berlin Process Information and Resource Center, 26 February 2018, <http://wb-csf.eu/op-eds/eus-re-engagement-western-balkans-strong-message-reconciliation/>

⁹ Nelson Mandela

⌘ What are the main civil society initiatives when it comes to the reconciliation process?

The civil society insists on the fact that traumas caused by war events will not disappear, and the reconciliation will not be achieved by ignoring and forgetting what happened. This stance is based upon the belief that the transitional justice is linked with the reconciliation process. The activities and initiatives advocated by the civil society organisations and which should lead towards reconciliation, can be grouped in four categories as follows:

✓ **Creation of the regional intergovernmental commission for the establishment of the facts about victims and the circumstances of their death (RECOM initiative);**

Truth and reconciliation commissions have a specific and limited mandate, both in time period in which they operate and investigate, and in regards to examining certain types of human rights violations. The core of this commission, which should be established and supported by all WB governments, should be the discovery and telling the true facts about victims. So far, **from 2008, when many NGOs and activists initiated it, significant progress towards its establishment has not been achieved. Because of the new momentum of the enlargement process, the representatives of the coalition for RECOM state that the agreement on establishment of this commission should be signed at the London Summit of the Berlin Process to be held in July.**¹⁰

580,000

Citizens from the WB have supported the initiative for the establishment of the commission

The mechanisms which should be in the centre of the commission's activities are: inquiries, recording of statements, investigating the causes and consequences through publicly available reports. The use of these mechanisms has multiple goals. First, they introduce the scale of past crimes to the public, collect written statements serving as clues and solve crimes that are negated. Second, collecting evidence should be the basis to use other mechanisms, such as trials. Three, in this way the families of victims are getting the truth. Four, findings and reports of the commission should serve as guidelines for educational material through informal and formal education channels. Five, the commission can be an addition to the judicial mechanisms, especially where big deadlocks and lack of will exist for the prosecuting of war crimes. Six, one should take into consideration that truth commissions are empowered and authorized by the stated, which should facilitate access to information, but it also means that their findings will be taken into account seriously.

✓ **Strengthening of the local judiciaries and their cooperation in the (non-selective) prosecution of war crimes;**

General issues that hold back the prosecution of war crimes on the local level are lack of institutional effectiveness and capacities for investigating and prosecuting war crimes, ascertaining the fate of missing persons, and flawed witness protection system. Moreover, **in most countries of the former Yugoslavia the end of the International Criminal Tribunal for the Former Yugoslavia's mandate in December 2017 was welcomed as the completion of further obligation to prosecute war crimes.**¹¹

¹⁰ Nataša Kandić, et al, Reconciliation through the Berlin Process: the Role of RECOM, RECOM, Policy Brief, November 2017, <http://wb-csf.eu/wp-content/uploads/2017/12/Reconciliation-through-the-Berlin-Process-The-role-of-RECOM.pdf>

¹¹ Amer Alija, et al, "How the European Union Can Contribute to the Reconciliation of Post-Yugoslav Countries", The Coalition for RECOM, March 2018, <http://recom.link/policy-brief-european-union-can-contribute-reconciliation-post-yugoslav-countries/>

✓ Towards reconciliation through education;

Planning and ensuring the necessary resources for education play a key role in facing the past by enabling children and youth to understand the past, but also through the development of the culture of non-violence and respect of human rights. Therefore, consensus around a common history is very important.¹² However, most often the education is, as part of the post-conflict reconstruction, is positioned low on the list of priorities. Currently, the concept of reconciliation through education is focused more on the informal channels of education, and less on the advocacy for systematic changes and institutional reforms.

124

Judgments have been delivered in Serbia since 2003

✓ Intensifying the public campaign for reconciliation process advocacy;

The activities of civil society organisations are not equally focused on these four groups of activities and instruments. The ones most visible to the public are those related to the role of the regional commission and criminal justice.

Even though the coalition for RECOM currently gathers 2,100 organisations and individuals, a small number of organisations are involved in the advocacy of the solution for the reconciliation process, especially on the national level. While the first two groups should lead to faster results, the other two affect the creation of the reconciliation process in the long run.

Indicators:

- Agreement at the ministerial level on the establishment of the regional truth and reconciliation commission signed;
 - The regional truth and reconciliation commission established;
- Reports of the regional truth and reconciliation commission are public and prepared annually;
- Regional curriculum with facts about past and reconciliation for elementary and secondary schools prepared;
- Progress in prosecuting war crimes in local courts achieved (measured by number of judgments in each country annually).

¹² Mirjana Adamović et al, "Process of Reconciliation in the Western Balkans and Turkey: A Qualitative Study", Zagreb, Institute for Social Research in Zagreb (ISRZ), 2017, <http://www.mreza-mira.net/wp-content/uploads/2017/12/Process-of-Reconciliation-Qualitative-study3.pdf>

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