

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

Policy Recommendations¹

Study Group Regional Stability in South East Europe

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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



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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 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 be 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 on 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 intensified 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 will gain 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 be 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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1. These policy recommendations reflect the findings of the 26th RSSEE workshop on "Regional Co-operation and Reconciliation in the Aftermath of the ICTY Verdicts: Continuation or Stalemate?" convened by the PfP Consortium Study Group "Regional Stability in South East Europe" from 2 – 4 May 2013 in Reichenau / Austria. They were prepared by Predrag Jureković, valuable support came from Laura Estl, Ernst M. Felberbauer and Edona Wirth (all Austrian National Defence Academy).