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EU enlargement and the resolution of bilateral disputes in the Western Balkans

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Summary

Bilateral disputes, of which there are many in the Western Balkans, continue to cast a dark shadow over the countries of the region. Individual EU Member States involved in some of these disputes have used them to raise issues that have nothing to do with the EU accession criteria, effectively blocking the EU's enlargement agenda. Thus, the EU's failure to put forward an overall strategy to address these disputes has undermined the overall credibility of the EU's enlargement policy towards the region.

If the EU is committed to bringing the Western Balkan countries into the Union and promoting long-term stability and reconciliation in the region, it will need a more determined and proactive strategy in bringing these disputes to a peaceful resolution. Issues that are not part of the accession criteria—such as those relating to history and identity—should be dealt with separately from the accession process itself.

By drawing on its own experience in overcoming the legacy of the past and building a process based on reconciliation and the rule of law, the EU can show that no matter how sensitive or complex the issues dividing countries, solutions that are not imposed but based on mutual trust and respect can be found.

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In the Western Balkans, good neighbourly relations and regional cooperation are essential elements of the stabilisation and association process and the enlargement process. ... Overcoming the legacy of the past and addressing disputes arising from the conflicts of the 1990s remain key. Important outstanding bilateral issues still have to be solved, including border issues and delivering justice to war crimes victims and identifying remaining missing persons and establishing an accurate record of past atrocities at regional level. There is no place in the EU for inflammatory rhetoric or the glorification of war criminals from any side.

European Commission, 2022 Communication on EU enlargement policy,
COM(2022) 528 final (12 October 2022)

INTRODUCTION

The *Template for Staged Accession to the EU*, developed in 2021 by CEPS and the European Policy Centre, states that ‘the implementation of the system of staged accession would have to be supplemented by a robust EU policy geared towards the resolution of bilateral disputes and issues of statehood in the region’. The need for this has become abundantly clear as the EU’s enlargement agenda has repeatedly been derailed by individual Member States raising issues unrelated to accession criteria and effectively blocking the process.

After setting out the extent and nature of the problem, this paper offers policy recommendations as part of overall work to update the *Template for Staged Accession*.

EXTENT AND NATURE OF THE BILATERAL DISPUTES

While the EU has not provided a definition of what constitutes a bilateral dispute in the context of the Western Balkans, the list in the Appendix illustrates the extensive range of current disputes and their potential to disrupt the EU accession process or weaken the respective countries’ EU aspirations. In some cases, they have already adversely affected their accession prospects, with demotivation and reduced public support for the EU undermining fragile political environments.

Western Balkan countries have suffered more than most from the painful legacies of the past. The aftermath of World War II and bitter conflicts that followed the breakup of Yugoslavia left deep scars and festering disputes throughout the region. Many of these disputes continue to plague the region, such as:

- Border demarcations;
- formal recognition of a country's statehood;
- the name of a country or its identity, language or history;
- the rights of ethnic minorities and refusal to recognise their existence in other states;

- fallout from the Balkan wars of the 1990s in relation to identifying missing persons and prosecuting war crimes;
- conflicts between different branches of the Orthodox Church.

Whatever their nature, these disputes trigger emotions that often render the search for solutions very difficult. They also contribute to the deep mistrust that still exists between the different countries and ethnic communities in the region – a mistrust that is exploited by malign external forces, notably Russia¹.

The search for a comprehensive, overarching solution is complicated by the fact that some of the disputes are between EU Member States and candidate countries. This inevitably means that any solution is heavily weighted in favour of the Member State, which, as we have seen, will not hesitate to use its veto power to impose a view motivated by its own domestic politics. That leaves the candidate country with little choice in the matter if it wishes to pursue its goal of EU accession. In such cases, the absence of a level playing field in the search for compromise erodes the EU's overall credibility in pursuing its enlargement agenda and adds to the ambiguity of its intentions towards the Western Balkans region. It also underlines the urgency of using qualified majority voting as much as possible to minimise the veto power of individual Member States.

An illustration of this is the deeply unsettling precedent set by the EU in the dispute between Bulgaria and North Macedonia (see the Appendix for details). Despite the EU's repeated calls for all parties to 'abstain from misusing outstanding issues in the EU accession process²', it effectively endorsed Bulgaria's stances on history, language and identity.

The lack of an overall strategy or any institutional mechanism on the part of the EU to deal with these disputes, and in most cases the absence of third-party mediation, reduces any political will to find viable solutions.

MEDIATION AND THE POSITION OF THE EU

Apart from the dispute between Greece and North Macedonia, which involved a UN-appointed mediator and led to the 2018 Prespa Agreement, the only one currently involving mediation is that between Serbia and Kosovo, with the EU High Representative acting as chief facilitator. EU efforts were strengthened in April 2020 with the appointment of Miroslav Lajcak as special representative for the Belgrade-Pristina Dialogue and other Western Balkan regional issues. Up to now he has confined his facilitation work to the former, with no indication that he will address the other pending disputes in the region.

The EU's position has been that outstanding bilateral disputes must be resolved prior to accession. This policy, which undoubtedly stems from the particular circumstances of Cyprus's accession in

¹ EPRS, *Russia and the Western Balkans – Geo-political confrontation, economic influence and political interference*, European Parliament Briefing (2023).

² European Commission, *Enhancing the accession process – A credible EU perspective for the Western Balkans*, Communication, COM(2020) 57 final (5 February 2020), p. 2.

2004, has not changed much over the years despite the negative impact disputes in the Western Balkans have had on the EU's enlargement agenda. Nor does the policy recognise the specific nature and complexity of the Western Balkans and the relationships emerging from the breakup of Yugoslavia.

In its 2018 strategy paper, the European Commission said: 'There are still important bilateral disputes between countries in the region which remain to be resolved. The EU will not accept to import these disputes and the instability they could entail. Definitive and binding solutions must be found and implemented before a country accedes'³.

Two years later, the European Commission used more or less the same wording, putting stress on the Serbia-Kosovo normalisation process. Its communication on modifications to the accession process states its position: 'All efforts need to be undertaken to resolve bilateral disputes, with a particular emphasis on the EU-facilitated dialogue between Belgrade and Pristina, which should be concluded with a comprehensive legally binding normalisation agreement'⁴.

However, developments so far show that this approach has had mixed results. In fact, it has raised more questions than answers, such as the EU's interpretation of the conditions for accession in cases where issues unrelated to those conditions effectively thwart the process. The failure of the EU to establish any overall method, strategy or mechanism to address these disputes in the region, especially those involving individual Member States, has led to repeated blockages in the conduct of its enlargement agenda.

OPTIONS FOR ADDRESSING BILATERAL DISPUTES IN THE EU ACCESSION PROCESS

In dealing with bilateral disputes, the precedent set in the Bulgaria-North Macedonia case will likely be used as a reference point that will be difficult to circumvent in the future. To avoid a similar situation arising again and the resulting difficulties for the candidate country concerned, the EU will need to find an alternative method for sorting out bilateral disputes. Better still would be a comprehensive strategy or institutional mechanism for disputes, covering both those between Member States and candidate countries and those solely between the latter.

Up to now, the only policy option put forward by the EU for settling bilateral disputes has been related to border demarcation. The 2018 strategy paper mentioned above calls for parties with unresolved border disputes to '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'⁵.

Yet, the Slovenia-Croatia case (see the Appendix) shows that some disputes have proved challenging even when submitted to international arbitration. At the same time, it should be recognised that EU

³ European Commission, A credible enlargement perspective for an enhanced EU engagement with the Western Balkans, Communication, COM(2018) 65 final (6 February 2018), p. 3.

⁴ European Commission, Enhancing the accession process, COM(2020) 57 final (2020), p. 3.

⁵ European Commission, A credible enlargement perspective, COM(2018) 65 final (2018), p. 7.

membership has a calming influence on disputing parties, which over time helps to minimise differences and find solutions.

For all other disputes in the Western Balkans, rather than leaving them entirely to the countries concerned to resolve, the EU should make a more determined effort to support dispute resolution. It could put forward its own experience of European integration and model for overcoming the legacy of war and building a process based on the rule of law. It should develop targeted programmes (depending on the issue) with both the OSCE (particularly the High Commissioner on National Minorities) and the Council of Europe (for example, the Venice Commission), drawing on their respective expertise to provide legal advice in the negotiation of bilateral agreements. Issues related to history, which under normal circumstances should never be considered part of EU accession criteria, could be addressed using the expertise of the Observatory on History Teaching for peace and reconciliation in Europe, established by the Council of Europe, or the European Association of History Educators (EUROClío).

The EU should also remember that, as the precedent of Bulgaria-North Macedonia shows, not all differences can or will be resolved with a bilateral agreement, whether they involve Member States and candidate countries or just the latter. Differences in historical narratives will persist. If we were to follow the logic of the Bulgarian approach, neither Ireland nor the UK would ever have joined the EU.

A crucial factor in the European integration process is the recognition of differences, with integration progressing in parallel with the gradual resolution of the many differences between Member States. The Elysée Treaty between France and West Germany, signed in 1963, or the Good Friday Agreement in Northern Ireland, signed in 1998, are illustrative of how the EU integration process provides a valuable setting for addressing and resolving disputes and for fostering reconciliation. With each making specific reference to the European integration process, they stand as powerful examples that finding the right solutions to long-standing disputes and overcoming mistrust has a far greater chance of success in a regional integration context.

There is no reason why the same logic cannot be used in dealing with the Western Balkans or other candidate countries. This is particularly the case for those disputes exclusively involving candidate countries. Leaving countries to resolve disputes on their own, rather than as part of a regional framework, risks further exacerbating tensions between them. Hence the importance of, for example, the Berlin Process or other regional cooperation endeavours like the connectivity programmes. In terms of measuring progress under the staged accession process, if a procedure or mechanism for dispute settlement is already in place, this should be sufficient to allow the accession process to move forward without hindrance.

RECOMMENDATIONS

- 1) Disputes over issues that are not covered by the accession criteria, such as identity, history and language, **should be subject to a separate process that would run in parallel with the accession negotiations**. Under the *Template for Staged Accession* mentioned above, benefits would gradually accrue to acceding countries as they meet the conditions. This in itself would create a more conducive environment for overcoming mistrust and addressing the disputes covered by the parallel process. Meanwhile, access to EU funds should be allowed to proceed unhindered.
- 2) Those disputes that are covered by the accession process **should be subject to the same conditions and benchmarking procedures**. For example, minority rights are included in the annual country reports and accession negotiations (Chapter 23). Still, greater efforts should be deployed to incorporate the Council of Europe's Framework Convention for the Protection of National Minorities and judgments of the European Court of Human Rights relating to national minority issues in both EU Member States and candidate countries. Progress in resolving these disputes will contribute to the overall improvement of the political atmosphere between the countries concerned and should help to strengthen mutual trust.
- 3) The synergy established between the parallel processes could be mutually reinforcing, with any danger of blockages or contamination of one by the other being minimised. This synergy could be enhanced by **financial incentives for helping to resolve the disputes, promoting reconciliation, and ensuring broad societal acceptance**. The EU Programme for Peace and Reconciliation in Northern Ireland provides a model. Established in 1995 by European Commission President Jacques Delors, it has provided over EUR 2 billion in funding, with civil society organisations and local communities being the main beneficiaries. It continues to this day and has played a huge role in the peace process with measures for confidence building and bringing the communities together.
- 4) The EU should develop **targeted programmes** with the OSCE, notably the OSCE High Commissioner on National Minorities, drawing on the OSCE's experience of extensive cooperation on the rule of law, conflict mediation and minority issues.
- 5) Similarly, **the EU should work with the Council of Europe**, and more specifically with its European Commission for Democracy through Law (the Venice Commission). This advisory body on constitutional matters provides legal advice to Council of Europe member countries. More specifically, it helps countries wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law. It also helps to disseminate and consolidate a common constitutional heritage, playing a unique role in conflict management. There have been several cases where EU candidate countries have referred individual laws to the Venice Commission for an assessment of their constitutionality, and its findings have been considered in the European Commission's annual country reports.

- 6) Regarding issues relating to history, **the EU should make use of the Observatory on History Teaching in Europe**, established by the Council of Europe in 2020 with the aim of providing a clear picture of the state of history teaching in Europe. Unfortunately, Bulgaria is not a member. Another important body the EU should involve is EUROCLIO, which was founded in 1992 to build bridges between history education professionals from all parts of Europe.
- 7) As seen from a wealth of past experience, including the Northern Ireland peace process, the role of civil society is crucial in overcoming bilateral disputes. The active involvement of civil society in grassroots projects can ensure wider public acceptance of any agreements reached and greater accountability from political leaders. Indeed, experience has repeatedly shown that civil society organisations are best placed to create a climate of trust between different ethnic communities, particularly at the local community level and in cross-border regions, **and as such the EU should work to bolster such organisations further in the Western Balkans.**
- 8) Civil society can also play a major role in promoting reconciliation and fostering cross-border links, especially between youth organisations, and in encouraging the countries of the Western Balkans to become more active in dealing with the legacy of the past. Two important initiatives in this area are (i) the Coalition for a 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 (known as the RECOM Initiative); and (ii) the Regional Youth Cooperation Council (RYCO) set up by the six Western Balkan countries at the Paris summit in 2016 as part of the Berlin Process. The latter brings together young people from all corners of the region to reconcile divisions resulting from recent conflicts and lay the foundations for reconciliation across the region. **The EU should offer encouragement and financial support to these organisations.**
- 9) The **Berlin Process could provide a useful framework for promoting the settlement of bilateral disputes**. During the 2015 Berlin Process meeting in Vienna, Western Balkan foreign ministers signed a Declaration on Regional Cooperation and the Solution of Bilateral Disputes, in which they committed to report ‘annually at the Western Balkan summits on the progress made in regard to bilateral relations and outstanding bilateral questions’. Although little progress has been made since, every opportunity should be taken to encourage greater momentum in this area, not least in following the very pertinent recommendations contained in the policy brief from the Balkans in Europe Policy Advisory Group (BiEPAG) presented to that meeting in 2015. These include an annual review of the state of bilateral relations and creation of a common framework for the resolution of border disputes.
- 10) Finally, the **European Political Community**, launched last year on the initiative of French President Emmanuel Macron, should be mentioned. Although its impact has yet to be tested, and its composition is rather unwieldy for resolving bilateral disputes, its potential as another useful forum should not be discounted.

CONCLUSION

There is no doubt that the EU needs to play a more proactive role in helping to resolve bilateral disputes, using its own expertise and experience in overcoming the legacy of war and in promoting a policy of reconciliation based on the rule of law.

Depending on the nature of the disputes, and as the countries concerned make advances in resolving them, the EU should, under the staged accession process, accommodate a regime of progressive, conditional and staged participation for those states aiming at full EU membership.

For disputes involving Member States, the EU will need to impose limits on the use of veto power in order to prevent further abuse by individual Member States and to avoid any further erosion of confidence in the EU's ability to deliver on its promises to the region.

For disputes between candidate countries, the EU should be more active and present on the ground, either by using the existing special representative or appointing another for the purposes of encouraging the countries concerned to find the right solutions and of facilitating dialogue between them.

The ultimate objective is to create a climate of trust throughout the region that will foster reconciliation and enable the EU accession process to move forward.

APPENDIX⁶

The list below is by no means exhaustive. However, it does refer to the most important disputes that countries of the region face and has the merit of bringing them together in one document. The purpose of this list is not to provide arguments to those who believe that reconciliation and dispute settlement in the region is an impossible dream. Quite the contrary, it is intended to demonstrate that no matter how sensitive or complex the issue, the impossible can be made possible, by drawing on the EU's own experience of overcoming the legacy of the past and building a process based on reconciliation and the rule of law. It should also serve to underline the importance of addressing these disputes not in isolation, but as part of a regional framework.

North Macedonia-Greece and North Macedonia-Bulgaria

Although North Macedonia was the first country in the Western Balkans to sign a Stabilisation and Association Agreement with the EU in 2001, ahead of Croatia, its road to EU accession has arguably been the most tortuous and obstacle-prone of any country in the region.

Since its referendum on independence in 1992 and subsequent declaration, the country has faced numerous existential challenges. Greece disputed the name of the country and even the identity of its citizens, who had been called Macedonians for generations. After independence, Greece imposed a trade boycott that was only lifted in 1995 following an Interim Agreement brokered by US President Bill Clinton's special envoy, Matthew Nimetz⁷. Under this agreement, a provisional name (the Former Yugoslav Republic of Macedonia) was adopted, allowing the country to become a member of the UN. Negotiations continued under UN auspices with the appointment of Nimetz as the UN Secretary-General's personal envoy in 1999.

Bulgaria was the first to recognise Macedonian statehood, but at the same time refused to accept the ethnic and linguistic identity of the Macedonian people. As for relations with neighbouring Serbia, the Serbian Orthodox Church initially refused to recognise the declaration of autocephalous independence by the Macedonian Orthodox Church. As if that were not enough, the multi-ethnic composition of the country, with its large ethnic Albanian population, was a major challenge in itself, with claims that their rights were not sufficiently respected by the government at the time. Instability arising from the massive influx of over 300 000 refugees escaping from Kosovo in 1999 presaged the armed conflict that broke out in the predominantly ethnic Albanian part of the country in 2001. It was only resolved after a combined EU-NATO-OSCE mediation effort, which led to the signing of the Ohrid Framework Agreement in August 2001.

The accumulation of all of these pressures left a deep and painful legacy within Macedonian society and constituted an ever-present threat to the stability of its institutions. It also served to strengthen the resolve of its political leaders to work towards EU membership as the best and only guarantee of its long-term viability as a country. It formally applied to join the EU in 2004.

⁶ The author is indebted to colleagues at the European Policy Centre for their input on the compilation of this list.

⁷ UN Peacemaker, Greece and the Former Yugoslav Republic of Macedonia: Interim Accord (with related letters and translations of the Interim Accord in the languages of the Contracting Parties), No 32193 (13 September 1995).

The Prespa Agreement with Greece

It was only after changes of government in both Greece and North Macedonia in 2016 that efforts began in earnest to resolve the name dispute, which up to then had been the subject of unsuccessful mediation by Nimetz. The negotiations led to the Prespa Agreement, signed on the shores of Lake Prespa (which borders the two countries and Albania) in June 2018. Under the terms of the agreement, the name of the country became the Republic of North Macedonia. In return the Greek government recognised the official language of the country as ‘Macedonian’ and agreed not to veto the country’s NATO or EU membership.

President Macron’s 2019 veto

The Macedonian government’s expectations that EU accession negotiations could start after ratification of the Prespa Agreement were nevertheless dashed by France’s veto in October 2019. This was despite the European Commission’s recommendation in 2018 that accession negotiations could start with both Albania and North Macedonia. As noted in a [CEPS commentary](#), the reasons given by President Macron were that the EU should first concentrate on its own reforms before entertaining any further enlargement. He also called for a new method for accession negotiations.

Treaty of Friendship, Good-Neighbourliness and Cooperation with Bulgaria

In the meantime, to address several concerns raised by Bulgaria about Macedonian identity, language and history, the Macedonian government agreed to sign a Treaty of Friendship, Good-Neighbourliness and Cooperation between the two countries in 2017, which came into force the following year⁸. It established a Joint Multidisciplinary Expert Commission on Historical and Educational Issues.

By placing this body at the heart of the friendship treaty, one could argue that the treaty was doomed from the start, with Bulgaria insisting on its own version of the region’s past and leaving no room for any plurality of historical narratives. It goes without saying that by introducing notions of history and identity as part of the accession process, Bulgaria undermined the criteria and conditions specified for EU accession. This has set a dangerous precedent and adds more uncertainty to the European ‘perspective’ for Western Balkan countries.

In addition to the friendship treaty, the Bulgarian government adopted a ‘framework position’ in 2019, endorsed by all Bulgarian political parties in the Bulgarian Assembly. It set out in more detail the conditions (some of which went beyond those of the 2017 friendship treaty) that the Macedonian government would have to meet before the opening of accession negotiations. The framework position was followed by a ‘Statement of the Bulgarian Government’ that was annexed (as a unilateral statement and thus not adopted by the Council) to the conclusions of March 2020⁹. This in essence became the Bulgarian veto on the European Council’s green light for the opening of accession negotiations with both Albania and North Macedonia, despite the new method for enlargement

⁸ Council of Ministers of the Republic of Bulgaria, *Framework Position regarding EU enlargement and the Stabilisation and Association Process of the Republic of North Macedonia and Albania* (9 October 2019), <https://www.gov.bg/bg/prestentat/novini/ramkova-pozitsia>, accessed 20 June 2023.

⁹ Council of the European Union, *Enlargement and Stabilisation and Association Process*, doc. 7002/20 (25 March 2020).

endorsed by the European Council in March 2020, which urges all parties to ‘abstain from misusing outstanding issues in the EU accession process¹⁰’.

The detailed conditions included not only the Bulgarian version of the region’s history, but also demands relating to the Macedonian language and identity. North Macedonia was to renounce any claim to the existence of a Macedonian minority in Bulgaria, even amid repeated rulings by the European Court of Human Rights calling on Bulgaria to recognise Macedonian minority groups in Bulgaria, which the country has ignored¹¹.

The impasse continued until June 2022, when in the final days of the French Presidency of the European Council President Macron put forward a French proposal that would lift the Bulgarian veto and guide the accession process. The proposal basically endorsed all of Bulgaria’s demands. As part of the proposal, North Macedonia would have to amend its constitution to include a reference to the existence of a Bulgarian community in the country. There was no mention of any reciprocity; the judgments of the European Court of Human Rights were completely disregarded. In the face of an enormous dilemma and huge pressure from the EU, the Macedonian government accepted the proposal and Bulgaria lifted its veto.

The first Intergovernmental Conference marking the formal opening of accession negotiations with both Albania (also blocked since 2020 because of the Bulgarian veto against North Macedonia) and North Macedonia took place in July 2022. Still, the actual negotiations with North Macedonia can only start once the amendment to the constitution has been adopted by the Macedonian parliament.

Furthermore, because of the EU’s unanimity rule over enlargement issues, there is no guarantee that Bulgaria will not exercise its veto power at any time to block an advance in the negotiations if it feels that the bilateral issues under the friendship treaty are not dealt with to its satisfaction by North Macedonia.

Serbia-Kosovo Dialogue

Launched by the EU in 2011, the dialogue has the following aims:

‘... to achieve a comprehensive legally binding normalisation agreement between Kosovo and Serbia addressing outstanding issues for both Parties to progress on their respective European paths, create new opportunities and improve the lives of their citizens. An Agreement between the parties is beneficial also to the security, stability and prosperity of the entire region¹²’.

This is the only bilateral dispute in the Western Balkans to be facilitated by a third party, with the EU having conceived, designed and led the dialogue, following the UN General Assembly Resolution (64/298) adopted in 2010. The dialogue has had its fair share of ups and downs and has suffered in

¹⁰ European Commission, Enhancing the accession process, COM(2020) 57 final (2020), p. 2.

¹¹ See, e.g., *The United Macedonian Organisation Ilinden and others v Bulgaria* (no. 3), Application no. 29496/16, Judgment (ECtHR, 11 January 2018). The number of ethnic Macedonians living in Bulgaria is a matter of controversy. According to Minority Rights Group International, there is evidence of these citizens being subject to harassment and intimidation. The 1992 census showed there were over 10 000; from the latest census in 2021, that figure has gone down to just over 1 000. See <https://minorityrights.org/minorities/macedonians-2/>

¹² See the European External Action Service, [Belgrade-Pristina Dialogue](#)

the past from uneven attention from the EU. Periodic meetings between the two leaders have been facilitated by successive High Representatives, with a more frequent rhythm of meetings since the appointment of EU envoy Miroslav Lajcak in April 2020.

Five EU Member States still do not recognise Kosovo, although they have not impeded any initiatives or agreements reached in the dialogue.

In April 2013, the two sides concluded a First Agreement of Principles governing the Normalisation of Relations, informally known as the Brussels Agreement. It provided, inter alia, for the establishment of an Association/Community of Serb-majority Municipalities. Despite a further agreement in 2015 setting out the main principles and elements of the body, it has yet to see the light of day. There have since been frequent occasions of serious tensions. The most recent was in 2022, after Kosovo's prime minister introduced new rules for car registration in the northern Serb-majority part of Kosovo. Serbian President Aleksandar Vučić claimed that the 'Brussels Agreement no longer exists' because the basic human rights of the Serb community in Kosovo were not, he alleged, being respected¹³.

Undoubtedly prompted by the Russian invasion of Ukraine and its security implications for the European continent, the EU realised that it needed to do much more to integrate the Western Balkans into the EU and move the enlargement process forward. The Kosovo-Serbia Dialogue gained new impetus with the presentation of a Franco-German proposal for the normalisation of relations between the two sides in the margins of the EU-Western Balkans summit in Tirana in November 2022. The EU then endorsed the proposal, with Kosovo's Prime Minister Albin Kurti and President Vučić both accepting it at their meeting in February 2023. A further meeting, this time in Ohrid in March 2023, confirmed the agreement reached plus a road map for implementation.

While the agreement does not explicitly require Serbia to recognise Kosovo's independence, it ensures that Serbia will not oppose Kosovo's accession to international organisations such as the Council of Europe and the EU. It does not specifically refer to establishing an Association/Community of Serb-majority Municipalities, but rather to a commitment 'to establish specific arrangements and guarantees ... to ensure an appropriate level of self-management for the Serbian community in Kosovo and the ability to provide services in specific areas, including the possibility for financial support by Serbia and a direct communication channel for the Serbian community to the Government of Kosovo'¹⁴.

Although there are likely to be further meetings between the two leaders, facilitated by the EU, the main challenge remains the effective implementation of the commitments made, bearing in mind that the initial agreement of 2013 has yet to be put into practice. The latest agreement specifically refers to this challenge: 'The Parties shall establish a joint Committee, chaired by the EU, for monitoring the implementation of this Agreement. Both Parties confirm their obligation to implement all past Dialogue agreements, which remain valid and binding'¹⁵.

¹³ The statement of 24 March 2022 is available at <https://www.slobodnaevropa.org/a/srbija-kosovo-briselcki-sporazum/31769091.html>, accessed on 20 June 2023.

¹⁴ Article 7, at https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-eu-proposal-agreement-path-normalisation-between-kosovo-and-serbia_en

¹⁵ Ibid., Article 10.

Any progress made by Serbia in its ongoing accession negotiations will depend on its progress in carrying out the above agreement. After the Ohrid meeting, the EU confirmed that it will amend the benchmarks contained in Chapter 35 of the negotiations to reflect Serbia's new obligations under the agreement.

Following recent violence in northern Kosovo and the Kosovo government's attempts to organise municipal elections, which were boycotted by the Serb community, tensions have reached a new level of concern. Their escalation underlines the urgency of resuming the dialogue between the two sides, overcoming the impasse and thus avoid possible EU sanctions.

Prosecution of war crimes and efforts towards reconciliation

Together with the issue of missing persons in the aftermath of conflicts in the former Yugoslavia, the prosecution of war crimes and reconciliation efforts remain the most emotive and contentious matters throughout region. They are also, in several instances, the cause of deep mistrust in bilateral relations.

A number of those convicted of war crimes by the International Criminal Tribunal for the former Yugoslavia (ICTY) continue to be revered as heroes in their respective countries, while the use of hate speech across the region is still prevalent.

After the closure of the ICTY in December 2017, all residual functions were placed under the jurisdiction of a successor body, the International Residual Mechanism for Criminal Tribunals. Although national mechanisms for the prosecution of war crimes are also in place, for example in Bosnia and Herzegovina and in Serbia, cooperation between them remains fraught.

Several initiatives have been launched, notably the Coalition for a Regional Commission to establish the facts about victims of war crimes and other serious human rights violations committed on the territory of the former Yugoslavia (RECOM).

Despite these initiatives and repeated statements of intent by the region's political leaders during EU-Western Balkans summits, progress in prosecuting war crimes and bringing closure to the conflicts that followed the breakup of Yugoslavia remains painfully slow. The state of play is regularly updated in the European Commission's annual country reports, under Chapter 23 ('Judiciary and fundamental rights'). Some of the most critical cases are below.

Croatia-Serbia

Croatia is already on record as refusing to accept Serbia's right to try any war crimes involving Croatian nationals. Confirmation by the Higher Court in Belgrade of the indictment against four Croatian military pilots for alleged crimes committed against ethnic Serbs in Bosnia and Herzegovina during Operation Storm in 1995 provoked a fierce reaction from the Croatian authorities. This and other cases are likely to be used by Croatia to block or delay progress in the accession negotiations with Serbia.

The European Commission's 2022 country report on Serbia calls on Serbia to show a genuine commitment to investigating and adjudicating war crimes, and to engage in meaningful regional cooperation and good neighbourly relations in the handling of war crimes. The report also refers to Serbia having a backlog of 1 731 pre-investigative cases.

Serbia-Bosnia and Herzegovina

The spread of hate speech by convicted war criminals in Serbia and the impunity with which certain politicians in Serbia and the Republika Srpska continue to deny the Srebrenica genocide is causing deep tensions in bilateral relations.

With both countries refusing to hand over their respective citizens for trial for alleged war crimes, the processing of warrants remains blocked. Urgent work needs to be undertaken to address these cases.

Missing persons, refugees and displaced persons

The issue of missing persons remains a crucial part of efforts towards reconciliation in the Western Balkans. The International Committee of the Red Cross (ICRC) and the working group it established on missing persons have been instrumental in dealing with it. According to the latest figures from the ICRC, just under 10 000 people are still missing with the vast majority (over 6 000 according to ICRC figures and over 7 000 according to the 2022 European Commission country report) in Bosnia and Herzegovina, followed by just under 2 000 in Croatia and a slightly lower number (1 621) in Kosovo¹⁶.

It is one of the few such sensitive areas where bilateral cooperation continues to function, thanks to the work of the ICRC. Several initiatives have also been taken in the context of the Berlin Process, such as the Joint Declaration on Missing Persons in the Framework of the Berlin Process adopted at the London summit in 2018¹⁷.

Meanwhile, attempts to find lasting solutions for refugees and displaced persons from conflicts in the former Yugoslavia are the focus of the Sarajevo Declaration and an initiative launched in 2005. This is the first refugee-related initiative adopted by governments of the region and involves four countries – Bosnia and Herzegovina, Croatia, Montenegro and Serbia. A Regional Housing Programme, benefiting some 73 000 individuals, forms an integral part of the Sarajevo Process and receives EU funding.

Border demarcation disputes

Although the Arbitration Commission of the Conference on Yugoslavia, established in 1991 and commonly referred to as the Badinter Arbitration Committee, devoted one of its 15 opinions to border issues arising from the breakup of Yugoslavia, there are still numerous unresolved border disputes between countries in the region¹⁸. The two border disputes that have finally been settled are between North Macedonia and Kosovo, and between Montenegro and Bosnia and Herzegovina (although the latter has yet to be physically demarcated – see the related subsection below).

¹⁶ ICRC, 'Strategy on the missing persons in the former Yugoslavia', November 2020.

¹⁷ See ICRC, Joint Declaration on Missing Persons in the Framework of the Berlin Process,

¹⁸ See, e.g. A. Pellet, 'The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples', *European Journal of International Law*, Vol. 3, No 1 (1992), pp. 178-185, <https://doi.org/10.1093/oxfordjournals.ejil.a035802>

Slovenia-Croatia

The dispute between Slovenia and Croatia over delimitation of the borders between the two countries, in particular that relating to Piran Bay, directly impacted on Croatia's accession negotiations, which had started in 2005. Slovenia actually blocked the negotiations for several months. It was only after the European Commission's facilitation efforts that both sides agreed to go to international arbitration. Slovenia lifted its blockade and allowed the accession negotiations to conclude, enabling Croatia to become the 28th EU Member State on 1 July 2013.

When the Arbitration Tribunal delivered its decision in June 2017, Croatia refused to accept it. Slovenia subsequently brought the matter before the European Court of Justice, which decided in 2020 that it had no jurisdiction to rule on it. The Court urged both sides to resolve their differences.

With both countries being within the EU, the danger of any escalation in outstanding differences is greatly minimised. Even so, the precedent of this case underlines the critical importance of finding the right avenue to resolve such disputes before they get out of hand or even derail the accession process.

Croatia-Serbia

One of the more contentious issues in the bilateral relations between Croatia and Serbia is the competing claims regarding the border at several locations along the Danube River valley shared by the two countries. The dispute rests on different bases for determining the actual border, with Serbia using the 1945 Federal Law on Delimitation and the 1946 decision of the Assembly of Vojvodina, and Croatia using cadastral boundaries dating back to the Austro-Hungarian period. The issue is complicated by the fact that the river has changed course in places and meandered somewhat in the intervening period, in addition to a number of hydro-engineering works. The dispute involves between 100 and 140 km² of territory.

The European Commission's 2022 country report for Serbia simply says that '[t]he border demarcation issues are yet to be resolved'¹⁹. Unless this dispute is sorted out to mutual satisfaction, it has all the potential for a repeat of the Slovenia-Croatia scenario.

Croatia-Bosnia and Herzegovina

On paper, the disputes between these two countries would appear to be relatively minor. But like everything else in the Western Balkans, they arouse deep emotions. The first concerns two small outcrops called Mali and Veliki Skolj, as well as the tip of the Klek Peninsula. An agreement was reached between the two countries in 1999, but it was never ratified. The dispute has lost much of its relevance since Croatia completed the Peljeski bridge – a fixed link from Croatia's south-eastern semi-enclave to the rest of the country, bypassing Bosnia and Herzegovina's short coastal strip at Neum.

¹⁹ European Commission, *Serbia 2022 Report*, Commission Staff Working Document, SWD(2022) 338 final (12 October 2022) at 87.

The second relates to a small part of the border near Hrvatska and Bosanska Kostajnica on the Una River, where a small castle, currently in the hands of Croatia, is also claimed by Bosnia and Herzegovina.

Serbia-Bosnia and Herzegovina

As stated in the European Commission's 2022 country report for Serbia, '[t]he border demarcation issue with Bosnia and Herzegovina remains unresolved. The countries also still need to reach agreement on two dams on the Drina River and a part of the Belgrade-Bar railway which crosses into Bosnia and Herzegovina'²⁰.

Serbia claims the territory on which two power plants (Zvornik and Bajna Basta Hydropower) are located, due to the fact that it has built and currently operates them. Bosnia and Herzegovina, on the other hand, claims that the issue of use of the two power plants should be resolved in a separate agreement once the overall border is settled.

The European Commission's 2022 report for Bosnia and Herzegovina refers to the 'lack of concrete steps in tackling outstanding issues, including on borders'²¹. It also mentions the construction by Serbia and the Republika Srpska of three hydroelectric power plants on the upper Drina River, which could give rise to problems down the road as state institutions were bypassed.

Montenegro-Kosovo

A diplomatic agreement on border demarcation between Montenegro and Kosovo was reached in 2015 and ratified by both sides. The dispute involved some 60 km of territory.

Yet, Kosovo's Prime Minister Albin Kurti, who was in opposition at the time the agreement was reached, has threatened not to implement the agreement and called for a new demarcation commission. This has been refused by Montenegro.

Montenegro-Bosnia and Herzegovina

As mentioned in the European Commission's 2022 country report for Montenegro, the border agreed between the two countries has yet to be physically demarcated. Three joint border crossings remain to be set up.

Montenegro-Croatia

Although both countries agreed on a temporary border regime at the Prevlaka peninsula in 2002, it was never finalised, leading them to agree in principle on submitting the issue to the International Court of Justice. However, this has yet to happen. The small peninsula lies in a strategic position at the entrance to the Bay of Kotor.

²⁰ Ibid.

²¹ European Commission, *Bosnia and Herzegovina 2022 Report*, Commission Staff Working Document, SWD(2022) 336 final (12 October 2022) at 69.

The European Commission's 2022 country report for Montenegro states that there had been 'no developments regarding the pending border demarcation between Montenegro and Croatia'²².

Montenegro-Albania

Like the previous two disputes, this one is low-hanging fruit that has so far not been the cause of any tensions between the two countries. The European Commission's 2022 country report merely states that 'maritime delimitation remains an open issue' between the two countries²³.

Albania-Greece

In a similar fashion, the delimitation of the maritime border between the two countries is pending, with both having agreed to refer the matter to the International Court of Justice.

National minorities

In addition to the North Macedonia-Bulgaria dispute over the rights of their respective national minorities, there are several other examples of such disputes in the region that could affect the accession process of the countries concerned.

Bulgaria-Serbia

In the context of ongoing accession negotiations with Serbia, the Bulgarian government has already aired concerns about the rights of the Bulgarian national minority in Serbia²⁴.

Serbia officially recognises the existence of the Bulgarian minority and Bulgarian is the official language in the two main municipalities where ethnic Bulgarians live (Dimitrovgrad and Bosilegrad). Yet judging from Bulgaria's behaviour towards North Macedonia, it is likely that Bulgaria will continue to raise issues relating to language rights as well as history textbooks.

Romania-Serbia

According to the 2011 census, just under 30 000 Romanians live in Serbia, mainly in the Vojvodina area and along the border with Romania. In addition, there are 43 000 who declare their mother tongue to be Vlach, of whom just over 28 000 identify as ethnic Vlach and live chiefly in the Timok Valley in the eastern part of Serbia.

Romania contests this classification, claiming that Vlachs are Romanian. It also claims that Romanians in the Timok Valley do not enjoy state recognition of their religious beliefs and are not entitled to build churches or attend services in Romanian. It points out that the lack of recognition of the Romanian Orthodox Church in Serbia as a traditional church prevents it from obtaining a VAT refund from the Serbian state.

²² Ibid., p. 79.

²³ Ibid., p. 78.

²⁴ According to the 2011 census, there are over 18 000 ethnic Bulgarians living mainly in the southeastern part of Serbia.

The European Commission's 2022 country report on Serbia states that '[a]ccess to religious worship in minority languages has yet to be enabled throughout Serbia'²⁵.

Disputes between Orthodox churches

While most of the disputes involving Orthodox churches in the region have been resolved, one remains outstanding – that between Montenegro and Serbia. Ever since its independence in 2006, there have been divisions and differences of opinion in Montenegro between those who claim allegiance to the Serbian Orthodox Church, which owns considerable real estate and claims authority over almost all of the country's 750 religious sites, and those who follow the much smaller Montenegrin Orthodox Church. The latter does not have autocephalous status.

The mix of religion and politics is toxic at the best of times, and this is no exception. A Fundamental Agreement reached by Montenegrin Prime Minister Dritan Abazović with the Serbian Orthodox Church in August 2022 was seen as too favourable to Serbia, resulting in a vote of no confidence in the government and increasing tensions between the two countries (defined as 'challenging' in the European Commission's 2022 country report)²⁶. Parliamentary elections took place on 11 June with the pro-European Europe Now Movement (PES) winning a majority of the votes.

Croatia-Bosnia and Herzegovina – A complex mix

As early as 2005, 10 years after the signing of the Dayton-Paris Agreement, the International Commission on the Balkans declared that Bosnia and Herzegovina was 'dysfunctional'²⁷. Many of the difficulties the country faces stem from constant infighting between the different entities. We have already referred to Serbia, which, while officially supporting the country's territorial integrity, has not minimised its ties with the Republika Srpska whose population represents approximately 34 % of the country's total).

Meanwhile, Croatia frequently speaks out on issues pertaining to the Bosnian Croat community. Most recently it has done so in the context of electoral law reforms, where the Office of the High Representative has had to resort to its executive powers to enforce reforms related, inter alia, to the financing of political parties. Croatia remains concerned about what it perceives as 'election engineering' to outvote Croats (who make up approximately 15 % of the total population).

²⁵ European Commission, *Serbia 2022 Report*, SWD(2022) 338 final (2022) at 46.

²⁶ *Ibid.*, p. 7.

²⁷ See the International Commission on the Balkans, *The Balkans in Europe's Future*, Report, Sofia (2005), p. 24.



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The core project team also counted on the valuable expertise of **prominent regional researchers**, as well as individual members of the **Think for Europe Network (TEN)**, such as the **European Policy Institute (EPI – Skopje)**, **Institute Alternative (IA – Podgorica)**, and **Foreign Policy Initiative Bosnia and Herzegovina (FPI BH – Sarajevo)**.

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