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## A bridge over troubled borders: Europeanising the Balkans

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### BACKGROUND

The EU-shepherded agreement to start talks between Belgrade and Prishtina is a recent sign that the winds in the Balkans might be starting to blow in a different direction. The past few months have seen gestures of commitment towards regional cooperation and some very first steps to start rethinking the region's recent history.

Some countries (Montenegro, Albania) are awaiting the Commission's opinion on their application to become proper candidates for accession, and the Council has given the green light for a Commission Opinion on Serbia's application. The way ahead for Croatia to close negotiations with the EU is clearer after Slovenian citizens agreed in a referendum that the solution to the bilateral border dispute between Croatia and Slovenia that blocked Zagreb's negotiations for a year should be found through international arbitration.

However, this latter episode illustrated in a nutshell how the accession process can be full of traps which could put a heavy spanner in the whole enlargement strategy. Kosovo, Serbia and Former Yugoslav Republic of Macedonia (FYROM or Macedonia for short) all have outstanding statehood problems, and most countries have unresolved border issues with their neighbours, which are also inextricably tied to minority rights.

#### **Balkan borders and EU accession**

The enduring name dispute over Macedonia, which prevented its joining NATO and opening negotiations with the EU despite being accepted as a candidate in 2005, Kosovo's declaration of independence in 2008, and Croatia's abrupt halt in its accession negotiations all brought to the fore how unresolved statehood and border definition can compromise stability in the region and EU strategies there.

Big or small as these disputes may appear, they pose three-fold challenges. First of all, it is politically unlikely that the EU and its Member States would open their arms to potentially troublesome members. Accepting Cyprus as a Member State before reaching a settlement on the division of the island highlighted not only the EU's inability to put pressure on a country once it becomes a member, but also the spillover consequences on other policy areas, where vetoes can create multiple blockages in the whole EU policy process.

The fact that some of these unresolved issues in the Balkans involve current EU Member States makes the picture far more complex to handle.

The pattern could be repeated once new countries from the region start joining. As things stand today, enlargement to the Western Balkans is likely to take place in stages, with Croatia (and possibly Iceland) leading the way, to be gradually followed by the other countries, as and when they are ready. If these countries have not resolved these border-related problems before starting accession negotiations, any one Member State could block the progress of the new candidate countries, as the cases of Slovenia-Croatia and Macedonia showed.

Finally, past experience has demonstrated that the EU's pre-accession process has not been able to provide solutions to these problems. Indeed, the *acquis* does not entail any competence over border disputes nor over minority rights (also because there is no consensus in the EU on these matters).

While the Stabilisation and Association Process (SAP) includes conditionality on regional cooperation, the accession process is essentially bilateral. This means that the EU has no formal leverage to exercise

pressure on solving the outstanding border issues in the region through accession conditionality. Furthermore, so far EU Member States have been reluctant to put pressure on their partners to find

pragmatic solutions to bilateral problems with third countries. The lack of standards for conditionality implies that a country's progress can be blocked by a single veto.

## STATE OF PLAY

Intractable or minor as they might appear, all the border disputes have roots in the history of the Balkans, from the battles against the expanding Ottoman Empire, through the Balkan wars of 1912-13 and the dissolution of the Ottoman Empire, to the creation and then violent dissolution of the Socialist Federal Republic of Yugoslavia (SFRY). In addition to historical changes to borders, there are other principles that complicate matters. International practice, the accommodation of local populations (which have moved, forcibly or not), and the principle of *uti possidetis et de facto* ('effective possession' which favours recognising the current situation) all come in the way of finding solutions.

In 1991 the Badinter Commission set the standards for the definition of the new republics, and in the 1990s and 2000s a number of bilateral committees were set up to solve outstanding issues. But on the whole there has been close to no progress. Only over the past few months did some committees re-start activities after years of hibernation.

### The troubled borders

Slovenia's blockage of Croatia's accession negotiations throughout 2009 stemmed from the two sides' inability, since 1991, to agree on the land and sea border between the two countries in the Piran Bay, and Slovenia's access to international waters (instead of just the rights of passage guaranteed by international law). Following the June referendum, the matter will be put to international arbitration, but other similar disputes could crop up.

The border issue between Croatia and Serbia is due to natural phenomena: land erosion and floods have shifted the flow of the Danube westwards. The questions regard an area of 14,000 hectares and navigation rights on an economically-strategic river.

The two sides have different approaches on how to solve the problem. From Serbia's point of view the border should follow the main flow of the Danube and international practice. Croatia on the other hand wants to use a law-informed approach based on the land registry originating in Austrian-Hungarian rule and its claims that in 1947 the SFRY recognised this territory as part of Croatia (although Serbia disputes this). The fact that part of the disputed lands is registered in the cadastral records of both

countries makes the situation even more problematic. If this issue were solved following Croatian arguments, management of river navigation would become extremely complicated and both sides would control enclaves on the other side of the river.

Croatia and Bosnia and Herzegovina also share some contested issues. The 1999 treaty on the border between the two countries was questioned by both sides soon after it was signed. Both are dissatisfied with the maritime border drawn between the Croatian Peljesac peninsula and the Klek peninsula on the Bosnian side, which allocates the islands close to Klek to Bosnia-Herzegovina and is part of its narrow access to the sea.

The contested issue is that the border was defined on the basis of the 1991 *status quo*, while historically part of the Klek peninsula belonged to Dubrovnik, Croatia's most southern territory. Indeed Zagreb has toyed with plans to build a bridge to physically connect Dubrovnik County to the rest of Croatia. Problematic are also the border on the Una river near Kostajnica, the border near Zeljave (Bihac), and one near Martin Brod. The Una River and villages at Mount Pljesevica are divided and spread on both territories, and Republika Srpska holds claims over an island in the Una River.

### Villages divided

Serbia too has a territorial dispute with Bosnia-Herzegovina that has remained unresolved since the times of Yugoslavia. The River Lim runs through three Balkan states ignoring their boundaries. As a tributary of the Drina River, it comes from Montenegro, runs through the northern part of Sandzak and enters Bosnia, but only for a few kilometres. After that it flows back to Serbia and again to Bosnia, leaving several small villages physically out of Serbia's territory.

One example is the village of Sastavci with its 1,400 inhabitants. Reaching Sastavci is an adventure entailing the crossing of four borders. It is a Bosnian island surrounded by Serbia and under Serbian administration. That means that all the buildings and institutions belong to the Serbian municipality of Priboj, but the cadastral records are in the municipality Rudo in Republika Srpska. The police of the Republic of Serbia are the first ones to be

on the spot in case of trouble but the Bosnian police have the authority.

In the village two brothers live in two houses on the same land, but with identity cards from two different countries. Two hydro-electric plants are also divided by the border, but there is disagreement over the use of these plants and Bosnia-Herzegovina believes it has the right to use part of the capacity. After four years of deadlock, the diplomatic commission for state borders between the two countries resumed negotiations last May. Serbia has proposed a land exchange but no agreement has been reached.

Kosovo's declaration of independence from Serbia in 2008 is one of the better-known issues in the region and for this reason will not be discussed in detail here: suffice to say that the absence of adequate international recognition of Kosovo's statehood creates many issues that need to be addressed in the framework of the bilateral talks between Belgrade and Prishtina. The talks' agenda has not been set yet, but is likely to include the Albanian-majority municipalities of Presevo and Bujanovac in Southern Serbia, the Serbian majority area of North Kosovo, the Serbian enclaves in Southern Kosovo, and the status of the Orthodox Church and its monasteries in Kosovo.

Among the spillover consequences of the lack of a solution between Belgrade and Prishtina on the statehood problem is the border between Serbia/Kosovo

and Macedonia. First agreed upon after negotiations between Skopje and Belgrade in 2001, it was then renegotiated in 2009 by Prishtina and Skopje for the part concerning Kosovo/Macedonia. Belgrade, however, considers the agreement illegitimate.

Montenegro too has some unfinished business with Serbia, with Croatia over the Prevlaka peninsula (where the two sides have agreed to refer to the International Court of Justice), and with Kosovo, none of which constitute politically contentious issues.

### **The troubled name**

The impossibility of finding a common narrative on the history of the region of Macedonia has continued to challenge Skopje's progress towards EU and NATO membership. Its current borders were drawn out of the Balkan Wars of 1912-13 which divided the region of Macedonia in three parts: current FYROM, much of Northern Greece, and the Pirin region in Bulgaria.

Disagreements between Skopje and Athens over who the Macedonians are (heirs of a non-Greek Alexander the Great, as many in Macedonia claim, Hellenes, as many in Greece claim, or Bulgarian Slavs?) have so far been translated into a Greek veto to the country's accession to NATO and the EU. This is on the grounds that the name 'Macedonia' belongs to the Greek region in which Alexander the Great was born.

## **PROSPECTS**

Borders are complex matters: defining them risks dividing societies, whereas what is needed above all in the Balkans is to bring societies together and reconcile peoples. The EU is a Union of states, which presupposes agreement on its Member States' borders, but it is also a project that aims to reduce the political, economic and social obstacles that borders can present.

In the Balkans they are a historical legacy of empire and war, making it impossible to define 'right' and 'wrong' solutions, just as it is impossible to identify where Europe might end on cultural, geographic or ethnic grounds. But the potential impact of the lack of border definition on the politics of the region and on the enlargement prospect is huge. Settling this unfinished business is a practical precondition to move towards a context of integration in which borders have less political resonance.

The EU would do well to seize the tide of increased cooperation in the region to promote a process that could create a positive context for the resolution of border disputes. The moment is ripe. Zagreb and

Belgrade have started talking about issues related to refugees and missing persons, and both sides are considering dropping their lawsuits against each other for genocide. The presidents of both countries are taking the lead in what could become a process of *rapprochement*, and are beginning to work with each other on practical issues, such as the fight against organised crime. Regional cooperation is moving ahead. Talks between Belgrade and Prishtina are envisaged to start in the near future.

### **Lessons from the past**

There is one past initiative from which some lessons could be drawn. In the first half of the 1990s, one of the EU's first 'joint actions' of the newly created Common Foreign and Security Policy, was the Stability Pact for Central and Eastern Europe. Originally a controversial idea driven by the preoccupation that minority issues could cause conflict in Central Europe, the process led to the signing of a multitude of bilateral and trilateral treaties, conventions and agreements between the countries of Central and Eastern Europe settling

open border questions, framing rights-based solutions for minority protection, and setting the conditions for good neighbourly relations.

By 1997 many of the potentially destabilising and undemocratic problems relating to minorities, borders and relations between the countries wanting to join the EU were, in principle, settled on the basis of Council of Europe and European standards. This took place before the front runners to accession opened negotiations with the EU. Although minority issues did emerge during the accession process (most notably the Russian-speaking minorities in the Baltic states), these did not involve disputes between neighbouring countries in the enlargement queue.

### **Build better borders to make them less meaningful**

The EU could promote a region-wide process modelled on the Stability Pact for Central and Eastern Europe. Such an initiative would need to be coordinated with other international actors such as the United Nations, the USA and Russia, which are still involved in many of these issues. But it is to the EU that the international community in general looks to promote future stability and prosperity for the region: being surrounded by EU Member States, the Balkans are effectively in the EU's own locality.

It would be unrealistic to expect such initiatives to provide a blueprint for solutions to the most controversial bilateral cases, but it would create a context most favourable to dialogue. A number of principles should inform this.

First of all, it should be an EU foreign policy initiative, decoupled from the accession and pre-accession process, given that the enlargement strategy does not have the legal and political tools to deal effectively with these issues. The High Representative's role in persuading Belgrade and Prishtina to agree to bilateral talks can be included among her successes: Catherine Ashton could build upon this leverage to make such regional initiative the first big challenge of the nascent European External Action Service.

It should also involve the relevant organisations present in the Balkans, such as the Organisation

for Security and Cooperation in Europe (OSCE), the Council of Europe and the Regional Cooperation Council (RCC), all of which have the expertise and the legal authority to address the complexities tied to unresolved border problems. Most importantly, the Council of Europe upholds the most appropriate principles and standards regarding democracy and minority protection that the EU cannot provide.

The EU can give the political drive and leverage, even if this is technically untied from accession conditionality. But ownership should fall in the Balkans, building upon the positive steps made during 2010: regional cooperation requires commitment on part of the governments supposed to carry it out.

If they are to be stable, maps cannot be drawn at the table. Minority rights need to be included and addressed through creative and democratic institutional and administrative solutions especially in frontier and multi-ethnic areas.

One way of approaching this potentially explosive issue is to involve civil society and local institutions. Grassroots and local initiatives need far more support and visibility in the EU and in the Balkans. Cross-border cooperation, initiatives aiming at reconciling citizens across different countries, property restitution projects, developing social networks, are all much needed bottom-up approaches to support people in climbing out of the dark hole of ethno-nationalism.

The Balkans have always been a crossroads of languages, religions and ethnicities. War has forced the fixing of borders at the expense of more open frontiers and exchanges. EU integration offers the opportunity to de-emphasise the importance of borders, but historically it has been able to do so only where borders were clearly delineated and uncontested. If settling borders is a way to make Europe less divided, it is worth investing in.

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*The issues raised in this paper are discussed in the EPC's Balkans Forum.*

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