

[Denisa Kostovicova](#)

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10. Civil society and reconciliation in the Western Balkans: great expectations?

Denisa Kostovicova

Introduction

The perspective of European membership for the countries of the Western Balkans was envisaged by the EU as an incentive for reconciliation in the region. Transitional justice, denoting the response of states and societies to the legacy of war crimes, provides an insight into the nature of political transformation in a post-conflict context. Ten years after the Thessaloniki Declaration, however, a paradox is evident. Approximation of Western Balkan states to the EU through deepening of contractual relations has not been accompanied by reconciliation among states and societies in the region.

In the decade that has passed since Thessaloniki, the question of accountability for war crimes has featured prominently in the public debate. This debate has taken place both within and between Western Balkan states owing to civil society groups that have spearheaded societal reconciliation efforts. Their advocacy has paved the way for official initiatives aimed at addressing war crimes, such as apologies by some countries' leaders. Nonetheless, accountability for mass atrocities remains one of the most fiercely contested issues, nationally and regionally.

There is no consensus on the causes and nature of the violence committed on the territory of the former Yugoslavia, or on the appropriate redress for past wrongs. Consequently, all ethnic groups tend to see themselves primarily as victims and not as perpetrators, while war crimes continue to be politicised and instrumentalised. Since the cessation of hostilities these attitudes have been perpetuated by the unintended effects of various international and domestic transitional justice mechanisms, rather than by the absence of such mechanisms. These include both retributive justice, which is focused on trials and punishment of perpetrators, as well as restorative justice, which encompasses non-

judicial victim-centred mechanisms, such as truth commissions, lustration, apologies and compensations, while aiming to restore social relations.

Post-conflict reconciliation in the Western Balkans remains an aspiration that is key for meaningful democratisation and Europeanisation. Adopting a bottom-up perspective, this chapter assesses civil society's role in advancing transitional justice in the region in the ten years that have passed since the Thessaloniki Declaration. It considers the EU's belated support to civil society's reconciliation efforts, as well as civil society's contribution to transitional justice alongside internal constraints on its ability to promote accountability for the crimes and abuse committed in the past.

BACKGROUND

The decade since the Thessaloniki Declaration has been marked by the EU's increasing focus on civil society in the Western Balkans. This trend has been reflected in the EU's strategic approach to the Stabilisation and Association Process (SAP), the policy framework for the EU's pre-accession engagement with the region, and in its financial instruments supporting the SAP goals. The EU's aim to address 'weak civil society', noted at the beginning of the SAP, was driven by anticipated dividends for democratisation, Europeanisation and reconciliation.

The EU's initial approach, through the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme, the EU's financial instrument for the Western Balkans from 2002 to 2006, was that of enabling civil society through strengthening its capacities, rather than positioning it as a partner in the mutual project of approximation to the EU. Accordingly, civil society received a fraction of the total assistance allocation, which was spread thinly over competing priorities. With some variation across different states, the necessity of tackling direct consequences of conflict, such as refugee integration, was balanced with projects aimed at supporting democratisation and approximation.

The change from the CARDS to the Instrument for Pre-accession Assistance (IPA), which has channeled EU financial assistance to the SAP since 2007, signalled the EU's changed understanding of the role of civil society in facilitating comprehensive transformation en route to the EU.

The 2007 Enlargement Strategy recognised the continued weakness of civil society in the countries of the region, making its development a policy priority in its own right. Civil society was accordingly repositioned as a partner in delivering policy goals of de-

mocratisation, as an agent in cross-border collaboration and dialogue, and as a mediator bringing the EU project closer to the people. This approach was reflected in the increased allocation for civil society development under the IPA as compared to the CARDS. The establishment of the Civil Society Facility (CSF) in 2008, under the IPA, further streamlined funding for civil society development, specifically focusing on three strands: capacity-building, direct exposure of civil society to EU institutions through ‘People 2 People’ programmes, and development of civil society networks. Also, the EU-funded project Technical Assistance for Civil Society Organisations (TACSO) was set up, targeting the deficient capacity of civil society organisations in order to better enable them to participate in political processes.

Nonetheless, the shift in the EU’s policy emphasis on civil society did not manage to resolve the tension between civil society development as an end in itself as opposed to civil society development as a means of approximation to the EU. The tension was ultimately resolved in favour of the latter, with civil society development guided by immediate priorities of European integration. Such resolution has a practical and operational rationale. The SAP, with its comprehensive reformist political and economic agenda, has served as the anchor of reforms enacted in the Western Balkan states. However, it also reflects the EU’s prioritisation of *member state-building*, which was applied to Central and East European candidates, as opposed to *post-conflict state-building*, which would entail a much broader reconstruction agenda for states and societies emerging from war.

The resulting weaknesses of the narrowly-focused EU member-state building approach are illustrated by the EU’s belated support to civil society. The EU’s delay in reaching out to civil society in the Western Balkans was particularly evident in the case of civil society initiatives aimed at furthering transitional justice and reconciliation. According to the EU’s logic, reconciliation would occur alongside the transformation of the Western Balkan countries as they moved towards EU membership, but the flaw in this logic was revealed by the persistent reluctance of the states and societies to confront their own nation’s role in the conflicts.

STATE OF PLAY

Civil society’s contribution to reconciliation in the Western Balkans exemplifies the ambiguous impact that the non-state sector has had on broader transitional processes, such as democratisation and Europeanisation, in the region. Civil society has been pivotal in putting the issues of the past mass atrocities and human rights violations on the

political agenda. Yet, at the same time, limited post-conflict reconciliation can also be understood in terms of the weaknesses of civil society itself.

Progress: civil society's contribution to post-conflict reconciliation

Since the opening up of the European perspective, civil society in the region has played several important roles. It has sought to promote public discussion of the accountability for war crimes, influenced policy, and became an agent of transitional justice in its own right, both implicitly and explicitly.

In its deliberative role, civil society throughout the region ought to be credited with putting the issue of accountability for war crimes on the political agenda in the Western Balkans states where continuity between wartime and post-war authorities was conducive to the 'let's forget and move on' approach. Furthermore, the states and societies overwhelmingly used international criminal prosecutions to reassert their own sense of victimisation rather than accept culpability in conflicts where victims belonged to all ethnic groups. While exposing the responsibility of their own nations in the mass atrocities, civil society groups were critical in delegitimising collective assumptions about victimhood that stood in the way of facing up to war crimes. However, deliberation and discussion have not produced a consensus on how to address the legacy of mass atrocities. Civil society in the Western Balkans has emerged as a vibrant space of dialogue and disagreement on a range of issues, such as the appropriateness of retributive vs. restorative transitional justice mechanisms or whether national transitional justice initiatives should precede regional ones.

In terms of influence on policy, civil society has simultaneously played an important role in compensating for state weakness. In the past decade, a growing number of domestic prosecutions, including the transfer of cases from the International Criminal Tribunal for the former Yugoslavia (ICTY) in line with the ICTY's planned closure, was accompanied by a number of challenges: politicisation and political interference, selectivity based on the ethnicity of those indicted, alongside capacity-related problems, resulting in the slow processing of cases and the build-up of a backlog of cases, as well as an inadequate framework for witness protection. Accordingly, civil society has stepped in where the institutional capacity of states was lacking while continuing to perform a watchdog function in relation to policies awarding impunity, avoiding accountability and marginalising the victims of mass atrocities.

Lastly, civil society in the region has become an agent in transitional justice and reconciliation in its own right, implicitly and explicitly. In the post-conflict context characterised

by fractured inter-ethnic relations, it became a bridge for establishing old and forging new contacts across the ethnic divide, whether inside countries or between countries. Particularly important in this respect have been civil society organisations working with young people, such as the Youth Initiative for Human Rights. Similarly, the emergence of regional civil society networks, like the Regional Women’s Lobby for Peace, Security and Justice in Southeastern Europe (RWL SEE), that cross national boundaries have – irrespective of their specific mandates and activities – been significant for the creation of a transnational social capital, as an aspect of reconciliation.

In summary, civil society has ensured that the question of accountability for war crimes and mass human rights violations was put – and has remained – on the political agenda in the region. It has played an essential role in compensating for weak state capacity in the pursuit of post-conflict justice. Lastly, civil society has provided an alternative way of addressing past culpability. It emerged as a local response to the war crimes legacy as opposed to internationally-driven ones and as an answer to weaknesses of the top-down trial-oriented mechanisms of transitional justice, and as a transnational instrument overcoming the limitations of nationally-defined approaches.

Challenges: constraints on civil society’s contribution to post-conflict reconciliation

Elusive reconciliation in the Western Balkans is also related to civil society’s weakness in terms of its own capacity, its relationship *vis-à-vis* the state and external donors, and its coherence as an actor. Furthermore, the impact of liberal civil society ought to be viewed in relation to illiberal political agendas of non-state actors and their activism.

The emergence of prominent NGOs throughout the region, such as Documenta – Centre for Dealing with the Past in Croatia, as torchbearers of activism in the area of transitional justice and reconciliation, is actually, paradoxically though it may seem, an indicator of the weakness of the sector. An increase in registered civil society organisations in the Western Balkans, including those whose remit is directly related to advancing transitional justice, gives a misleading picture of civil society capacity. Not only are many organisations inactive, but also their weak capacity limits their impact. The latter is related to their lack of fundraising ability and expertise on complex policy issues, such as those related to criminal prosecutions, for example. However, even the most capable and active civil society organisations have been constrained to various degrees by the legal framework set out by Western Balkan states.

Furthermore, civil society's lack of financial autonomy in a context where a state-society consensus on accounting for past crimes is lacking has shaped the activism of civil society organisations and affected how their activism resonates with broader society. On the one hand, those NGOs which depend solely on the state, have in a number of cases become agents of the state's rather than their own agendas. For example, some victims' associations have ended up overlooking victims' interests. On the other, those NGOs who turned to external sources of funding were open to criticism of not only rent-seeking on the back of war crimes, but also of furthering agendas that were not seen to be 'authentic'. Such public perceptions affected their standing as a legitimate actor in a policy dialogue with the state.

Despite efforts to bridge ethnic divisions, civil society in the Western Balkans is, by and large, a fragmented sphere, characterised both by ethnic segmentation and by prioritising national over transnational modes of activism. Therefore, the relative vibrancy of civil society activism as evidence of democratisation is offset by its ethnic nature. At the same time, many smaller grassroots projects, which question the mono-ethnic orthodoxy, such as the work of Future without Fear in Kosovo and the Macedonian Women's Lobby, are often ignored by the media. A lack of opportunity for wider dissemination of cross-ethnic initiatives is another illustration of the contested, competitive and fragmented nature of civil society. Lastly, the national states have remained the primary framework for civil society activism, while a regional civil society initiative such as the Coalition for the Regional Commission for Establishing the Facts about War Crimes and other Serious Human Rights Violations in former Yugoslavia (RECOM) is an exception. The necessity of a regional approach to the transnational character of the Balkan wars is obvious given that perpetrators and victims often belonged to different states.

Lastly, a range of civil society organisations and movements in the region, such as the Dveri Movement in Serbia, have emerged as purveyors of an exclusive ethnic nationalism, combined with an anti-EU message. By and large, they are run by and attract the youth cohort. 'New media savvy', they repudiate their nation's culpability with regard to war crimes and thus dismiss the criminal legacy of the past. Such public narratives that reject the criminal legacy and, with it, the notion of reconciliation, and that emanate from civil society, represent an additional constraint on the liberally-minded civil society groups. Thus, civil society and its contribution to justice and reconciliation cannot be assessed separately from the broader environment in which it operates. It has faced an 'illiberal alliance' where segments of illiberal civil society have reinforced the reluctance or resistance at the state level to address the issue of culpability.

PROSPECTS

Direct engagement with and support of civil society organisations in the field of transitional justice and reconciliation in the Western Balkans has signalled a long-needed change in the EU's policies. This suggests that the EU is beginning to accept civil society as a transitional justice actor in its own right. It also indicates that the EU may have come to appreciate the relevance of restorative mechanisms of transitional justice, which prioritise reconciliation and recognition of victims, as opposed to retributive judicial mechanisms, that have been criticised for their top-down and technocratic approach to post-conflict justice. Ten years after Thessaloniki, the debate about war crimes initially prompted by the ICTY, has been internalised in the Western Balkans, albeit without any consensus on either the cause(s), nature and consequences of violence, or the redress for past wrongs, within nations or regionally.

Spurred by the EU's recent policy approach, progress in cooperation between states and civil societies in the Western Balkans has advanced in many policy areas, but not in those that deal with the legacy of mass atrocities. Policies that lead to the recognition of the victims, whether related to war crimes trials, social policy such as welfare benefits, or even the issue of the missing, may be considered as an area where collaboration between the state and civil society should be actively promoted.

Furthermore, the EU needs to focus on fostering a transnational dialogue in the divided region through civil society support. This could be a strategy to ameliorate the structural weakness of civil society, i.e. its internal capacity, but also address exclusive ethnic viewpoints originating in the non-state sphere and fuelled by ethnic fragmentation. Therefore, reconciliation, in terms of creating opportunities for debate, for example through work on school textbooks and student exchanges, might be considered.

The EU's origins are historically tied to the idea of peace through integration. The European project in the Western Balkans is also a response to the violence that accompanied the dissolution of the former Yugoslavia and a deterrence strategy against its future recurrence. Rather than sidelining the dimension of post-conflict state-building in favour of member state-building, the EU might consider how a more comprehensive support of reconciliation processes may advance approximation to the EU. The strengthening of civil society to deal with past atrocities is an investment in reconciliation, and, thus in the Europeanisation of the Western Balkans.

