

The EU and transitional justice in the Western Balkans

The need for an alternative approach

MA Thesis International Relations in Historical Perspective

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Table of contents

PREFACE AND ACKNOWLEDGEMENT	
INTRODUCTION	3
CHAPTER 1: THE EU AND TRANSITIONAL JUSTICE	10
1.1 EU POLICY ON TRANSITIONAL JUSTICE	11
1.2 EU ENLARGEMENT AND TRANSITIONAL JUSTICE	13
1.3 CRITICISING EU TRANSITIONAL JUSTICE POLICY	14
CHAPTER 2: THE EU AND CIVIL SOCIETY	18
2.1 EU POLICY ON CIVIL SOCIETY	19
2.2 CRITICISING EU POLICY ON CIVIL SOCIETY	21
CHAPTER 3: CIVIL SOCIETY AND TRANSITIONAL JUSTICE	27
3.1 CIVIL SOCIETY	27
3.2 TROUBLED PAST	28
3.3 CIVIL SOCIETY AND UNCOVERING THE PAST	30
3.4 CIVIC PARTICIPATION AND BOTTOM-UP APPROACH	31
CHAPTER 4: CHANGING EU POLICIES ON TRANSITIONAL JUSTICE	38
4.1 TRANSITIONAL JUSTICE AND THE POLICY OF CONDITIONALITY	39
4.2 PRESSURE GOVERNMENTS	42
4.3 ENGAGING CIVIL SOCIETY	44
CONCLUSION	51
BIBLIOGRAPHY	53

Preface and acknowledgement

The creation of this MA thesis did not begin at the beginning of this semester but rather, during my internship at PAX last semester. Here I developed an interest in the Western Balkans, studied its recent history, and became aware of the complex problems entangling the region. I did extensive research on inclusive remembrance in the Western Balkans, for which I interviewed more than two dozen members of civil society organisations operating in the region. My internship supervisors, Dion van den Berg and Inge Baanders, guided in my process, and offered a unique insight into how PAX works together with local partners to assist transitional justice initiatives in the countries of former Yugoslavia. I am still deeply grateful for the opportunities they offered. It was quite obvious to continue on the themes of transitional justice and the Western Balkans in my MA thesis; there was so much more to explore and research. After almost four months, this has resulted in the work that is before you.

This thesis would not have been possible without the supervision of dr. David Snyder. He has given extensive feedback and guidance throughout the writing process. For this, I want to thank him. Furthermore, I am grateful for all the insights provided via the interviews I have conducted for my research at PAX. Additionally, I want to thank Puck le Roy, who has answered my questions regarding the EU policy and transitional justice in the Western Balkans. My thanks also goes out to Guy Bergmans and Emily Queiroz, whose revisions aided in fine-crafting this thesis. Last but not least, I want to thank Sarah, who is not only a loving girlfriend, but who was also always prepared to discuss my thesis and critically reflect on my work.

Timo Quint

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Introduction

During an interview, Nataša Kandić, founder of Humanitarian Law Centre Serbia, expressed her dissatisfaction with EU policy on transitional justice in the Western Balkans¹:

Now we are trying to warn the European Union that the Western Balkans and post-Yugoslav countries are post-conflict societies, and that they need concrete support in the area of transitional justice. The European Union should use the policy of conditionality to link European integration and transitional justice activities [...] we are trying to convince the European Union with arguments that they should try to convince leaders from the Western Balkans to show dedication to reconciliation.²

The European Union has been heavily involved in the reconstruction of the Western Balkans after violent wars ravaged the region in the 1990s. The Yugoslav Wars were the most violent conflicts in Europe since the end of the Second World War. Most countries of the former Yugoslavia are still suffering from this violent past. Nationalism and ethnic tensions continue to plague the societies in the region.³ This is a dangerous cocktail in a region that has witnessed many violent outbreaks in the last two centuries. A stable and peaceful Balkan region is in the interest of the European Union. Thus, the EU aims to integrate the region in its European institutions. However, as the above anecdote states, local civil society organisations express their dissatisfaction when it comes to EU policy on transitional justice. This leads to the question whether this critique is justified, and if so, how the EU can improve its efforts to assist the transitional justice process in the Western Balkans.

¹ Timo Quint, "Remembering the Yugoslav Wars: Towards an Inclusive Approach," *PAX* (unpublished, 2017).

² Nataša Kandić (HLC), interviewed by author, Skype interview, Utrecht, May 2, 2017.

³ Martina Fischer and Ljubinka Petrović-Ziemer, "Dealing with the Past in the Western Balkans: Initiatives for Peacebuilding and Transitional Justice in Bosnia-Herzegovina, Serbia and Croatia," *Berghof Report* 18 (2013), 2-3.

Transitional justice is defined by the UN as 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'.⁴ Criminal prosecution is one element of transitional justice, and aims to penalise those responsible for war crimes and other atrocities. The European Union acknowledges the need to deal with the large-scale atrocities of the Yugoslav Wars in order to attain stability, democracy and prospect of integration for the Western Balkans. Therefore, the EU incorporated some transitional justice mechanisms in its enlargement strategy vis-à-vis the Western Balkans. In the Stabilization and Association Process (SAP), which defines the framework of the accession process of South East Europe, the EU demands full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), the return of refugees and internally displaced persons, respect for minorities and human rights, and a commitment to regional cooperation.

In the last few decades, criminal prosecution through the ICTY has dominated the EU's political relations with the countries of former Yugoslavia. It was one of the most problematic issues in the negotiating process as established in the SAP.⁵ However, criminal justice is just one element of transitional justice, and the EU's reliance on (international) retributive justice could be insufficient in overcoming the issues of the past. This paper aims to examine how the EU can assist the transitional justice process in the Western Balkans more holistically, and with respect for bottom-up dynamics and practices. The Western Balkans continue to be strained by ethnic tensions, war traumas, and the political elites that adhere to ethnonationalist myths and propaganda. Hence, the EU might need to reconsider its strategies and policies regarding transitional justice. Transitional justice encompasses much more than merely penalising major

⁴ Peter Malcontent (ed.), *Facing the past: Amending historical injustices through instruments of transitional justice*, (Antwerp: Intersentia, 2016), 7.

⁵ Javor Rangelov, "EU conditionality and transitional justice in the former Yugoslavia," *Croatian Yearbook of European Law and Policy*, 2 (2006): 2, 365-375, 366.

war criminals through international courts. It also involves long-term and constructive engagement with people's pain related to history and memory, which continue to shape and guide individuals and societies. Literature on peace-building stresses the importance of this process in order to counter the manipulation of history and memory for violent purposes.⁶ Thus, activities such as fact-finding, documentation, education and remembrance are important mechanisms in addressing the legacy of conflict.

Several civil society organisations (CSOs) operating in the Western Balkans are among the few actors that dedicate their time and energy on these aforementioned issues. These include professional human rights NGOs, as well as smaller civic associations, youth centres and art collectives. The approach of these organisations to the subject of transitional justice might differ, but they are united in their aims to counter ethno nationalist narratives, add understanding for suffering of "the other", and improve inter-ethnic relations. This paper examines current EU policies on transitional justice and civil society in the Western Balkans. Furthermore, it discusses the work, needs and challenges of civil society organisations dealing with issues of history and memory. These topics shall be covered in the first three chapters. These examinations, based upon academic literature and personal interviews, will lead to a final chapter which recommends how the EU should increase its engagement with local civil society, and support its alternative approaches to transitional justice.

Scholars and policy-analysts have frequently argued that the past needs to be reckoned with in order for the Western Balkans to successfully integrate into the EU.⁷ This includes far

⁶ Ivana Franović, "Dealing with the past in the context of ethnonationalism: The case of Bosnia-Herzegovina, Croatia and Serbia," *Berghof Occasional Paper* 29 (2008), 27.

⁷ For example, see: Corina Stratulat, "EU enlargement to the Balkans: shaken, not stirred." (last modified November 4, 2013), http://www.epc.eu/documents/uploads/pub_3892_eu_enlargement_to_the_balkans_-_shaken,_not_stirred.pdf (accessed on November 22, 2017); Joanna Hanson, "A Practitioner's Perspective: Post-Conflict Civil Society Development in the Balkans," in *Civil Society and Transitions in the Western Balkans*, ed. Vesna Bojicic-Dzelilovic, James Ker-Lindsay, and Denisa Kostovicova (London: Palgrave Macmillan, 2013), 170-174; Stefanie Kappler and Oliver Richmond, "Peacebuilding and culture in Bosnia and Herzegovina: Resistance or emancipation?," *Security Dialogue*, 42 (2011): 3, 261-278.

broader transitional justice mechanisms than an international court of justice, which is the current situation. Although the work of the ICTY has certainly been important in convicting high-class war criminals, it has received much criticism on its ability to reconcile former warring nations and individuals.⁸ The legacies of the conflict continue to shape people's worldviews and actions. Therefore, alternative approaches to transitional justice should be considered in order to change people's attitude towards the past. Scholarship concerned with politics of memory addresses these issues involving history and memory in post-conflict societies. Countries in Latin America, for example, continue to struggle with the legacies of former authoritarian governments. The democratisation process in such countries goes hand in hand with a deepening of understanding what happened during the autocratic regimes, and calls for historical contextualisation and meaning.⁹ Furthermore, the need to know what happened, and why it has happened also exists in other post-conflict settings. In the Western Balkans, CSOs operating in the field of transitional justice are one of the few actors concerned with investigating, explaining and remembering past crimes and injustices without befalling into ethnonational interpretations. Thus, alternative approaches to transitional justice should include extensive engagements with local CSOs operating in the region. Many scholars criticise the EU's overtly top-down strategy towards the region, despite the EU regarding civil society, like NGOs and civic associations, as a key stakeholder in the democratisation process of the Western Balkans.¹⁰ The EU seems reluctant to address the difficult issues related to the Yugoslav

⁸ Alex Jeffrey, "The political geographies of transitional justice," *Transactions of the Institute of British Geographers*, 36 (2011): 3, 344-359; Izabela Steflja, "Identity crisis in post-conflict societies: the ICTY's role in defensive nationalism among the Serbs," *Global change, peace & security*, 22 (2010): 2, 231-248; Arnaud Kurze, "# WarCrimes# PostConflictJustice# Balkans: Youth, Performance Activism and the Politics of Memory," *International Journal of Transitional Justice*, 10 (2016): 3, 451-470.

⁹ Louis Bickford, "Human rights archives and research on historical memory: Argentina, Chile, and Uruguay," *Latin American Research Review*, 35 (2000): 2, 160-182.

¹⁰ See: John O'Brennan, "The European Commission, Enlargement Policy and Civil Society in the Western Balkans," in *Civil Society and Transitions in the Western Balkans*, ed. Vesna Bojicic-Dzelilovic, James Ker-Lindsay, and Denisa Kostovicova (London: Palgrave Macmillan, 2013); Adam Fagan, "Civil Society and 'Good Governance' in Bosnia-Herzegovina and Serbia: An Assessment of EU Assistance and Intervention," in *Civil Society and Transitions in the Western Balkans*, ed. Vesna Bojicic-Dzelilovic, James Ker-Lindsay, and Denisa Kostovicova (London: Palgrave Macmillan, 2013); Roberto Belloni, "European integration and the Western Balkans: lessons, prospects and obstacles," *Journal of Balkan and Near Eastern Studies* 11 (2009): 3, 313-331.

conflicts, and prefers engaging with CSOs whose work is more in line with the needs of the European Union. CSOs that engage with sensitive topics related to transitional justice seem to be neglected. Few authors have written on the EU's strategy towards CSOs in the context of transitional justice in the Western Balkans. This paper aspires to add additional insights to the academic understanding by researching the bottom-up transitional justice process, and examine how and to what extent the EU can aid the transitional justice process in the Western Balkans with respect for bottom-up dynamics and practices.

For the stability and security of the Western Balkans, the demand that the EU reconsider its approach to transnational justice is urgent. Tensions in the Western Balkans are rising as the result of nationalist rhetoric propagated by political parties, which are further stimulated by increased Turkish and Russian influence in the region.¹¹ So far, the EU hopes to transform Balkan societies through integration in EU structures, and implementation of liberal and democratic reforms. This process of "Europeanisation" would result in the gradual transformation from post-conflict and post-socialist states into democratic societies.¹² Unfortunately, this process does not tackle the underlying dynamics of ethnonational politics, the corruption and nepotism that characterise most countries in the Western Balkans. As Burnell argues, democratisation and liberalisation efforts in post-conflict areas can often strengthen elites that profited from the war economy and consolidate their political power.¹³ It is not the aim of this paper to delve deeply into the socio-economic consequences of the Yugoslav Wars, but it is important for European policymakers and state-leaders to acknowledge the fact that the Western Balkans are still post-conflict societies. This means that democratisation efforts will

¹¹ Walter Mayr and Jan Puhl, "Tensions Rising in Balkans as Hopes for EU Future Fade." *Der Spiegel* (last modified June 27, 2017), <http://www.spiegel.de/international/europe/tensions-in-the-balkans-rising-as-promise-of-eu-future-fades-a-1154499.html> (accessed on November 22, 2017).

¹² Soeren Keil, "Europeanization, state-building and democratization in the Western Balkans," *Nationalities Papers* 41 (2013): 3, 343-353, 345.

¹³ Denisa Kostovicova and Vesna Bojicic-Dzelilovic, "Introduction: Civil Society and Multiple Transitions-Meanings, Actors and Effects," in *Civil Society and Transitions in the Western Balkans*, ed. Vesna Bojicic-Dzelilovic, James Ker-Lindsay, and Denisa Kostovicova (London: Palgrave Macmillan, 2013), 14.

probably not succeed unless the roots of conflict are addressed. It requires a transitional justice approach which does not limit itself to top-down interventions, such as the ICTY trials. In this regard, transitional justice should be understood in holistic terms and with respect for bottom-up practices and dynamics. European guidance in the area of transitional justice might be needed in order to properly address the legacy of the past. Pleas made by local human rights activists, like Nataša Kandić, restate this need for European support in the area of transitional justice. Without proper and sufficient attention to the historical causes of the present political and socio-economic problems in the Western Balkans, it is unlikely the region will smoothly integrate into the Union.

Chapter 1: The EU and transitional justice

Transitional justice is a relatively new field of academic inquiry and judicial and political practice that aims to address systemic and widespread human rights violations. It emerged in the 1980s and 1990s in order to address the crimes of former authoritarian governments in Latin America, Central and Eastern Europe, and South Africa.¹⁴ Nowadays, transitional justice not only deals with crimes of authoritarian governments, but with all questions of how to address historical crimes and injustices. The UN defines transitional justice as 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'.¹⁵ "Dealing with the past" is another term referred to by scholars and practitioners in peace work and post-conflict reconstruction.¹⁶ Members of CSOs in the Western Balkans often use this term to refer to the same process of addressing large-scale injustices in the past.¹⁷ Thus, this paper will use the terms transitional justice and "dealing with the past" in different contexts.

Transitional justice mechanisms can broadly be placed into two categories: judicial and non-judicial. Judicial practices focus on trials – international, national or through specialist courts – while non-judicial practices encompass truth-commissions, reparations, documentation, education, vetting and lustration procedures, memorialisation and reconciliation commissions. These non-judicial practices have received more and more scholarly attention in the last decade¹⁸ Thus, transitional justice covers a far broader spectrum

¹⁴ Katy A. Crossley-Frolick, "The European Union and transitional justice: Human rights and post-conflict reconciliation in Europe and beyond," *Contemporary readings in law and social justice* 3 (2011): 1, 33-57, 33.

¹⁵ Malcontent, *Facing the past*, 7.

¹⁶ Beatrix Austin, "Dealing with the Past: Supporting people-centred 'working-through' the legacies of violence," *Berghof Policy Brief 06* (2017), 3-4.

¹⁷ Dion van den Berg, "Theory of change: dealing with the past," *PAX* internal document (2015).

¹⁸ Zala Volčič and Olivera Simić, "Localizing Transitional Justice: Civil Society Practices and Initiatives in the Balkans," in *Transitional Justice and Civil Society in the Balkans*, ed. Zala Volčič and Olivera Simić (New York: Springer, 2013), 10-11.

than retributive punishment for those who are responsible for war crimes and widespread human rights violations. It also aims to restore justice, peace and trust in transitional societies, and to strengthen the rule of law, good governance and democratisation processes.¹⁹

1.1 EU POLICY ON TRANSITIONAL JUSTICE

The aims of transitional justice are closely related to the values and politics of the European Union. The legal and humanitarian practices of transitional justice can be related to the EU's policy of promoting human rights, democracy, freedom, security and development, both in its enlargement policy, as in its broader approach to foreign policy. Article 21 of the Lisbon Treaty reaffirms the EU's commitment to these values and states that its actions 'on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world'.²⁰ As an example, the EU strongly supports the International Criminal Court²¹ Moreover, the European Common Foreign and Security Policy (CFSP) tackles issues related to transitional justice. The CFSP is the European Union's agreed-upon and formalised approach to foreign policy, and it embeds transitional justice practices in peace-building missions and security-oriented missions such as crisis-management and disarmament. This practice can be seen in Bosnia-Herzegovina; peace-building missions such as EUFOR Althea and the European Police Missions are directly related to the democratisation and state-building process.²²

¹⁹ Briony Jones, Alex Jeffrey, and Michaelina Jakala, "The 'Transitional Citizen': Civil Society, Political Agency and Hopes for Transitional Justice in Bosnia–Herzegovina," in *Transitional Justice and Civil Society in the Balkans*, ed. Zala Volčič and Olivera Simić (New York: Springer, 2013), 87.

²⁰ The Lisbon Treaty, <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-5-general-provisions-on-the-unions-external-action-and-specific-provisions/chapter-1-general-provisions-on-the-unions-external-action/101-article-10a.html> (accessed on November 22, 2017).

²¹ The EU's Policy Framework on support to transitional justice, http://eas.europa.eu.proxy.library.uu.nl/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf (accessed on November 22, 2017), 3.

²² Crossley-Frolick, "The European Union," 38; Iavor Rangelov and Marika Theros, "Transitional justice in Bosnia and Herzegovina: Coherence and complementarity of EU institutions and civil society," in *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development*, ed. K. Ambos et al. (Berlin: Springer-Verlag, 2009), 367.

Considering the values that guide the EU's international politics, it is surprising that an official policy framework on transitional justice was only adopted in 2015. This policy framework calls for a holistic approach to transitional justice.²³ The document stresses the importance of transitional justice in addressing large scale human rights violations in conflict and post-conflict societies. The four pillars of the EU's approach to transitional justice are: criminal justice, truth, reparations, and guarantees of non-recurrence/institutional reform. These are aimed at ending impunity, providing support to victims, fostering trust, strengthening the rule of law, and contributing to reconciliation.²⁴ The policy framework stresses the importance of transitional justice mechanisms to be inclusive, locally, and nationally owned – including government and civil society – as well as taking into account context-specific circumstances. Furthermore, the various transitional justice mechanisms should not exclude each other, but be mutually reinforcing. The EU also places heavy emphasis on international law, gender and children's rights, and a victim-centred approach.²⁵ Moreover, a small section of the policy framework is dedicated to transitional justice in the EU's enlargement policy; it focuses on the importance of compliance to the Copenhagen criteria, the issues of war crimes, and the return of refugees and internally displaced persons, ensuring that violent conflict cannot reoccur in the future. It also touches upon the EU's financial instrument (Instrument for Pre-accession Assistance II), which supports local civil society organisations in seeking truth and promoting reconciliation.²⁶ Thus, practices of transitional justice can be seen in both the EU's general approach to foreign policy, and also in its official policy framework.

²³ Council conclusions on EU's support to transitional justice, 13576/15, Council of the European Union, 3426th meeting (November 16, 2015).

²⁴ The EU's Policy Framework on support to transitional justice, http://eeas.europa.eu.proxy.library.uu.nl/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf (accessed on November 22, 2017), 2.

²⁵ *Ibidem*, 8-12.

²⁶ *Ibidem*, 17.

1.2 EU ENLARGEMENT AND TRANSITIONAL JUSTICE

Transitional justice is also incorporated within the EU's enlargement strategy vis-à-vis the Western Balkans. The European Union uses a "stick and carrot" approach; it compels countries to implement reforms and adopt new laws and regulations in return for future EU membership and other benefits. The accession conditionality also includes compliance to some transitional justice mechanisms and respect for minorities and human rights. According to EU policy-makers, the integration of the Western Balkans into the European Union is vital to ensure peace and stability in the region. Most scholarship agrees that increased integration of the Western Balkans into EU institutions is a key step towards stability.²⁷ Therefore, increased EU-facilitated dialogue among the countries in the region could serve to lower tensions and address border issues through non-hostile interactions. Above all, EU integration ensures that borders become less fixed, possibly allowing for national identities to become more fluid and the draw of ethnonationalist myths to become correspondingly weakened. Hence, the result of the European integration process could be the formation of a new European identity, which might result in people less fixated on border claims and ethnic divisions.²⁸

The transitional justice mechanisms that are included in the enlargement strategy are defined in the Stabilisation and Association Process (SAP), which guides the accession procedures for the Western Balkans. The Stabilisation and Association Agreements (SAAs) are the core components of this process, in which countries commit themselves to reforms and mutual rights and responsibilities. The criteria of the SAP are developed specifically for South East Europe, and complement the already existing Copenhagen criteria.²⁹ The Copenhagen criteria are general criteria that apply to all countries that wish to join the European Union. These criteria were formalised in the 1993 European Council in Copenhagen. The criteria

²⁷ Belloni, "European integration and the Western Balkans," 313.

²⁸ *Ibidem*, 324.

²⁹ Rangelov and Theros, "Transitional justice in Bosnia and Herzegovina," 368.

demand that certain political rights and freedoms are respected in countries that want to join the European Union, such as a pluralist and multi-party democracy, respect for minorities and human rights, the rule of law, and freedom of speech.³⁰ These are values deeply integrated into the identity of the European Union. In the SAP, the EU places emphasis on 'the principles of peace, justice for war crimes, reconciliation, anti-discrimination, and good neighbourly relations'.³¹ As a consequence of the EU integration process, the countries of the Western Balkans are obliged to fully comply with the ICTY, allow the right of return for refugees, and compensate for lost and damaged property. Furthermore, the EU demands improvements in neighbourhood relations and many economic, political and judicial reforms. Moreover, they are bound to adhere to the peace agreements of Dayton (Bosnian War), Ohrid (Macedonian conflict) and UN 1244 resolution (Kosovo war).³² Through the SAP, the European Union aims to assist the democratisation process in the Western Balkans, and prevent nationalist and ethnic conflicts in the future.

1.3 CRITICISING EU TRANSITIONAL JUSTICE POLICY

The European Union has thus incorporated some transitional justice mechanisms in the accession process of the Western Balkans. However, it is clear that a comprehensive transitional justice strategy is still missing. Many academics have already criticised the EU's policy on transitional justice towards the Western Balkans.³³ Many officials in the EU believed that the legacies of the recent past would solve themselves once the countries of the Western Balkans

³⁰ Othon Anastasakis, "The EU's political conditionality in the Western Balkans: towards a more pragmatic approach," *Southeast European and Black Sea Studies*, 8 (2008): 4, 365-377, 367.

³¹ *Ibidem*, 368.

³² *Ibidem*, 368.

³³ See: Belloni, "European integration and the Western Balkans,"; Florence Hartmann, "A Practitioner's Perspective," in *Civil Society and Transitions in the Western Balkans*, ed. Vesna Bojicic-Dzelilovic, James Ker-Lindsay, and Denisa Kostovicova (London: Palgrave Macmillan, 2013); Kappler and Richmond, "Peacebuilding and culture in Bosnia and Herzegovina,"; Rangelov and Theros, "Transitional justice in Bosnia and Herzegovina,"; Crossley-Frolick, "The European Union,"; O'Brennan, "The European Commission,"; Fagan, "Civil Society and 'Good Governance' in Bosnia-Herzegovina and Serbia,".

gradually adopted “European standards”. This Europeanisation process mainly focuses on implementing liberal laws and regulations, the rule of law, democratic standards and reforming the economic market.³⁴ However, these democratisation and liberalisation efforts can also be counter-productive in post-conflict situations. Several authors, such as Burnell, have stressed that democratisation efforts in societies that are ‘permeated by fear, mistrust and economic vulnerability may in fact rekindle divineness that led to the war in the first place’.³⁵ Democratic elections can strengthen political parties that ground their power base on ethnic divisionism and fear, while post-conflict economic interventions can bolster elite groups that profited from the war economy, which in turn fuels corruption and undermines a well-functioning economic system.³⁶ Still, it can be said that European interventions have stabilised the region, since the last violent conflict dates to 2001 in Macedonia.

The EU has mainly focused on punishing war criminals through the ICTY, but has not thought about other mechanisms that could contribute to the transitional justice process. This approach to transitional justice is one-sided and proved insufficient in overcoming the legacies of the past. The ICTY has indeed been able to condemn some of the most important war criminals, but this does not mean that societies have also changed their attitudes towards their former “war heroes”.³⁷ Now that the ICTY is closing down, the main EU supported transitional justice instrument will cease to exist. Besides the EU's commitment to international justice through the ICTY, it is not showing interest in implementing other transitional justice mechanisms in the region.³⁸ This is a critical flaw in the EU's approach to transitional justice, as many academics have already agreed upon the fact that the ICTY proved to be unable to

³⁴ Keil, "Europeanization," 345.

³⁵ Kostovicova and Bojicic-Dzelilovic, "Introduction," 14.

³⁶ *Ibidem*, 14.

³⁷ Hartmann, "A Practitioner's Perspective," 252.

³⁸ Rangelov and Theros, "Transitional justice in Bosnia and Herzegovina," 368.

change domestic perspectives on the war and war crimes.³⁹ According to Jelena Subotić, most political elites in the Western Balkans have used the ICTY to further their own political agenda. These elites 'use transitional justice to get rid of domestic political opponents, obtain international material benefits, or gain membership in prestigious international clubs, such as the European Union'.⁴⁰ She calls this phenomenon “hijacked justice”, which allows elites to show compliance to international norms and practices while adopting domestic policies that are obstructing a genuine reckoning with the past.⁴¹ So, although the ICTY managed to convict war criminals, and in doing so gathered much important factual evidence on war atrocities, it proved to be less effective when it came to reconciling former enemies.

Furthermore, most European transitional justice interventions in the Western Balkans have been top-down. Although the European Commission puts heavy rhetorical emphasis on working closely with civil society organisations, they have mainly engaged themselves with local political elites in practice.⁴² Transitional justice activities have thus never been properly supported on a local and grassroots level. Moreover, international interventions have in general been ad-hoc and based upon short-term objectives, while post-conflict reconstruction is in need of a comprehensive and long-term plan. Hence, although the EU has been involved in the Western Balkans since the outbreak of the conflicts, few enduring partnerships have been established with local actors and organisations with regards to post-conflict reconstruction and

³⁹ See: Kurze, “# WarCrimes# PostConflictJustice# Balkans,”; Jeffrey, “The political geographies of transitional justice,”; Steflja, “Identity crisis in post-conflict societies,”; Mladen Ostojčić, "Facing the Past while Disregarding the Present? Human Rights NGOs and Truth-Telling in Post-Milošević Serbia," in *Civil Society and Transitions in the Western Balkans*, ed. Vesna Bojicic-Dzelilovic, James Ker-Lindsay, and Denisa Kostovicova (London: Palgrave Macmillan, 2013).

⁴⁰ Jelena Subotić, *Hijacked justice: Dealing with the past in the Balkans*, (Ithaca: Cornell University Press, 2009), 6.

⁴¹ *Ibidem*, 23.

⁴² O'Brennan, "The European Commission," 2; Micha Fiedlschuster, "Democratizing EU Democracy Assistance? The EU's Perspective on Civil Society," in *European Neighbourhood Policy: Geopolitics between integration and security*, ed. B. Burns et al. (London: Palgrave Macmillan, 2016), 73.

transitional justice.⁴³ The last couple of years the EU is realising its shortcomings, but it is questionable whether the present strategy on civil society support is effective.

⁴³ Belloni, "European integration and the Western Balkans," 316.

Chapter 2: The EU and Civil Society

Although the EU has been criticised for its top-down intervention in the Western Balkans, it puts heavy rhetorical emphasis on working with local CSOs. Ever since the Thessaloniki Summit in 2003, which formalised the membership perspectives of the Western Balkan countries, the EU has stated that civil society should be a key stakeholder in the accession process.⁴⁴ According to the European Union, a well-functioning civil society plays an important role in guaranteeing democratic rights and freedoms. CSOs are 'understood as all non-state, not-for-profit structures in which people organise to pursue shared objectives and ideals'.⁴⁵ The EU believes that CSOs could address the obstacles and challenges of the enlargement countries through advocacy, lobbying and oversight activities, both on a local/national and international level. 'When it comes to democratic governance and the rule of law and fundamental rights, including freedom of expression & association and minority rights, they can create demand for enhanced transparency, accountability and effectiveness from public institutions and facilitate a greater focus on the needs of citizens in policy-making'.⁴⁶ Hence, CSOs should function as a "watchdog" that holds politicians accountable and demands transparency from public institutions, all while safe-guarding the needs of citizens in policy-making. Furthermore, the European Union believes that incorporating CSOs in the pre-accession process can increase understanding among citizens of the necessity to reform in order to maintain EU membership, and thus contribute to a public debate on EU accession. In this way, the EU hopes that the accession process becomes more than just a political agreement concluded by governments.⁴⁷

⁴⁴ Giulio Venneri, "A Practitioner's Perspective," in *Civil Society and Transitions in the Western Balkans*, ed. Vesna Bojicic-Dzelilovic, James Ker-Lindsay, and Denisa Kostovicova (London: Palgrave Macmillan, 2013), 85.

⁴⁵ *DG Enlargement: Guidelines for EU support to civil society in enlargement countries, 2014-2020*, (last modified October 14, 2013)

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/civil_society/doc_guidelines_cs_support.pdf (accessed on November 22, 2017), 1.

⁴⁶ *Ibidem*, 1.

⁴⁷ *Ibidem*, 1.

2.1 EU POLICY ON CIVIL SOCIETY

Besides rhetorical emphasis on bottom-up partnerships, EU policies are directed to give political and financial support to local CSOs, and enhance the judicial, administrative and legal environment in which they operate. The document that defines the European enlargement strategy states that the EU 'will encourage enlargement countries to make legislation more conducive for civil society. It will also promote the involvement of civil society in the pre-accession process'.⁴⁸ Furthermore, the European Commission gives financial support to CSOs through certain financial instruments. The EU recognises that active citizenship cannot be achieved by outside financial support alone, and that CSOs should not be merely dependent on foreign donors in their work.⁴⁹ The progress CSOs are making is measured at two levels, national and regional, and include annual regional meetings with relevant civil society actors.⁵⁰ According to Giulio Venneri, Policy Officer at the Enlargement Directorate of the European Commission, the EU is committed to a partnership approach when it comes to CSOs and other non-state organisations. This interaction goes further than merely supporting CSOs financially, but also aims to increase dialogue with representatives of civil society, and to commit towards the sustainability of local CSOs and NGOs.⁵¹

The EU has several financial instruments at its disposal in order to support civil society in the Western Balkans. The Instrument of Pre-accession Assistance (IPA) and the European Instrument for Democracy and Human Rights (EIDHR) are the two main instruments. IPA was established in 2007, and replaced several other financial instruments that supported

⁴⁸ *DG Enlargement: Guidelines for EU support to civil society in enlargement countries, 2014-2020*, (last modified October 14, 2013) https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/civil_society/doc_guidelines_cs_support.pdf (accessed on November 22, 2017), 3.

⁴⁹ *Ibidem*, 3.

⁵⁰ *Ibidem*, 4.

⁵¹ Venneri, "A Practitioner's Perspective," 88.

enlargement countries. IPA was established in order to invest in public administration, rule of law, sustainable economy, and rural development. In the period 2007-2013, IPA allocated 11.5 billion euros to Albania, Bosnia-Herzegovina, Macedonia, Kosovo, Montenegro, Serbia, and Turkey. For the period 2014-2020, IPA II will invest another 11.7 billion euros in the enlargement countries.⁵² IPA is also financing several activities in the field of transitional justice, and also supporting civil society organisations. In Bosnia-Herzegovina, for example, some support has been given to judicial reforms, the prosecution of war crimes, capacity-building of CSOs, vulnerable minority groups, and the return of refugees and internally displaced people.⁵³ However, money allocated to CSOs comprises only a small percentage of the total IPA budget. For example, in Bosnia-Herzegovina less than three percent of the total budget in 2007-2009 was spent on civil society support.⁵⁴ In contrast to IPA, EIDHR invests most of its money in civil society. However, EIDHR is not, like IPA, specifically designed for the enlargement countries. Rather, EDIHR aims to support human rights and democracy in all non-EU countries. EIDHR is flexible in the sense that it does not need government approval in order to be able to finance local CSOs. Organisations can apply for funds through the calls for proposals. All CSOs and non-profit organisations can apply for funding as long as their projects cover the themes as stated within the objectives of EIDHR. For the 2014-2020 period, a stronger emphasis is going to be given to the role of civil society in its interaction with local authorities and state institutions, vulnerable groups and minorities (e.g. women, gay, ethnic minorities) and economic and social rights.⁵⁵ There are both global calls for proposals as well as national calls for proposals. The global calls are selected by the European Commission in consultation with

⁵² European Commission, Overview – Instrument for Pre-accession Assistance, (last modified December 6, 2016) https://ec.europa.eu/neighbourhood-enlargement/instruments/overview_en (accessed on November 22, 2017).

⁵³ Crossley-Frolick, "The European Union," 41.

⁵⁴ Anže Voh Boštich, "Analysing EU's Civil Society development in Bosnia and Herzegovina," *European Perspectives-Journal on European Perspectives of the Western Balkans*, 3 (2011): 1, 91-113, 103.

⁵⁵ EIDHR, What is EIDHR?, <http://www.eidhr.eu/whatis-eidhr> (accessed on November 22, 2017).

its local delegations, while the national calls are allocated by local EU delegations. Furthermore, the EU can directly support Human Rights Defenders by allocating small grants when there is a sense of urgency.⁵⁶ These financial instruments demonstrate the EU's willingness to support local CSOs.

2.2 CRITICISING EU POLICY ON CIVIL SOCIETY

As the above section describes, EU policy agendas seem to regard civil society as a key stakeholder in the democratisation process of the Western Balkans. This bottom-up approach to democratisation is believed to gather more support from citizens for EU integration and democratic values. Furthermore, the EU believes CSOs have an important role to play in transitional societies by holding governments accountable and safeguarding the needs of citizens in the political sphere. Still, many academics have criticised the EU approach towards civil society and its policy of bottom-up democratisation. There are several points of criticism which academics point out in their studies.

Many authors agree that the European Commission expects too much from civil society.⁵⁷ Although civil society has been working for years on transitional justice and democratisation, it is unlikely they will bring about the political change that is expected of them by the EU. The countries of the Western Balkans are still permeated by mistrust, rivalries and ethnic politics. Fischer argues that 'peace endeavours at the grassroots level do not appear to have exerted any direct pressure, nor have they had real impact at the top political level'.⁵⁸ This is probably the result of state institutions' unwillingness to accept, and cooperate with, CSOs

⁵⁶ EIDHR, Apply for a Grant, <http://www.eidhr.eu/funding> (accessed on November 22, 2017).

⁵⁷ See: Martina Fischer, "Civil society in conflict transformation: Ambivalence, potentials and challenges," *Berghof Research Center for Constructive Conflict Management* (2006); Adam Fagan, "EU assistance for civil society in Kosovo: a step too far for democracy promotion?," *Democratization* 18 (2011): 3, 707-730; Hartmann, "A Practitioner's Perspective,"

⁵⁸ Fischer, "Civil society in conflict transformation," 16.

working on transitional justice.⁵⁹ Hartmann further argues that 'civil society can never compensate for all the deficits of democratisation, state-building and post-conflict reconstruction'.⁶⁰ According to the author, this is beyond the capabilities and capacities of CSOs in the Western Balkans. Furthermore, civil society was never properly involved in the initial phase of the transition process by international actors. The European Union only seemed to turn to civil society once the post-conflict reconstruction failed. CSOs were never part of the reconstruction process from the beginning, as the EU's approach to democratisation and state-building was mainly top-down.⁶¹

Additionally, the European Commission tends to exclude certain CSOs that do not fit their view of what civil society consists and what their projects should aim for. The Commission seems to favour those organisations that are more in line with Western market logistics and liberal democratic norms and practices. The Commission fails to understand the fact that civil society in the Western Balkans developed in a total different context than in Western Europe. Many new (international) NGOs are established in the countries of former Yugoslavia around Western liberal notions. On the surface, these organisations might be part of civil society, but in reality, they have no real roots in local customs and practices.⁶²

Moreover, many CSOs that have different approaches to peace-building than the standard formats of workshops, conferences, or dialogue forums seem to be neglected. The EU seems to favour those organisations that are more in line with their own needs in the accession process instead of focusing on what local societies really need.⁶³ According to Brennan, 'adaption to EU norms and effective compliance with the *aquis* framed the Commission's

⁵⁹ Fischer, "Civil society in conflict transformation," 17.

⁶⁰ Hartmann, "A Practitioner's Perspective," 248.

⁶¹ *Ibidem*, 248-249.

⁶² Kappler and Richmond, "Peacebuilding and culture in Bosnia and Herzegovina," 265.

⁶³ *Ibidem*, 265-266.

approach to civil society'.⁶⁴ Thus, civil society is regarded as an instrument that could aid the Commission's objectives and demands, instead of as a sector that is in need of concrete support.

As a result of the EU's preference for CSOs that work in fields related to the *acquis communautaire*, transitional justice is often neglected as an essential element in post-conflict reconstruction. The Commission's EIDHR financial instrument has supported some projects that deal with reconciliation, memorialisation, education and refugee return.⁶⁵ However, in general, organisations that address politically sensitive issues are bypassed by the EU's financial instruments. EU officials in Brussels and Sarajevo claim that dealing with the past is not in focus because local authorities in Bosnia have no common consensus on how to tackle this issue.⁶⁶ This line of thinking is paradoxical because the past needs to be reckoned in order for any consensus on history to take place. Unfortunately, the neglect for dealing with the past programmes is also seen in the case of other international donors. They tend to favour more straightforward projects that are less politically problematic and sensitive by focusing on legal aid and providing service delivery.⁶⁷ The CSOs that do receive support on projects in the field of transitional justice are often located in the capitals. Less professional organisations, like associations of war victims, veterans, women's groups and missing persons, are often overlooked. In the case of Bosnia-Herzegovina, Rangelov and Theros claim that these groups 'have been excluded from both the political dialogue facilitated by the international community in BiH [Bosnia-Herzegovina] and the assistance priorities of donors'.⁶⁸ And it is exactly these groups, according to Rangelov and Theros, that are in need of justice, and concrete support in order for their voices to be heard.

⁶⁴ O'Brennan, "The European Commission," 7.

⁶⁵ Crossley-Frolick, "The European Union," 47.

⁶⁶ Rangelov and Theros, "Transitional justice in Bosnia and Herzegovina," 383.

⁶⁷ *Ibidem*, 366-367.

⁶⁸ *Ibidem*, 367.

As implied above, the EU funding system favours those NGOs that are professionally organised and have concrete know-how of the European funding system, as the application system is extremely complex and bureaucratic. Hence, only established NGOs and foreign NGOs that have local offices with enough manpower and experience are able to apply for European funds. These organisations are likely to be clustered in capitals and other urban centres. Organisations in small towns and rural areas are neglected, and a connection with large parts of civil society is missing.⁶⁹ The Commission also expects organisations to secure funding from other sources, which makes it even more difficult for smaller and more fluid CSOs to apply. This application process goes against the Commission's objective to strengthen the capacities of local organisations, as they are often unable to receive funding.⁷⁰ According to Kurki, civil society's 'capacity to democratize becomes, even if rather unintentionally, equated with capacity to obtain and manage funding'.⁷¹ She stresses that CSOs are expected to be cost-efficient organisations that can properly manage themselves, and be attractive and competitive in the market-system. 'Civil society organizations should act as competitive agents – as homo oeconomicus – in their political, economic and cultural scene'.⁷² Competition between CSOs is thus a by-product of the EU's approach to funding. This could obstruct civil society's common goal of post-war reconstruction, rapprochement between ethnic groups and facing the past.

It is worrisome that the Commission gives financial support to CSOs, but fails to structurally engage with them in order to establish a concrete transitional justice framework. Boštic argues that the EU should not only invest material resources into civil society development, but also human resources, such as establishing consultations with local CSO

⁶⁹ Martina Fischer, "Civil society in conflict transformation," 17.

⁷⁰ Boštic, "Analysing EU's Civil Society development," 105; Milja Kurki, "Governmentality and EU democracy promotion: The European instrument for democracy and human rights and the construction of democratic civil societies," *International Political Sociology* 5 (2011): 4, 349-366, 361; Fagan, "Civil Society and 'Good Governance' in Bosnia-Herzegovina and Serbia," 65.

⁷¹ Kurki, "Governmentality and EU democracy promotion," 361.

⁷² *Ibidem*, 360.

representatives. The author criticises EU officials for failing to engage with local CSOs; for example, in the context of consultations within the EIDHR programme, where only western-based NGOs were participating in the consultations. Only by working together face-to-face with CSOs can long-term cooperation and local ownership be established.⁷³ The EU does include CSOs in the consultative phase of writing the annual Progress Reports of enlargement countries. However, the question is whether the needs addressed by civil society result in concrete actions on behalf of the Commission. More often, these Progress Reports are packed with technocratic language and rhetoric, while concrete action and genuine cooperation with civil society is severely lacking. There are no efforts to constructively work towards policy recommendations, or to put things on the European agenda that CSOs want to address. The policy-makers of the EU need to show some sort of progress in the Western Balkans, in order to prevent a failure of the accession process. According to Brennan, 'civil dialogue ... has seen a tendency on the part of the Commission to avoid interaction with civil society on controversial issues'.⁷⁴ Thus, critical obstacles in the integration process, of which transitional justice is probably the biggest, are not tackled sufficiently.

All in all, European and international donor policy has led to the creation of a professionalised NGO sector that does not have its roots in local practices nor enjoys sufficient contact with ordinary citizens. Fagan captures this problematic situation when he states that

professional NGOs competing for externally funded donor projects have become a ubiquitous and almost generic feature of post-socialism ... the tier of professional NGOs masquerading as civil society in urban locations across the post-socialist world, and the donors on which they depend for their revenue, have been criticised for wasting resources, duplicating projects and

⁷³ Boštic, "Analysing EU's Civil Society development," 109-110.

⁷⁴ O'Brennan, "The European Commission," 3.

initiatives, failing to engage with communities and local campaign agendas, and generally being temporary constructions that are neither accountable, legitimate nor particularly sustainable.⁷⁵

However, this does not mean that there are no CSOs and NGOs located in the capitals doing valuable work in the field of transitional justice. Nor, does this mean that there are no established CSOs that trace their origins to the anti-war movements of the 1990s. There are certainly also professionalised NGOs that benefit from foreign funding, and manage to reach-out to citizens and do important work on documentation, truth-finding, education and peace activism. Still, the situation remains problematic. The funding procedure has led to what some people call the “projectisation” or “projectomania” of civil society; NGOs are more focused on making money than concerning themselves with the social needs of civilians.⁷⁶ This is not what transitional justice “from below” should look like. It is therefore highly important for the European Union to contact those organisations which have genuine roots in local practices and engage with ordinary citizens. Besides, professional and international NGOs should step outside their cosmopolitan bubbles and establish contact with citizens and grassroots organisations. Establishing local partnerships and networks is a long-term process but necessary to establish trust and engage in genuine dialogue.

⁷⁵ Fagan, "EU assistance for civil society in Kosovo," 710.

⁷⁶ Kostovicova and Bojicic-Dzelilovic, "Introduction," 9; Fischer, "Civil society in conflict transformation," 17.

Chapter 3: Civil society and transitional justice

European support to civil society does not seem to function properly nor sufficiently benefit organisations working in the field of transitional justice. The EU seems to lack understanding of local contexts and dynamics, which is not helpful in making effective policies. Therefore, it is important to examine carefully the nature of civil society in the Western Balkans, and discuss the needs, aims and challenges of organisations working on the transitional justice process.

3.1 CIVIL SOCIETY

Civil society is a complex phenomenon; it is a homogenous heterogeneous entity hard to define. Political philosophers and theorists have thought about the concept in various meanings and contexts. There seems to be a dichotomy in the theorising of Western academics and those of the former Communist countries. In the tradition of Communist-era thinkers, like Havel, Michnik, Benda and Konrad, civil society is seen as an entity that stands in opposition to the authoritarian state. However, in the West, theorists on civil society have often stressed the linkage between the modern state, market and civil society. In the Western Balkans, where societies are in a transition from conflict and socialism to democracy and liberalism, the aforementioned views clash with each other. On the one hand, part of the civil society movement in the Western Balkans originates from anti-war and anti-fascist movements during the Communist-era and breakup of Yugoslavia. On the other hand, professional and international NGOs have recently been established and supported by international state-building efforts in the Western Balkans. These non-profit organisations are part of civil society, but it can be questioned to what extent they genuinely engage with ordinary citizens.⁷⁷

Despite the various meanings and forms attached to the concept of civil society, the common feature is that civil society operates relatively autonomously from the state. This

⁷⁷ Kostovicova and Bojicic-Dzelilovic, "Introduction," 7-9.

means that civil society is the space where alternative narratives can develop and criticisms vis-à-vis the government can be voiced. The civil sphere provides spaces of interaction for civilians outside the political and private sphere. It can increase trust and tolerance between civilians, and grow a critical and engaged citizenry, which is an essential element in a working democracy.⁷⁸ However, civil society does not always have to be a positive force. Organisations can form themselves along ethnic and nationalist lines, and promote anti-democracy, violence and hatred. Thus, civil society does not always have to promote the values of “civility”; of an engaged, critical and tolerant citizenry.⁷⁹

3.2 TROUBLED PAST

As stated above, ethnonationalist ideologies are visible in all layers of society. These ideologies continue to divide the societies of the Western Balkans; it is heavily influenced by contested perceptions of history and identity, which remain controversial topics in the countries of former Yugoslavia. Sadly, disputed views on history do not only apply to the Yugoslav Wars, but also to earlier history, like the Tito-regime, the Second World War, the Balkan Wars, First World War and the Ottoman period.⁸⁰ Each ethnic group continues to have its own version of history in which victimisation and the glorification of ethnonational history is central. Each side blames the other for being responsible for the suffering inflicted upon it. These conflicting views on history are a primary obstacle to rapprochement between different ethnic groups.⁸¹

For example, Croatia considers Serbia and its ideology of a “Great Serbia” as the main cause of the Yugoslav wars.⁸² Croatia refers to the war as the “Homeland War” and considers

⁷⁸ Volčič and Simić, "Localizing Transitional Justice," 9.

⁷⁹ Kostovicova and Bojicic-Dzelilovic, "Introduction," 9; Volčič and Simić, "Localizing Transitional Justice," 9.

⁸⁰ Maja Nenadovic (Anne Frank House), interviewed by author, personal interview, Amsterdam, April 13, 2017; Hasan Nuhanović (PMC), interviewed by author, personal interview, Utrecht, April 21, 2017.

⁸¹ Franović, “Dealing with the past,” 35-37.

⁸² *Ibidem*, 17.

all Croatian aggression, even when condemned as war crimes, as self-defence.⁸³ Serbia, on the other hand, sees itself as the main victim in the conflict. It considers the breakup of Yugoslavia as a civil war, and places it in a long historical trend of violence against the Serb people, marked by genocide and diaspora.⁸⁴ In Bosnia-Herzegovina, three perspectives collide with each other, as Croats, Bosniaks and Serbs all consider themselves the main victims. Bosniaks argue their position is substantially different from the rest, as they were the victims of genocide.⁸⁵ The war in Kosovo was a conflict between ethnic Serbs and Kosovar Albanians. Serbs consider Kosovo as an integral part of their nation with important historical connections.⁸⁶ The loss of Kosovo strengthens their sense of victimhood. In contrast, Kosovar Albanians consider the conflict as a war of independence, which is glorified through a rhetoric of sacrifice, liberation and heroism.⁸⁷ These examples suggest the politicisation of history in conflict and post-conflict contexts.

Unfortunately, these narratives are strengthened through ethnonationalist politics of present elites. They are not interested in regional reconciliation, and continue to misuse history and practice divisive politics. Reasonable discussion of the war is lacking in all countries of the region, and the past remains narrowed-down to the nationalist interpretations of history.⁸⁸ Therefore, alternative narratives have to be presented for people to reach beyond their sense of victimisation, and be able to acknowledge the suffering of other individuals and groups. Still, it is very difficult for people to accept the suffering of other communities as long as their own suffering has not been properly addressed. There needs to be a balance between offering

⁸³ Fischer and Petrović-Ziemer, "Dealing with the Past in the Western Balkans," 47.

⁸⁴ Sirkka Ahonen, *Coming to terms with a dark past: how post-conflict societies deal with history*, (Frankfurt am Main: Peter Lang, 2012), 122.

⁸⁵ Subotić, *Hijacked justice*, 131.

⁸⁶ Edona Maloku, Belle Derks, Colette Van Laar, and Naomi Ellemers, "Building National Identity in Newborn Kosovo: Challenges of Integrating National Identity with Ethnic Identity Among Kosovar Albanians and Kosovar Serbs," in *Understanding Peace and Conflict Through Social Identity Theory*, ed. Shelley McKeown, Reeshma Haji and Neil Ferguson (Cham: Springer International Publishing, 2016), 247.

⁸⁷ Gëzim Visoka, "Arrested Truth: Transitional Justice and the Politics of Remembrance in Kosovo," *Journal of Human Rights Practice*, 8 (2016): 1, 62-80, 68.

⁸⁸ Franović, "Dealing with the past," 5-7.

multiple narratives of history, and taking into account the suffering of all victims.⁸⁹ Civil society, which stands outside the political sphere, could be the place where these alternative narratives of history and memory are presented.

3.3 CIVIL SOCIETY AND UNCOVERING THE PAST

In the last decade a more critical reflection upon the legalistic nature of transitional justice has resulted in more and more scholarly attention to alternative approaches to the field.⁹⁰ Instead of merely focusing on international justice and the conviction of war criminals, academics have studied the work of civil society, art performers, and other local grassroots initiatives.⁹¹ In the Western Balkans, CSOs are one of the few actors that continue to work on transitional justice, or as local CSOs seem to prefer, dealing with the past.⁹² In their work, they demand justice for victims, truth and inclusive remembrance. Their activities range from fact-finding missions and psychological help to victims, to dialogue platforms and inclusive memory initiatives.⁹³ Without the efforts of civil society, it is questionable whether dealing with the past would be of any topic of attention in the Western Balkans.

In reckoning with the past, uncovering facts of war crimes and other atrocities during the war is very important. As long as facts have not been established, every side will be able to deny certain historical events. Without facts, people can easily deny responsibility for war crimes and thus obstruct any reckoning with the past. In this regard, it is important that evidence of war crimes and other atrocities are researched, documented and conveyed to the public. Some CSOs are doing valuable work in these fields, like the Humanitarian Law Centre (HLC) and

⁸⁹ Jasmina Tepić, "Do memory initiatives have a role in addressing cultures of silence that perpetuate impunity in Bosnia and Herzegovina?," *Impunity Watch* (2012).

⁹⁰ Kieran McEvoy, "Beyond legalism: Towards a thicker understanding of transitional justice," *Journal of Law and Society* 34 (2007): 4, 411-440.

⁹¹ Volčič and Simić, "Localizing Transitional Justice," 3.

⁹² Van den Berg, "Theory of change,".

⁹³ Fischer and Petrović-Ziemer, "Dealing with the Past in the Western Balkans," 13.

HLC Kosovo; both work towards creating a complete list of human casualties and circumstances of death and disappearance in Kosovo.⁹⁴ Others, like the Association of Transitional Justice, Accountability and Remembrance (TJAR) and the Centre for Democracy and Transitional Justice (CDTJ), work towards a complete database on detention camps and places of detention in Bosnia-Herzegovina.⁹⁵ Documenta, a CSO located in Zagreb, is also doing outstanding work on researching victims and war crimes.⁹⁶ In all these research projects, no differentiation is made between victims of one side or the other. All victims are regarded as victims, no matter their background. This is something rarely seen in the countries of former Yugoslavia.

Still, facts on war crimes and other atrocities need to be presented to the public. This is sometimes a difficult step for civil society. However, more and more they are realising that facts cannot merely be presented in academic publications that no ordinary people will ever read.⁹⁷ CSOs need to have attractive formats to engage the public with the topic. This includes public exhibitions, online narratives, art installations, film and documentaries. These formats are more attractive than reading complex articles, and could be more emotionally engaging. Nevertheless, it has to be realised that presenting information to the public is not enough in dealing with the past. There also needs to be forms in which the public is directly involved in the creation process, in order to provide local ownership and genuine participation.

3.4 CIVIC PARTICIPATION AND BOTTOM-UP APPROACH

In the first chapter, it became clear that many academics are critical of the NGO sector in post-socialist countries. They are often criticised for not properly engaging ordinary civilians, being

⁹⁴ Bekim Blakaj (HLC Kosovo), interviewed by author, Skype interview, Utrecht, April 4, 2017; Nataša Kandić (HLC), interviewed by author, Skype interview, Utrecht, May 2, 2017.

⁹⁵ Ada Hasanagic (TJAR), interviewed by author, Skype interview, Utrecht, March 29, 2017; Ljupko Mišeljić (CDTJ), interviewed by author, Skype interview, Utrecht, April 11, 2017.

⁹⁶ Vesna Tercelic (Documenta), interviewed by author, Skype interview, Utrecht, April 25, 2017.

⁹⁷ Jelena Krstic (HLC), interviewed by author, Skype interview, Utrecht, May 11, 2017.

project-oriented, and more occupied with generating money than resolving social needs. Although these criticisms cannot be applied to the entire NGO and civil society sector, especially not those genuinely working on transitional justice, more engagement with the public is certainly needed. Obradović-Wochnik argues that civil society in Serbia has insufficiently established dialogue with civilians. She states that NGOs and intellectuals ‘are leading the debate with an attempt to inform and convert the majority, ... so that they may begin the process of coming to terms with the past’.⁹⁸ However, in this approach CSOs and intellectuals treat the public as being passive consumers. They are people that are “in denial” but who through public discussions could adopt the narratives of a small elitist group.⁹⁹ She claims that their approach has made the public feel excluded from historical debates. It ‘has led to feelings of resentment and alienation on part of some sections of the public, who view the NGOs’ involvement with questions of the past as suspicious and their approach to the public as judgemental’.¹⁰⁰

However, her article does not examine other projects and initiatives on transitional justice established by CSOs. Still, she does have a point that many activities of CSOs are not always properly engaging the public. Dealing with the past is something that cannot be forced top-down. It often requires approaches that are different from traditional practices of public debates, conferences and round tables. Although sometimes unintentional, these practices can remain rather top-down and obstruct active participation. History and memory-related initiatives have to be interactive because people need to feel involved and part of the process. With this thought in mind, some organisations have set-up oral history projects in both regional and local contexts.¹⁰¹ Oral history projects have great potential because they offer a platform

⁹⁸ Jelena Obradović-Wochnik, “Serbian Civil Society as an Exclusionary Space: NGOs, the Public and ‘Coming to Terms with the Past’” in *Civil Society and Transitions in the Western Balkans*, ed. Vesna Bojicic-Dzelilovic, James Ker-Lindsay, and Denisa Kostovicova (London: Palgrave Macmillan, 2013), 215.

⁹⁹ *Ibidem*, 214.

¹⁰⁰ *Ibidem*, 225.

¹⁰¹ See, for example: Peoples and Memories talk (Integra), Oral History Project Kosovo, Croatian Memories (Documenta).

for alternative narratives. These narratives can then be used in online media, public exhibitions, documentaries or artist productions. In the Western Balkans, there is no platform of discussion on the war, and many voices have been repressed or silenced. Oral history provides a kaleidoscopic view of history that does not follow the mainstream narratives of nationalism, but instead shows the experiences of ordinary people. Thus, many people have the chance to relate to other experiences, and even from people who belong to other ethnic groups. History is humanised, and common experiences of suffering and human emotions have a chance to create empathy for the other. Still, sharing personal experiences can be quite difficult for people. Building networks of trust and communication is essential when working with local communities. Boro Kitanoski, founder of Peace Action in Macedonia, underscores this issue and states that sometimes many years of trust-building is needed before people share their stories: ‘peace building takes time [...] you cannot just do a project and walk away’.¹⁰² He reveals that some of the people that were engaged in oral history projects are now working with Peace Action. According to Kitanoski, a long-term approach and encouraging more civilian involvement is exactly their goal in peace work. Peace Action is very aware of the fact that dealing with the past is not a top-down process. The organisation has a long-term strategy and heavily invests in bottom-up personal networks. This is an illustration of the way in which civil society can promote civic engagement in the transitional justice process.

Moreover, youth inclusion is an essential element in bottom-up transitional justice strategies. Education in the Western Balkans remains highly ethnically segregated, and textbooks on history are based upon nationalist interpretations of history. Bosnia-Herzegovina is especially worrisome in this regard, as the practice of “two schools under one roof” remains in place. It is likely that youngsters adopt the nationalist narratives of previous generations.¹⁰³

¹⁰² Boro Kitanoski (Peace Action), interviewed by author, Skype interview, Utrecht, June 8, 2017.

¹⁰³ James Meernik, et al, "Truth, justice, and education: towards reconciliation in the former Yugoslavia," *Southeast European and Black Sea Studies* 16 (2016): 3, 413-431, 414.

Therefore, it is necessary for youth to be educated and critically reflect upon history and memory. Unfortunately, many youngsters are not really interested in the past. They can hardly be blamed for this. The previous generations remain silent, and the past is filled with traumatic memories. Memory and history-related education can be made more appealing to youth by combining education with recreational and entertaining activities, and by giving them opportunities to learn, grow and build self-esteem. Sadly, the past is not the only issue in the Western Balkans, as unemployment, corruption and low-wages continue to compel youngsters to leave the region.¹⁰⁴ These issues are also sometimes tackled in dealing with the past programmes. For example, the Post-Conflict Research Centre (PCRC) organises a journalist programme within their Ordinary Heroes project. This project focuses on acts of heroism during the Yugoslav Wars, wherein ordinary civilians saved the lives of those who were persecuted. In the journalist programme, young people get the opportunity to write about issues in their local community, or to write about other important topics.¹⁰⁵ In this way, young people build-up their CV, develop writing skills and receive visibility and attention. This is especially important for youth that live in underdeveloped and rural regions.¹⁰⁶ The Ordinary Heroes project demonstrates that memory and history-related projects can be shaped in such a way that it is appealing and useful for youth.

3.5 PROBLEMS CIVIL SOCIETY

Despite civil societies' overall good work there are many obstacles and challenges to their efforts. People living in countries of the former Yugoslavia often have negative attitudes towards civil society. Furthermore, CSOs are obstructed in their work by political forces, lack of funding, and insufficient strategies on comprehensive cooperation. The overall negative

¹⁰⁴ Deutsche Welle, "Youth are deserting Balkan countries," (last modified December 23, 2016), <http://www.dw.com/en/youth-are-deserting-balkan-countries/a-36891266> (accessed on December 8, 2017).

¹⁰⁵ See: Balkan Diskurs, <http://balkandiskurs.com/en/> (accessed on December 8, 2017).

¹⁰⁶ Velma Šarić (PCRC), interviewed by author, Skype interview, Utrecht, April 18, 2017.

image of civil society is exploited by political propaganda. Most NGOs and CSOs receive foreign funding, and there have been cases of fraud and corruption. Citizens often have a lack of trust in civil society, and are not sufficiently engaged with their projects.¹⁰⁷ Political propaganda easily exploits this image, and frames CSOs as foreign organisations which aim to threaten national cohesion and stability. Politicians actively promote this negative image through media channels that are often closely controlled by the state. This is especially dangerous in the societies of the Western Balkans where most people get their information via traditional media channels.¹⁰⁸

Unfortunately, in recent years the political situation seems to be deteriorating in the region. Antonis Hadjiyannakis, programme advisor of the Centre for Democracy and Reconciliation in Southeast Europe (CDRSEE), has the feeling that the Balkans is in the worst political situation they have been since the end of the wars.¹⁰⁹ A few years ago, political leaders seemed to be more willing to contribute towards regional cooperation. Elections in Croatia during 2016 have placed political parties in power that are unwilling to honestly engage the past.¹¹⁰ Furthermore, in Serbia, civil society has been under more pressure since Alexander Vučić has been in power. Staša Zajović, founder of Woman in Black, claims that her organisation has encountered more and more organised violence from right-wing groups, who she claims are implicitly backed by the government.¹¹¹

¹⁰⁷ Velma Šarić (PCRC), interviewed by author, Skype interview, Utrecht, April 18, 2017; Antonis Hadjiyannakis (CDRSEE), interviewed by author, Skype interview, Utrecht, April 12, 2017; Ada Hasanagic (TJAR), interviewed by author, Skype interview, Utrecht, March 29, 2017; Daniel Bernhardt (Forum ZFD), interviewed by author, Skype interview, Utrecht, May 18, 2017.

¹⁰⁸ Staša Zajović (Women in Black), interviewed by author, Skype interview, Utrecht, May 10, 2017; Anita Mitić (YIHR Serbia), interviewed by author, Skype interview, Utrecht, May 10, 2017; Jelena Krstic (HLC), interviewed by author, Skype interview, Utrecht, May 11, 2017.

¹⁰⁹ Antonis Hadjiyannakis (CDRSEE), interviewed by author, Skype interview, Utrecht, April 12, 2017.

¹¹⁰ Vesna Tercelec (Documenta), interviewed by author, Skype interview, Utrecht, April 25, 2017; Mario Mažić (YIHR Croatia), interviewed by author, Skype interview, Utrecht, April 25, 2017; Antonis Hadjiyannakis (CDRSEE), interviewed by author, Skype interview, Utrecht, April 12, 2017.

¹¹¹ Staša Zajović (Women in Black), interviewed by author, Skype interview, Utrecht, May 10, 2017.

Another problem is funding projects in the field of transitional justice. The Western Balkans have seen a steady decrease in international assistance now that the wars are becoming more and more distant. The topic dealing with the past has especially lost interest among many donors.¹¹² This means that CSOs have to compete, while there are less and less donors available. This shortage of funding promotes an atmosphere of competition and rivalry, while instead of competing, organisations should work together on their common goal to deconstruct ethnonationalist narratives and promote inter-ethnic relations. However, organisations are sometimes forced to cooperate on projects by donors, and the shortage of funding can compel CSOs to be more creative in making their programmes more attractive to donors.¹¹³ Still, the biggest issue regarding funding is the way in which the donor-system is organised. Donors decide which topics deserve attention, and financial assistance is generally project-based.¹¹⁴ Thus, organisations are often unable to implement and monitor certain projects, as projects are constructed according to available funds.

As stated above, organisations do work together, sometimes forced by donors, on certain projects. Unfortunately, cooperation seems to be restricted to project-based partnerships. There does not seem to be a structural approach to cooperation, nor is there a common policy agenda on transitional justice. There are some organisations that highlight the well-established regional cooperation between civil society in the Western Balkans.¹¹⁵ This is especially true regarding the RECOM mission; this is a collective of civil society organisations, human rights activists

¹¹² Nataša Kandić (HLC), interviewed by author, Skype interview, Utrecht, May 2, 2017; Jelena Krstic (HLC), interviewed by author, Skype interview, Utrecht, May 11, 2017; Anita Mitić (YIHR Serbia), interviewed by author, Skype interview, Utrecht, May 10, 2017; Kushtrim Koliqi (Integra), interviewed by author, Skype interview, Utrecht, April 3, 2017.

¹¹³ Jelena Krstic (HLC), interviewed by author, Skype interview, Utrecht, May 11, 2017; Alma Masic (YIHR Bosnia), interviewed by author, Skype interview, Utrecht, May 10, 2017.

¹¹⁴ Velma Šarić (PCRC), interviewed by author, Skype interview, Utrecht, April 18, 2017; Amina Krvavac (War Childhood Museum), interviewed by author, Skype interview, Utrecht, April 26, 2017; Staša Zajović (Women in Black), interviewed by author, Skype interview, Utrecht, May 10, 2017.

¹¹⁵ Mario Mažić (YIHR Croatia), interviewed by author, Skype interview, Utrecht, April 25, 2017; Jelena Krstic (HLC), interviewed by author, Skype interview, Utrecht, May 11, 2017; Nataša Kandić (HLC), interviewed by author, Skype interview, Utrecht, May 2, 2017.

and other stakeholders that advocate for a regional commission for the establishment of facts about war crimes and other serious violations of human rights committed in the former Yugoslavia from January 1, 1991 until December 21, 2001.¹¹⁶ Still, most organisations are critical of the nature of cooperation between CSOs.

¹¹⁶ Mario Mažić (YIHR Croatia), interviewed by author, Skype interview, Utrecht, April 25, 2017; Bekim Blakaj (HLC Kosovo), interviewed by author, Skype interview, Utrecht, April 4, 2017; Nataša Kandić (HLC), interviewed by author, Skype interview, Utrecht, May 2, 2017; Jelena Krstić (HLC), interviewed by author, Skype interview, Utrecht, May 11, 2017.

Chapter 4: Changing EU policies on transitional justice

The transitional justice process in the Western Balkans is in need of concrete support from the European Union. The EU must take far bigger responsibilities when it comes to tackling issues of the past. It has to be one of the main focusses of attention in the development and integration of the region. Since the Macedonian conflict in 2001, it has been relatively quiet in the Balkan region. This might lead to the impression that the relations between ethnic groups and governments are improving. However, the absence of war is not equal to a successful healing of past traumas, justice for war crime victims, and inter-ethnic rapprochement. People in the Western Balkans need to understand the mechanisms of nationalism, ethnic divisionism, and elite power manipulation in order to prevent violent conflicts from happening again.

The European Union should realise that transitional justice is essential in overcoming the legacies of the past. Past wrongdoings and traumas can jeopardise present state-building activities in countries like Bosnia-Herzegovina. Coming to terms with the past is not something that will automatically flow from democratic state-building and foreign liberal interventions.¹¹⁷ The past needs to be addressed in order for the countries of the Western Balkans to go forward and grow into fully democratic societies. Therefore, the EU needs to have a coherent framework on transitional justice for the Western Balkans at the level of the Copenhagen criteria and accession negotiations.¹¹⁸

In its policy framework on transitional justice, the EU underscores the importance of installing proper mechanisms in order to prevent the reoccurrence of violence in conflict and post-conflict societies. Unfortunately, the promised rhetoric in its policy framework is not translated into concrete action, or a proper transitional justice strategy in the Western Balkans.

¹¹⁷ Soeren Keil and Zeynep Arkan, "The limits of normative power?: EU Member State building in the Western Balkans," in *The EU and Member State Building: European Foreign Policy in the Western Balkans*, ed. Soeren Keil and Zeynep Arkan (New York: Routledge, 2015), 28-29.

¹¹⁸ Rangelov and Theros, "Transitional justice in Bosnia and Herzegovina," 376-377.

The holistic approach to dealing with the past, as stated in the EU's Policy Framework on support to transitional justice, should also be implemented in the countries of former Yugoslavia. In its framework, the EU states the fact that legal and institutional measures alone are not sufficient to foster reconciliation in divided societies. Alternative approaches to, and personal dimensions of, transitional justice should be explored in efforts such as memorials, official apologies, and reforming the educational system.¹¹⁹ Furthermore, the document stresses that the design and implementation of historical memory programmes should be locally owned, inclusive, and conducted in close cooperation with civil society.¹²⁰ Nevertheless, the EU's approach towards transitional justice in the Western Balkans does not take these recommendations into account.

4.1 TRANSITIONAL JUSTICE AND THE POLICY OF CONDITIONALITY

The holistic approach to transitional justice should go beyond the current transitional justice mechanisms incorporated in the SAP. The European Union will only grant future EU membership on the condition that the countries of the former Yugoslavia fully cooperate with the ICTY. Ideally, this so-called policy of conditionality should also be used by the EU in order to oblige governments in the Western Balkans to implement broader transitional justice mechanisms. However, it is questionable to what extent the EU has leverage to oblige the countries in the former Yugoslavia to install alternative transitional justice mechanisms. Full cooperation with the ICTY was explicitly stated in the SAP, while other instruments were not mentioned. Still, in the EU-Western Balkans Summit in 2003, the EU and the countries of the Western Balkans agreed to the following:

¹¹⁹ The EU's Policy Framework on support to transitional justice, http://eas.europa.eu.proxy.library.uu.nl/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf (accessed on November 22, 2017), 2-3.

¹²⁰ Ibidem, 16.

Providing justice for war crimes is a legal, political and moral imperative to which we are all committed [...] We stress the role of education, culture and youth in promoting tolerance, ensuring ethnic and religious coexistence and shaping modern democratic societies. Fragmentation and divisions along ethnic lines are incompatible with the European perspective, which should act as a catalyst for addressing problems in the region.¹²¹

Furthermore, in the Zagreb Summit in 2000, the EU and the countries of the Western Balkans adopted a document which stated that ‘the European Union confirms its wish to contribute to the consolidation of democracy and to give its resolute support to the process of reconciliation and cooperation between the countries concerned’.¹²² In the light of these agreements, the EU’s normative agenda could allow the creation of alternative transitional justice mechanisms in order to promote reconciliation, regional cooperation and justice for war crimes. The documents do not always elaborate on how to achieve these goals, but they should give the EU some legal and moral grounds to call for broader transitional justice instruments.

Nataša Kandić, founder of the Humanitarian Law Centre, proposes the implementation of two additional transitional justice mechanisms: establishing a regional truth-commission and domestic war-crimes trials.¹²³ Well-functioning domestic war-crimes courts are still lacking in the region. Although local courts managed to condemn some war criminals, overall, national judiciaries are characterised by ethnic bias, and fail to deliver justice to victims and accountability for most war crimes.¹²⁴ Also, regional truth-commissions have so far not been established in the Western Balkans, and those that were set-up in the individual countries have

¹²¹ EU-Western Balkans Summit, Thessaloniki, 21 June 2003, http://europa.eu/rapid/press-release_PRES-03-163_en.htm (accessed on December 8, 2017).

¹²² Zagreb Summit, 24 November 2000, http://europa.rs/upload/documents/key_documents/2000/Zagreb%20Summit%2024%20Nov%202000%20Final%20Declaration.pdf (accessed on December 8, 2017).

¹²³ Nataša Kandić (HLC), interviewed by author, Skype interview, Utrecht, May 2, 2017.

¹²⁴ Rangelov, "EU conditionality," 370-371.

been a failure.¹²⁵ Without these two instruments, regional rapprochement and dealing with the past will be very difficult to establish. The RECOM initiative is a valuable step in establishing a regional truth-commission. The EU should acknowledge the importance of a regional truth-commission and build upon the efforts of civil society to force governments to install a regional truth-commission. The European Commission has provided financial assistance to the RECOM process, but concrete political support is needed in order to demand governments to start negotiating on establishing a regional commission.¹²⁶

On top of these two instruments, two additional mechanisms should be incorporated in the EU's policy of conditionality: educational reform and memorialisation. History teaching in the Western Balkans, especially in secondary schools, is heavily based on national interpretation of the past.¹²⁷ In Bosnia-Herzegovina for example, each ethnic group makes use of its own textbooks and has three different versions of the past. This does not only apply for the Yugoslav Wars, but even for the Second World War.¹²⁸ Thus, new generations will continue to adhere to the same ethnic-biased ideologies that divide the Western Balkans today.¹²⁹ Memorialisation is another problematic issue in the Balkans. Memorials and official commemorations are based upon excluding narratives of victimhood and heroic deeds of mostly male soldiers. Thus, these acts of remembrance further fuel mistrust and enmity between different ethnic groups.¹³⁰ Tackling the nationalist interpretations of history in education and memorials is very difficult. As stated earlier, the implementation of such reforms is not specifically stated in the SAP. Therefore, it is questionable whether the EU has political grounds to call for the implementation

¹²⁵ Jill A. Irvine and Patrice C. McMahon, "From international courts to grassroots organizing: Obstacles to transitional justice in the Balkans," in *Transitional Justice and Civil Society in the Balkans*, ed. Zala Volčič and Olivera Simić (New York: Springer, 2013), 220.

¹²⁶ Iavor Rangelov, Marika Theros, and Nataša Kandić, "EU Approaches to Justice in Conflict and Transition," *Security in Transition: An Interdisciplinary Investigation into the Security Gap* (2016), 15.

¹²⁷ M. J. George, "The Past as a Tool for the Present: The Role of History Education in the Western Balkans since the Second World War," (Master's thesis, Utrecht University, 2014), 50.

¹²⁸ Hasan Nuhanović (PMC), interviewed by author, personal interview, Utrecht, April 21, 2017.

¹²⁹ Meernik, "Truth, justice, and education," 414.

¹³⁰ Subotić, "Remembrance, Public Narratives, and Obstacles to Justice in the Western Balkans," 266.

of broader transitional justice mechanisms and reforms. Still, the values to which the EU and the countries of the Western Balkans commit themselves do indeed leave space for interpretation in how to achieve such goals. In this respect, it is more a question whether the EU has the political willingness to fully embrace alternative transitional justice mechanisms and reforms.

One problematic issue is that Croatia is already a member of the European Union. The EU can no longer use a policy of conditionality to demand reforms in the field of transitional justice. Unfortunately, historical issues are as much of a problem in Croatia as in the rest of the Western Balkans. Therefore, the Union has to start negotiations with the Croatian government on the issues of facing the past. It needs to establish contact with the Croatian civil society sector in order to cooperate on transitional justice. Ideally, all the above stated mechanisms should be implemented in Croatia, and on a regional level as well. Still, it might prove very difficult to oblige an EU member to implement such reforms. The situation in Poland and Hungary shows that the EU does not have sufficient instruments to deal with member states in which democratic values are at stake.¹³¹ Hopefully, the Croatian government will realise the need to address the past when other countries in the Western Balkans are forced to do so as well.

4.2 PRESSURE GOVERNMENTS

As stated in the third chapter, political forces are seriously obstructing the work of CSOs in the field of transitional justice. This also affects public opinion on civil society. Therefore, the European Commission should take a more critical stance towards the governments of the Western Balkans. It should realise ethnonationalist politics are one of the main obstacles in achieving a healthy democratisation of the Western Balkans. The EU cooperates with

¹³¹ Heather Grabbe and Stefan Lehne, “Defending EU Values in Poland and Hungary,” *Carnegie Europe* (last modified September 4, 2017), <http://carnegieeurope.eu/2017/09/04/defending-eu-values-in-poland-and-hungary-pub-72988> (accessed on December 8, 2017).

governments which practice undemocratic politics, and which include politicians condemned for war crimes and who worked within former authoritarian governments. In dealing with the governments of the Western Balkans, the EU avoids historically sensitive topics in order to work on key themes important to the EU, such as migration.¹³² The EU seems to prefer stability above genuine democratic reforms in the Western Balkans. This is very worrisome, as stability can never arise from nationalist politics, ethnic divisionism and undemocratic rule.¹³³

EU Commissioners working on foreign policy and enlargement negotiations, such as Johannes Hahn and Frederica Mogherini, should speak-out when Balkan politicians deny war crimes, promote ethnic divisionism and endanger human rights and basic democratic freedoms. Hahn and the department of European Neighbourhood Policy and Enlargement Negotiations should urge the governments of the Western Balkans to implement a vetting and lustration procedure that will prevent war criminals from taking public office. This is a genuine problem in the Western Balkans, as accused and convicted war criminals are often praised as war heroes and often take public offices in the countries of the former Yugoslavia.¹³⁴ Hahn and Mogherini are key figures in the enlargement negotiations and their actions could therefore impact the transitional justice process in the Western Balkans. An example is the fact that they publicly supported the Joint History Project, an educational programme of CDRSEE, which Hadjiyannakis claims to be one of the main reason for the Ministries of Education from several Balkan countries to cooperate with the project.¹³⁵

¹³² The Economist, “The West backs Balkan autocrats to keep the peace, again,” (last modified July 1, 2017), <https://www.economist.com/news/europe/21724414-some-call-it-stabilitocracy-others-call-it-way-things-have-always-been-west-backs-balkan> (accessed on December 8, 2017).

¹³³ Florian Bieber, “What is stabilitocracy?,” *Centre for Southeast European Studies* (last modified May 5, 2017), <http://www.suedosteuropa.uni-graz.at/biepag/node/245> (accessed on December 8, 2017).

¹³⁴ Marija Ristic, “How Did War Criminals Become Serbia’s Heroes?,” *Balkan Insight* (last modified October 9, 2017), <http://www.balkaninsight.com/en/article/how-did-war-criminals-become-serbia-s-heroes--10-09-2017> (accessed on December 8, 2017); Balkan Insight, “Balkan War Crime Suspects Maintain Political Influence,” (last modified February 12, 2016), <http://www.balkaninsight.com/en/article/balkan-war-crime-suspects-maintain-political-influence-12-02-2016vf> (accessed on November 22, 2017).

¹³⁵ Antonis Hadjiyannakis (CDRSEE), interviewed by author, Skype interview, Utrecht, April 12, 2017.

Moreover, EU Commissioners should take human rights activists and CSOs in protection by publicly condemning any acts of violence and media propaganda. Furthermore, freedom of speech and an independent and critical media is essential to counter nationalist propaganda. Therefore, it is very worrisome that freedom of speech and media is under pressure in Serbia. Attacks on journalists have sharply increased in recent years. Local activists point to the destabilising politics of current President Alexander Vučić, who might seem pro-European, but is accused of disregarding democratic rights and principles.¹³⁶ War crimes denial is another issue in the Western Balkans. An example is Milorad Dodik, President of Republica Srpska, who has said repeatedly that no genocide took place in Srebrenica.¹³⁷ This seriously endangers the fragile political situation in Bosnia-Herzegovina, and obstructs any harmonisation between Serbs and Bosniaks.

4.3 ENGAGING CIVIL SOCIETY

An essential part of the EU policy on transitional justice should be focused on civil society. Through engagements with civil society, the EU can assist the bottom-up transitional justice process and encourage active civic participation. As the third chapter has demonstrated, it is essential for CSOs to also genuinely interact with ordinary citizens. In order for the past to be reckoned with, active participation is needed from all layers of society. In their memory and history-related projects, CSOs should make civic participation top priority. This does not only mean engaging people who have direct experience of the Yugoslav Wars. Engaging youth is also very important in projects related to dealing with the past. The youth constitute the future

¹³⁶ Steve Crawshaw, “Serbia and the EU: Stability over democracy,” *Euobserver* (last modified September 20, 2017), <https://euobserver.com/opinion/139081> (accessed on December 8, 2017).

¹³⁷ B92, “Dodik: There was no genocide in Srebrenica,” (last modified July 11, 2016), http://www.b92.net/eng/news/region.php?yyyy=2016&mm=07&dd=11&nav_id=98580 (accessed on December 8, 2017); and Sabina Arslanagic, “Dodik Again Denies Srebrenica Genocide,” *BalkanInsight* (last modified December 3, 2010), <http://www.balkaninsight.com/en/article/dodik-slams-international-community-for-referring-to-srebrenica-massacre-as-genocide> (accessed on December 8, 2017).

of the Western Balkans, and it is important they learn and engage with alternative readings of history and memory.

The EU can play a guiding role when it comes to promoting joint cooperation between CSOs. Often, local organisations do not have the capacity to promote regional cooperation on top of their normal work.¹³⁸ Furthermore, local organisations that aim to promote cooperation might be seen as competitors in the field instead of as partners.¹³⁹ Still, the EU has to bear in mind that any cooperation has to be based on existing network, needs-driven, in close partnership with local organisations and with a clear and realistic plan of action.¹⁴⁰ The EU should abstain from imposing its own agendas and interests on local civil society. These are all important considerations when we discuss the possibility of increased EU engagement with local civil society in the context of transitional justice.

EU intervention could tackle two pressing issues within civil society – funding and cooperation – and work on structural partnerships with respect to local needs. Rangelov and Theros acknowledge the need for more structural engagement between Brussels and local civil society. They state that interaction should not only be limited to professional NGOs, but also to loosely organised victim groups and other social movements. The authors propose to do a mapping study in Bosnia-Herzegovina to determine which actors and civil movements work on dealing with the past. Hereafter, the EU should develop a mechanism for dialogue between EU officials and civil society. Finally, the European Union should ‘devise an adequate strategy for financial assistance to support civil society action in transitional justice’.¹⁴¹ Their recommendations will guide the proposed action plan as developed in the section below.

¹³⁸ Antonis Hadjiyannakis (CDRSEE), interviewed by author, Skype interview, Utrecht, April 12, 2017.

¹³⁹ Maike Dafeld (Forum ZFD), interviewed by author, Skype interview, Utrecht, April 25, 2017.

¹⁴⁰ Anita Mitić (YIHR Serbia), interviewed by author, Skype interview, Utrecht, May 10, 2017; Velma Šarić (PCRC), interviewed by author, Skype interview, Utrecht, April 18, 2017; Michele Parente and Soraja Zagic (Forum ZFD), interviewed by author, Skype interview, Utrecht, May 4, 2017.

¹⁴¹ Rangelov and Theros, “Transitional justice in Bosnia and Herzegovina,” 384.

First of all, the EU country delegations should do a mapping study in the countries that were immediately affected by the wars: Croatia, Serbia, Bosnia-Herzegovina, Kosovo and Macedonia. This mapping study should discover which relevant CSOs work on dealing with the past. The local EU delegations might already have contact with some of the relevant CSOs working in the field of transitional justice. The country delegations might already have assisted some CSOs through the IPA or IPA II assistance programme. Furthermore, some more professional NGOs might have contributed in some way to the process of writing the annual Progress Reports. Also, local delegations should have built a network of associates and contacts in the region, which would significantly aid the mapping study. Previous mapping studies and research may also aid in the process, like the study of the Berghof Foundation on dealing with the past initiatives in the Western Balkans.¹⁴² As Rangelov and Theros suggested, the mapping study should also encompass more fluid organisations, youth centres, and relevant veteran and victims' organisations. It is also important that more rural areas and smaller towns are incorporated in the mapping as well.

The goal of this mapping study is to bring EU delegations and CSOs together in order to create common strategies, discuss agenda topics, and write recommendations. This is in line with Rangelov and Theros' recommendation to devise a mechanism of dialogue between the EU and local civil society. In order to do so, local EU delegations should contact representatives of the relevant CSOs and inform about their projects, aims, needs and challenges. Hereafter, the country delegations should bring together the relevant CSOs in order to critically reflect on civil society's work on dealing with the past. They should discuss where civil society working in the field of transitional justice is currently standing, what are the common aims and challenges, what kind of themes are in need of priority, how they can involve common citizens

¹⁴² Fischer and Petrović-Ziemer, "Dealing with the Past in the Western Balkans,".

in dealing with the past, what approaches to dealing with the past are effective, and how they can share expertise and strengthen each other. These discussions are needed in order to create more synergies between civil society. This process might take some time, and CSOs would need to dedicate substantial time and energy. Therefore, the meetings should not be too frequent. This process could continue for half a year to a year, according to the needs of CSOs.

This process should be repeated simultaneously on the regional level, although less frequently. These consultations should be coordinated between the different EU country delegations. Representatives of these delegations should be present at the regional meetings. The bigger NGOs and CSOs will already have regional contacts with civil society in other countries. Therefore, it is important that also several smaller organisations, and possibly victims' and veteran organisations attend these regional meetings. Those that might not have the capacity to do so should be able to receive European funds for travel and accommodation expenses. The consultations on the regional level should build upon the national discussions, but information and communication should flow both ways. Of course, in each country there are context-specific circumstances. Still, it is likely that CSOs, both on national and regional level, will share a lot of common aims and struggles.

After this period, the EU country delegations and civil society should have created a framework on dealing with the past from "the bottom-up". In this framework, the work of civil society is evaluated, and common strategies, recommendations and policies are incorporated. Discussions on such common strategies are probably not new to some segments of civil society. For example, Fischer states that academics and CSOs in Bosnia-Herzegovina 'have begun to discuss the question of how to increase credibility and social acceptance, and as well as how to create a vibrant civil society'.¹⁴³ Nevertheless, it is important that all relevant CSOs in the field of transitional justice get the chance to discuss such topics in national and regional

¹⁴³ Fischer, "Civil society in conflict transformation," 20.

consultations. Common strategies and recommendations could cover topics such as: dealing with traumatised victims, engaging ordinary citizens, setting-up inclusive story-telling and oral-history projects, engaging state actors, EU assistance to the transitional justice process, and inclusive memorials. CSOs would substantially benefit from discussing such topics together, and by proposing concrete joint action plans.

Rangelov and Theros further suggest devising an adequate strategy for funding civil society in the Western Balkans.¹⁴⁴ The problem is not that the EU does not spend enough money on the enlargement countries, the problem is how it is spent. The EIDHR and IPA II programme allow for substantial money to be allocated to CSOs and their work on transitional justice. Therefore, extra European budget for the enlargement countries is probably not needed, but resources should be allocated in a different direction. The most important aspect of this funding system is that it arises out of the needs of local civil society. It should not fuel competition between civil society, but support their work constructively and in common coordination. The following example illustrates how such a system could take shape.

Each country should receive a specific amount of funding on transitional justice initiatives proportionally to the level of destruction the country endured. For example, it is obvious that a country like Macedonia should not receive the same amount of funding as Bosnia-Herzegovina. This total amount should be divided between several transitional justice themes. This could include peace education, research and documentation, memorialisation, art installations, summer camps and youth training. It is essential that CSOs have agreed upon the themes that should receive support, and have made priorities which themes deserve more resources. The majority of these resources will be invested in new long-term projects, while some money will also be made available for programmes that have already been implemented for several years, like most fact-finding and documentation. CSOs should then coordinate to

¹⁴⁴ Rangelov and Theros, “Transitional justice in Bosnia and Herzegovina,” 384.

which themes they will and can contribute. The amount and level of contribution will differ for each organisation. For example, an established CSO with lots of resources and capacities could contribute to several themes, while a local youth organisation could contribute to only one theme. Hereafter, CSOs working within a specific theme will discuss with each other what kind of projects they want to organise together. Money will be directed to projects, and not to organisations themselves. For example, several organisations might plan to organise a summer camp in Bosnia-Herzegovina, which is already being done independently by different CSOs.¹⁴⁵ The budget on summer camps in Bosnia-Herzegovina might be X. For this amount, an estimated three summer camps can be organised. Thus, those organisations will receive one-third of the amount X for this specific summer camp.

The same funding procedure should function on the regional level. The framework on dealing with the past should incorporate regional challenges and objectives. This will determine the themes that are in need of priority. This could differ from the themes that are in focus on the country level. For example, regional funds on documentation and research could be proportionally far larger because these activities are mostly conducted on a regional level. Like on the country level, organisations on the regional level can work together on several themes. Although, it is obvious that some local organisations are less inclined to contribute on the regional level. For example, a peace organisation in a small town which only conducts a local oral history project is possibly not interested to contribute to memorialisation projects on the regional level. Still, it is quite possible that a regional memorialisation project will include oral history narratives from different rural areas in the Western Balkans. This would be a project to which smaller organisations can significantly contribute.

Of course, this funding system appears to be easier to manage on paper than in reality. Competition between organisations might lead to unwillingness to cooperate on several

¹⁴⁵ Michele Parente and Soraja Zagic (Forum ZFD), interviewed by author, Skype interview, Utrecht, May 4, 2017; Alma Masic (YIHR Bosnia), interviewed by author, Skype interview, Utrecht, May 10, 2017.

projects. Some organisations might have bad experiences with each other in the past, or organisations will be unable to determine which themes deserve what amount of funding. Nevertheless, the EU delegations will have the final say in the distribution of money and projects. They need to act according to the needs of local civil society, but this does not mean civil society can determine unilaterally who receives what portion of the cake. Still, there might be incidences where the delegations or CSOs cannot agree among themselves on certain issues. This should not be too surprising when money is involved. Nevertheless, it is exactly this interaction and discussion that is needed in the first place. Disagreement will always arise when different stakeholders are incorporated. It is much easier to have all the money yourself and determine the rules of the game. Yet, dealing with the past is a difficult process. It is not something that can be easily done, not by the European Union, and not by local civil society. It will be a long-term process, and requires determination, patience, and energy.

However, what is certain is that the EU cannot neglect the transitional justice process any longer. In order for a successful integration of the Western Balkans to happen, the past needs to be addressed. Establishing genuine dialogue with local civil society, and creating an alternative funding system is essential in this. As a study has shown, the EU is currently the main agenda setter for interventions of other donors in the region.¹⁴⁶ Thus, it is quite possible that an alternative EU donor strategy will result in other donors following its example. Donors could coordinate their aid assistance with the European Union. It could even be possible for them to invest money in the country- or regional level assistance programme of the European Union. Additionally, they could support projects that are already assisted through the European funding programme. This will create more coordination in the funding streams and is more efficient.

¹⁴⁶ Tanja Hafner Ademi (ed.), “Donor Strategies and Practices for Supporting Civil Society in the Western Balkans,” *Balkan Civic Practices* 11 (2014).

Conclusion

The Western Balkans are in need of concrete European support in the field of transitional justice. With the ICTY closing down, the main EU-supported transitional justice instrument will cease to exist. High-level war criminals have been prosecuted, and some of the most important ones, like Mladić and Karadžić, are awaiting their final verdicts in appeal. Although the ICTY has been important in combatting impunity, it did not lead to regional reconciliation, healing of war traumas, or diffusing ethnic tensions. This paper examined how the EU can assist the transitional justice process in the Western Balkans more holistically and with respect for bottom-up dynamics and practices. In order to successfully reckon with the past other approaches outside the judicial field are needed. Civil society has much experience in finding alternative approaches to dealing with the past. However, their work is obstructed by many obstacles. Public opinion, political forces, cooperation and funding are the most overwhelming challenges. The EU can play a guiding role in countering these challenges. In order to do so, it needs to make transitional justice one of the priorities in its enlargement strategy. It should demand the implementation of several mechanisms and instruments: processing war criminals in domestic courts, establishing a regional truth-commission, educational reforms and inclusive memorialisation. These transitional justice mechanisms are not explicitly incorporated in the SAP. Still, the EU should follow-up on its moral and normative politics, and take political responsibility to assist the transitional justice process. Furthermore, it needs to pressure governments and politicians when they endanger democratic values and adhere to excluding ethnonationalist politics. Above all, its transitional justice strategy needs to respect local needs and actors. Civil society is currently the only stakeholder that combats the ethnonationalist politics of local elites. Therefore, they should be essential partner in the process of facing the past. Unfortunately, current EU support for CSOs working on transitional justice is insufficient.

Structural engagements and an alternative funding system are needed to tighten the collaboration with local actors.

A failure to come to grips with the past is obstructing regional rapprochement, genuine peace, and the democratisation process in the Western Balkans. The EU hopes to avoid politically sensitive issues in order to ensure stability in the region. This line of thinking is paradoxical, and will never work. In order to establish genuine stability, the EU needs to shift its priorities and strategies. The Western Balkans could be a potential security hazard for the European Union. The EU needs to offer a democratic alternative to the ethnonationalist politics in the Western Balkans. It needs to be an alternative that is not based upon divisive ethnonational politics, which build upon historical myths and past wrongdoings. In order to deconstruct these unhealthy politics, the traumas of the past need to be genuinely reckoned with. Without this, a successful integration of the Western Balkans is unlikely to happen.

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