

Bilateral relations in the Western Balkans as a challenge for EU accession

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Abstract

Although the European Union pledges to ‘maintain [and reaffirm] the credible enlargement perspective for the Western Balkans,’ (European Commission, 2018), some of the new requirements which it demands the Western Balkan candidate states to meet in order to gain membership seem to be very demanding for the political leaderships of these states. This is particularly the case for the requirement that candidate states solve all their ‘bilateral disputes...as a matter of urgency’. While Montenegro hopes to solve its only remaining (though nearly thirty year old) dispute with Croatia over their maritime border sometime soon, the second regional frontrunner for EU membership, Serbia, and the other remaining Western Balkan states (with the partial exception of Albania) have many more (and more serious) problems to resolve with their neighbours. This article discusses the nature and origins of problems in several most complex bilateral relationships in the Western Balkans and critically assesses the difficulty these problems pose for the Western Balkan states’ accession to the EU.

Keywords: Western Balkans, bilateral disputes, EU accession

Introduction

Fearing the potential negative consequences of its “mega enlargement” of 2004/07 and of the rejection of its institutional reform in the French and Dutch referenda in 2005, the EU started feeling *enlargement fatigue* even before Romania and Bulgaria, ‘two poor [Balkan] states’ (*The Economist* 2006) joined it in 2007 (Phinmore 2006; Emerson et al. 2006; Pridham 2007). The negative effects of the 2008 global financial crises and even more so the Eurozone crisis of 2010/11 had further strengthened enlargement fatigue among the political elite in the core EU member states and put future EU enlargement to the Western Balkans on ‘life support’ (O’ Brennan 2014).ⁱ As a ‘cure’ for this ‘illness’ or, as often touted, the way to better prepare the candidate countries for membership by ‘avoid[ing] mistakes’ from the previous enlargement rounds, particularly those related to the ‘premature’ accession of Romania and Bulgaria (Grabbe 2014; O’ Brennan 2014; Vachudova 2014) the EU tightened the Copenhagen accession conditionsⁱⁱ in 2006 and has continued to make them even tougher and to introduce additional requirements for the Western Balkan membership candidates ever since. While most of these additional accession obligations were in fact additional requirements incorporated in the existing Copenhagen conditions related to strengthening the rule of law and governance in the candidate countries, some of them arose from the ‘Stabilisation and Association Process’ (SAP), which the EU launched in the late 1990s for post-Yugoslav states (excluding Slovenia) and Albania (later labelled the ‘Western Balkans’). The SAP aimed to ‘help enable the countries in the region to create lasting peace, democracy, stability and prosperity’ after the destructive wars in the 1990s by offering conditioned EU assistance (EU General Affairs Council, 1999).

The SAP conditions particularly targeted the post-war reconciliation, mutual cooperation (especially regarding the return of refugees) and compliance with international obligations (particularly cooperation with the International Criminal Tribunal in The Hague [ICTY]ⁱⁱⁱ) and have so far primarily been used by the EU Council to ‘fine tune’ individual countries’ progress in accession negotiations run by the Commission (see the Introductory to this SI). Both the opening of Croatia’s accession negotiations in October 2005 and the signing of Serbia’s Stabilisation and Association Agreement (SAA) with the EU in 2008 were postponed (and Serbia’s SAA also frozen immediately after it was signed in April 2008) due to these two countries’ lack of cooperation with the ICTY in The Hague. Similarly, the Council postponed its response to the Commission’s recommendation to grant official candidate status to Serbia from December 2011 to March 2012 due to Serbia’s unsatisfactory progress ‘in the Belgrade-Pristina dialogue’ on issues arising from its refusal to recognise Kosovo’s unilateral declaration of independence in 2008 (European Council 2011, point 13).

However, the most recent EU accession condition related to good neighbourly relations and peaceful development in the Western Balkan region was formulated by the Commission itself and included in its 2018 Enlargement Strategy as a requirement that the Western Balkan candidate states have to find ‘definitive solutions to disputes with neighbours’ (p. 3) and solve them ‘as a matter of urgency’ (p. 8) as the EU ‘will not accept to import these disputes and the instability they could entail’ (p.3). Although the Strategy aims to revitalise and boost the EU enlargement process to the Western Balkans (see the introduction to this SI) it has, nonetheless, identified this additional requirement for the WB candidates although such an explicit demand was not included as an official EU accession (pre)condition in any of the previous enlargement rounds.^{iv} While its basic aim was officially set out (as were all additional accession conditions which the EU imposed on the Western Balkan candidates after 2006) to ‘support preparations [of the candidate countries] for meeting the requirements of EU membership...[and] continue contributing to political stabilisation...’ (European Commission 2018, 6), this EU requirement has in contrast to all other Copenhagen and post-Copenhagen accession conditions broadened the scope of its fulfilment beyond the capacity and competency of the individual country governments. This (*it takes two to tango*), combined with the complexity and longevity of problems in bilateral relations between some Western Balkan states, makes this accession requirement enormously demanding for the political elites of individual candidate states and de facto unattainable.

The analysis presented in this paper will show that the problems in bilateral state relations in the Western Balkans are very serious and very deep and that they can hardly be resolved by the efforts of these states’ political elites alone. While the EU cannot be expected (even less so ‘obliged’) to ‘import instabilities’ with its enlargements, its demand that the Western Balkan candidates resolve their bilateral disputes with neighbours as a *sine qua non* of their further progress towards accession can be justified only if it is accompanied with significant external EU assistance and guidelines to help the divided parties find mutually acceptable solutions. Without EU assistance, this accession request can only further hinder and postpone rather than assist (let alone boost) Western Balkan accession to the EU.

After defining the nature and origins of bilateral disputes between the Western Balkan states and their neighbours in Section 1, Section 2 discusses the most serious bilateral dispute in the region – the Serbia-Kosovo dispute over the latter’s statehood. Section 3 investigates the

ongoing bilateral border disputes in the region. Section 4 concludes the paper with the examination of the nature of non-border bilateral disputes between two Western Balkan candidates for EU membership and their two EU member neighbours and the impact of these disputes on the ongoing (and future) accession progress of the candidate countries.

The nature and origins of bilateral disputes in the Western Balkans

While the literature on EU enlargement and Europeanisation has so far discussed the intra-national and inter-national political disputes in the Western Balkans primarily in the context of the EU's state building efforts in Bosnia and Herzegovina (B-H) and Kosovo (Bieber 2011; Noutcheva 2009 and 2012, Juncos 2012), bilateral disputes between other countries in the region have so far received much lesser academic attention. A partial exemption to that generalisation can be found in respect of the still ongoing dispute between Croatia and Slovenia about their maritime border and the recently resolved dispute between Greece and (now) North Macedonia regarding the latter's name. These have been covered in several academic contributions as a case of an EU member state using its membership rights to block the accession bid of its neighbour in order to solve a dispute in its favour (Bickl 2017; Geddes and Taylor 2016; Mavromatidis 2010; Tziampiris 2012). Apart from a few rare attempts (Orlandic 2019; Vankovska 2020) the impact of several ongoing border and other bilateral disputes in the region on progress in the EU accession process of countries has yet to be critically analysed in the mainstream literature.

The low coverage of bilateral disputes between the Western Balkan states and their neighbours in the EU enlargement literature is not surprising, considering that resolving disputes was not defined by the EU as an accession condition before the release of the 2018 Enlargement Strategy. However, the origins and nature of Western Balkan bilateral disputes have been extensively investigated in the history, international relations and regional conflict literature. Academic research (see e.g. Brubaker, 1996; Crampton, 2002; Lampe, 1996; Roeder, 2004; Woodward, 1995) has more or less univocally concluded that the communist legacy of institutionally decentralised and ethnically fragmented governmental power in the former Yugoslavia (based on Lenin's 'solution of the national question')^v was the primary cause of the troubling relations among its constituent nations and major ethnic groups that ultimately led to the collapse of their common state. On the other hand, the mushroomed media coverage and some 'instantly written' histories of Yugoslavia and post-Yugoslav wars (supported with some more radical structural theories – e.g. Huntington 1996; Janos 2000) have insisted on the argument that 'Balkan states had always been corrupt and tyrannous and their societies forever backward and...[that all] Balkan troubles were the inevitable outcome of "ancient ethnic hatreds"' (Crampton 2013, xii; see also Hatzopoulos 2003 and Todorova 1997). This argument in the context of the continuously problematic relations between the post-Yugoslav Western Balkan states has been used to account for the uselessness of external efforts, including the EU's, to 'repair' these relations and solve the existing disputes. The EU itself has not been unwilling to lean on this argument (though not explicitly) in explaining the reasons for its generally 'weaker commitment to south-eastern [Western Balkan] enlargement compared to eastern [2004/07] enlargement' (Phinnemore 2006, 13) and continuous insistence 'on placing an ever-increasing burden of asymmetric adjustment on [Western Balkan] candidate states' (O' Brennan 2014, 225). The rationale for its decision to re-reactivate the 'absorption criterion'

for the Western Balkan membership candidates (and Turkey) in 2006^{vi} in order to establish ‘whether the EU can take in new members...without jeopardising the political and policy objectives established by the Treaties’ (European Commission, 2006, 6) or to introduce the 2018 request for the pre-accession ‘bilateral dispute resolution’ in order to secure its internal stability, can also be linked to the EU’s fear of the problems related to and associated with the balkanisation argument (compare Phinnemore 2006 and O’Brennan 2014).

If there is disagreement in the literature and external policy approaches regarding whether the collapse of the former Yugoslavia was rooted in (irreparable) ‘ancient ethnic hatreds’ and general backwardness, or whether it had primarily resulted from the semi-confederative institutional setting and political developments in the late 1980s, there are not many dissonant voices in assessing the causes of the ongoing problems among post-Yugoslav states. These are, more or less unanimously, seen as a direct result and consequence of events and developments that immediately preceded or immediately followed the collapse of communist Yugoslavia. While some of these problems, particularly the border disputes, may be considered to be a ‘technical consequence’ of the fact that some land areas and assets were owned by the federal state government and that, as a result, the former Yugoslav constitutive republics (turned independent states) did not have precisely delineated borders among themselves (particularly at sea and rivers). Other problems are of a more substantial nature. These are primarily related to the different interpretations of the causes, scope and consequences of the 1990s ethno-national conflicts and wars in Croatia, B-H and Kosovo (and the involvement of Serbia and Montenegro) which affect various aspects of the bilateral relations between the countries. The opposite stances of their political leaderships (and often wider public) regarding their disputes have not converged over time as many expected, but have remarkably persisted and become a salient feature of the region over the last two decades.

While not one of the four official candidates and two potential candidates for EU membership in the region is free of some dispute with a neighbour, the conflicts between Kosovo and B-H with Serbia and Croatia are the most serious, due to their potential impact on the fragile state-building processes in these two countries and consequently regional peace and security. However, there is a significant difference regarding the importance of the negative impact of these bilateral disputes on building functional state institutions in B-H and Kosovo. While Kosovo’s ongoing dispute with Serbia denies Kosovo’s very statehood and blocks its inclusion in many international organisations (including the UN and potentially the EU) both Serbia and Croatia officially recognise B-H’s sovereignty and its existing constitutional order. The disputes which occasionally emerge between this country or, more precisely, between its Bosniak political leadership and the official Serbia and Croatia leadership, primarily result from support that the latter give to their ethnic counterparts living in B-H (Bosnian Serbs and Croats) in their internal conflicts over various issues, most notably the very constitutional order of the country (see e.g. Hyden 2005 and Noutcheva 2009). As such, B-H’s disputes with these two neighbouring countries, similarly to the occasional disputes between North Macedonia’s political leaders and their counterparts in Albania over the status of the Albanian ethnic minority in North Macedonia (and the latter’s request for possible further ‘internal

federalisation' of this country – see Vankovska 2020), are directly related to these countries' internal problems of broken ethno-national relations.

The European Commission's requirement for the resolution of bilateral disputes between the Western Balkan candidates and their neighbours was not specifically designed, nor can it objectively 'help,' to resolve B-H's state building problems or North Macedonia's federalisation.^{vii} Indeed, this requirement was primarily created to deal with the unfinished state building project in Kosovo, the successful completion of which is directly related to the resolution of the bilateral conflict(s) between the Kosovo and Serbian governments. The scope of the 'bilateral dispute resolution' requirement, which is mentioned in the 2018 Strategy document several times in the context of the Kosovo-Serbia dispute (including five times where it is noted that this dispute must be resolved by signing a 'legally-binding agreement') has been further broadened by the request that '[all] countries must unequivocally commit... to...solve [their] open issues well before their accession to the EU, in particular border disputes' (p.18). Probably motivated by the idea of avoiding EU 'imports' of similar disputes as those between Slovenia and Croatia over their maritime border (discussed in Section 4) or (recently solved) between Greece and North Macedonia over the latter's name in the future, the latter request is mentioned in several places in the document. Somewhat paradoxically, after excluding the Serbia-Kosovo' border dispute' (which comes as a result of a 'general' refusal by Serbia to accept the existence of Kosovo as a sovereign state and thereby its borders as well) the discussion in Section 3 will show that apart from one case, the current Western Balkan candidates and potential candidates for EU membership do not have unresolved border disputes among themselves. All their ongoing border disputes are those which they have with Croatia - which, as an EU member state, can make fulfilling the 'border requirement' even more demanding and complicated for them.

However, Serbia's border problems with Croatia constitute only a small part of generally problematic relations between these two countries that stem from the time of Yugoslavia's disintegration and the Croatian 1991 -1995 war. These will, therefore, be specifically discussed in the final section of this paper, together with the bilateral dispute which North Macedonia has with Bulgaria over its ethnic/national identity and language. Both these disputes have nothing to do with the border delineation, but may nevertheless negatively affect and potentially postpone the EU accession of the involved candidate countries.

The internal politico-religious dispute between the pro-Serbian opposition parties and the Serbian Orthodox Church in Montenegro on the one side, and the Montenegrin government (which supports the non-canonical and very small Montenegrin Orthodox Church) on the other, as well as the religious dispute between the Serbian Orthodox Church and Macedonian Orthodox Church, are out of the scope of this paper for two main reasons. Firstly, both these disputes (like the above mentioned occasional disputes between the (central) B-H government and the governments of Serbia and Croatia), cannot be considered as state level disputes and as such they are not addressed by the EU's requirement for the resolution of bilateral disputes before the EU accession is granted. Secondly, even in the case that these two disputes further escalate and more directly affect relations between the respective governments, it may be

expected that these governments will find ways to de-escalate them (as happened during the alleged ‘coup’ against the Djukanović government in October 2016)^{viii} and avoid them becoming an obstacle for progress towards EU accession.

The Serbia - Kosovo dispute

Twelve years after Kosovo declared independence in February 2008 and nine years after the launch of the EU facilitated ‘Belgrade-Pristina dialogue’ in Brussels in March 2011, official relations between Serbia and Kosovo are still non-existent. Finding support among the two permanent members of the UN Security Council – Russia and China – and over 80 members of the UN (including five member states of the EU) who have not yet recognised the independence Serbia’s former province, Serbia continues to officially deny Kosovo’s sovereignty and succeeds in blocking its membership of the UN and many other international organisations. Despite Serbia’s positive response to the EU’s request to ‘show credible commitment [to]...the Belgrade-Pristina dialogue’ (EU General Affairs Council 2012, 1) that came with its being granted official EU candidate status in March 2012 and the strong motivation of both parties to resolve their dispute that would grant them further progress towards EU accession, the relationship between the two governments has remained very tense to the present day.

The adoption of the Brussels Agreement in April 2013 on the establishment of some cooperation (foremost on governing Serbian-populated enclaves in Kosovo) and official communication between the two parties^{ix} has, despite high expectations, had little effect. Governments’ officials have continued to ‘communicate’ almost exclusively via the EU’s and UN’s civil and military missions in Kosovo and the very interpretation of their obligations under the Agreement has proven to be a new source of dispute.

The implementation of the first six (out of 15) points of the Agreement on the establishment of an ‘Association/Community of Serb majority municipalities in Kosovo’ has become particularly problematic. While the Serbian side has considered this a crucial part of the Agreement, successive Kosovo governments (supported by the Kosovo Albanian nationalist opposition) have tried to postpone its implementation. After the Kosovo Constitutional Court ruled on 23 December 2015 that all parts of the Brussels Agreement which grant autonomous executive rights to the Association of Serb municipalities ‘are not entirely in compliance with the spirit of the [Kosovo] constitution’ (Constitutional Court 2015, Conclusions, point 4) and the Kosovo government accordingly asked for a revision of the Agreement, the Brussels talks effectively stalled in 2016. Claiming that ‘we have done what we promised and signed, [whereas] they [the Kosovo government/Albanian politicians] have not yet applied a single word from the Brussels agreement’ (Danas, 2017) Serbian President Vučić rejected any idea of revising the Agreement and insisted that the Kosovo Albanian side must fulfil its obligation as is stated in the original document. While there was no progress in the Brussels talks between January 2016 and mid-2018, tensions and nationalist rhetoric increased. Among particularly inflammatory incidents were arrest of former Kosovo Prime Minister Haradinaj in France on 4 January 2017 (based on Serbia’s arrest warrant for alleged war crimes) and the departure of a ‘Kosovo is Serbia’ train from Belgrade for North Mitrovica in north Kosovo, only two days after Haradinaj was released from the French prison on 12 January (Emini and Stakic 2018; Morina 2017). The exchange of mutual accusations and offensive rhetoric intensified again in January 2018 when independent Serb politician Oliver

Ivanović was assassinated in North Mitrovica (for which both sides have been accusing each other, see e.g. Emini and Stakic, 2018) and even more so, two months later, after the theatrical arrest and quick release of the head of the Serbian Government office for Kosovo during his visit to the same city on 26 March (*The Guardian* 2018a).

However, despite these negative trends, it would be incorrect to say that the ‘Pristina-Belgrade dialogue’ in Brussels has been fruitless. Although the first part of the Brussels Agreement has not yet been implemented, its other parts, particularly those which regulate the integration of the Serbian police forces and the judicial system in Serb-dominated northern Kosovo into a Kosovo structure (points 7-10)^x have so far been largely implemented. Moreover, many ‘technical issues’ such as border control, some communication and transport issues, or the procedure governing the visits of Serbia’s officials to Serbian enclaves in Kosovo^{xi} were not included in the 2013 Agreement but have been successfully discussed and resolved at the Brussels talks between representatives of the two governments (see. e.g. Jovanovic 2015).

The EU role, particularly that of the two previous High Representatives for Foreign Affairs (and Vice Presidents of the European Commission) Catharine Ashton and Frederica Mogherini, in trying to bring the two parties together and ‘forcing’ them to find mutually acceptable solutions, has been of paramount importance. While Ashton initiated the Brussels talks and facilitated the signing of the Agreement in 2013, Mogherini took over in 2014 and managed the signing of four other ‘key agreements’ between the two sides before talks were suspended in December 2015. In spite of the negative developments that marked Serbia-Kosovo relations from January 2016 to mid 2018, Mogherini and her predecessor’s efforts and commitment were almost rewarded by a ‘final solution’ for the dispute. Strongly encouraged by Mogherini, Commissioner for Enlargement Hahn and the Austrian government (which presided over the EU Council at the time) who organised the meeting between them in Vienna in late August, Serbia’s and Kosovo’s presidents Vučić and Thaçi seemed to have significantly reconciled their stances and Mogherini stated that ‘[w]e’re all committed to finalise negotiations in the coming months, before the end of the mandate of this commission...’ (Rettman 2018).

However, Mogherini’s hope was never realised, as the leaders of some influential EU member states, notably Germany and the UK, were not willing to support a possible ‘final solution’ between the two parties which would, as discussed at the Vienna meeting, include a ‘redraw’ of their borders (Gray and Heath 2018; Rettman 2018). Claiming that any border corrections or territorial swaps would set a precedent for other states in the region with similar issues (notably Bosnia and Herzegovina and North Macedonia), this opposition effectively torpedoed any further talks and the possible resolution of the Kosovo-Serbia dispute during Mogherini’s mandate. Moreover, after then-Kosovo Prime Minister Haradinaj resolutely rejected any deal with Serbia which would include border changes, and even decided to increase taxes on all imports of goods from Serbia to 100% in November 2018 (*Euractiv* 2018) the relationship between the two parties became again extremely tense. Repeated statements by President Vučić that Serbia will never recognise Kosovo if it does not get ‘something in return’ (*RFERL* 2019), have further cemented the impression that the EU’s internal divisions and mistrust between the Commission and Council (see the Introduction to this SI) bear a

significant level of responsibility for the failed opportunity to resolve this serious bilateral and regional problem.

When in May 2020, pressured by the EU and the USA, Kosovo's new government dropped the 100% import tariffs and Serbia (informally) agreed to stop its campaign for small countries around the world to revoke their declared recognition of Kosovo's independence (Turp-Balazs 2020; *Euractiv* 2020), the US administration tried to be the first to renew the Belgrade-Pristina dialogue after nearly two years. However, this attempt suddenly failed when just two days before his scheduled meeting with Vučić in Washington on 27 June the special international prosecutor indicted President Thaçi for war crimes committed against Serb civilians in Kosovo (Euronews 2020). This meeting was consequently cancelled and new EU High Representative Barel and the EU's special representative for the Belgrade-Pristina dialogue Lajčák were later able to arrange a meeting between Vučić and Kosovo's Prime Minister Hoti in Brussels on 16 July, though with a very modest agenda. The major point of the talks reverted to 'technical issues' such as finding the (still) missing persons from the 1999 Kosovo war and returning displaced persons to their homes (*RFERL* 2020). There was no word at the meeting about a possible 'final resolution' of the core dispute, let alone the signing of a 'legally binding agreement'.

Bilateral border disputes in the Western Balkans

The existence of border disputes between the Western Balkan states is a logical consequence of the fact that they were all, excluding Albania (which does not have any border disputes with its three Western Balkan neighbours), established as sovereign states after the dissolution of the former Yugoslavia without having clearly defined borders among themselves at sea and (some) rivers. What is less logical is that the bilateral disputes regarding demarcation of federal waters in the Adriatic Sea and some river boundaries between (some of) the post-Yugoslav states have remained unresolved for almost thirty years. The following discussion tries to reveal the reasons behind the longevity of these disputes and assess the prospects for their resolution in light of the above-discussed European Commission's accession requirement.

While North Macedonia is the only Western Balkan state without unresolved border disputes with any of its neighbours, all other candidate and potential candidate states for EU membership from the region have at least one such dispute. Excluding the contested borders between Serbia and Kosovo that result from Serbia's refusal to recognise the very existence of the former as a sovereign state, there is only one current ongoing border dispute between the two non-EU Western Balkan states, and this is the dispute between Serbia and Bosnia and Herzegovina over their border along the Drina River.^{xii} All other border disputes in the region refer to disputes between EU member Croatia and one of its Western Balkan neighbours, which (as mentioned earlier) might be a more serious obstacle to the Western Balkan states' accession to the EU than any bilateral disputes between the Western Balkan candidate (and potential candidate) states themselves.

The experience with the still ongoing dispute between Croatia and Slovenia over their maritime border in the Bay of Piran which has received solid coverage in the related literature (Bickl 2017; Cataldi 2013; Geddes and Taylor 2016) is very telling. Although the two countries agreed in November 2009 (after Slovenia blocked Croatia's accession negotiations in December 2008) to send the case to international arbitration (Geddes and Taylor 2016, 939), Croatia refused to accept the June 2017 ruling of the Arbitration Tribunal in the Hague which largely favoured Slovenia's request for the vast majority of the Bay and a corridor to

international waters (Nielsen 2017). Claiming that the Court and its decision were compromised by the 2015 disclosed contacts between the Slovenian arbitrator and the Slovenian government (which is not permitted by the Court rules), Croatia refused to even receive the copy of the decision and argued that the issue should be resolved on a bilateral basis (ibid). Expectations that the European Commission or the European Court of Justice, which Slovenia asked to mediate, will finally close the case have, however, remained futile. The European Commission subsequently declined to mediate and the Court (2020), in a judgment delivered on 31 January 2020, declared ‘its lacks of jurisdiction’ to rule on a border dispute between the two member states and effectively returned the case to the two parties ‘to strive sincerely to bring about a definitive legal solution consistent with international law’ (Vladislavljivic, 2020).

Croatia’s dispute with Montenegro about their land border at the strategically important Prevlaka peninsula and the sea border in the Bay of Kotor at whose entrance (on its western side) Prevlaka is located, seemed to be largely resolved by a Protocol which was signed in December 2002 by Croatia and the Federal Republic of Yugoslavia, of which Montenegro was part at the time (United Nations 2002; Orlandic 2019). However, despite the general satisfaction of both sides with the existing agreement, their inability to reach a permanent settlement has since affected their bilateral relations. Tensions particularly increased in the course of 2014 and 2015 when both countries criticised each other for issuing tenders for oil and gas exploration in the area claiming that the other had no right to publish such tenders (Orlandic 2019; Prekic 2014). After a European Parliamentarian from Croatia asked the Commission for a written answer as to how the European Commission intended ‘to contribute to a rapid and amicable resolution of the Prevlaka border dispute taking into account Montenegro’s European accession process’ (Šuica, 2015), it became clear that the dispute is still ‘very alive’ and that Croatia might be able to use its EU membership status to obstruct Montenegro’s accession process (as Slovenia did earlier to Croatia). Although the latter has not happened (yet) and the Commission’s answer to the above question stated that bilateral issues ‘should not hold up the accession process’, but should ‘be addressed by the parties concerned...including [if necessary] through referring [them] to the International Court of Justice or other existing or *ad hoc* dispute-settlement bodies’ (Mogherini 2015), the later inclusion of the border dispute resolution requirement in the Commission’s 2018 Strategy document has in fact formally allowed Croatia to use this bilateral dispute to ‘hold up [Montenegro’s] accession process’.

Although it involves some disputed (very small) land territories and two uninhabited (extremely) small islands (Pavlic 2017), Croatia’s dispute with Bosnia and Herzegovina over their 20km long border at the Adriatic Sea (which is B-H’s only access to the sea), is more related to Croatia’s project of building a bridge from its mainland to the Peljesac Peninsula which would overpass the short B-H’s coastline that cuts the Croatian Adriatic coast in two. As this bridge would significantly shorten the travel time between the two coastal parts of Croatia (by avoiding two sets of border controls on the B-H territory), the EU has found its own interest in supporting Croatia as an EU state and future member of the Schengen Area to realise the project. Hence, the European Commission granted €357 million from EU Cohesion policy funds (European Commission 2017) for building the bridge and supporting infrastructure that would contribute to 85% of the total construction costs. The Croatian government then contracted a Chinese construction company which promised to build the bridge by the end of 2021 (Parok 2019). However, the project is strongly opposed by the B-H government. It fears that the bridge will further isolate the town of Neum (which is B-H’s only one on the Adriatic Sea) in respect of traffic from the north and south of the Adriatic coast

(which will largely by-pass it) and block the access of large ships from entering a port should one be built at Neum. Both of these would have significant negative effects on the country's tourism and economy. However, as B-H is still not even a candidate for EU membership and the construction of the bridge has largely been advanced and directly supported by the EU, its complaints are fruitless (Lakic 2018) and it can be said that Croatia has already 'won' this dispute. This outcome is definitely not pleasing to the B-H political leadership,^{xiii} but this dispute, at least, will not be an obstacle to its accession process in the future - unless Croatia decides to link the sovereignty over the above-mentioned small pieces of land and two small islands to B-H's accession.

While it remains to be seen whether Croatia will try to force Montenegro into choosing between its progress towards EU accession and giving further concessions to Croatia regarding their Prevlaka dispute, the border dispute which Croatia has with Serbia, will very likely be included in the list of Croatia's demands for its final 'yes' to the closure of the EU's accession negotiations with Serbia. Although relatively trivial and basically technical, this dispute over the border line on the Danube River^{xiv} has so far remained very difficult to negotiate (let alone solve) in the context of generally problematic relations and several ongoing disputes between the two countries that will be examined in the next section. In February 2019 Nemanja Stevanovic, head of the Serbian delegation to negotiations with Croatia, summed it up this way: 'We only agree that we disagree about almost everything because we see the problem completely differently' (Stojanovic 2020).

Although more complicated but in fact similar to the above border dispute between Croatia and Serbia, the only ongoing bilateral territorial dispute in the Western Balkans that does not involve Croatia, the dispute between Serbia and B-H over their border on the Drina river, seems to be slightly less contested. Due to a mutually strong motivation of the two parties which both seek EU accession, a compromise solution of matching the existing cadastral records (inherited from Yugoslavia times) with the border line that follows the middle of the river^{xv} is here more likely. Despite the currently still very opposed stances (Stojanovic 2020; Skokić 2020), the interests of both countries in joining the EU will make them more ready to accept compromise rather than block each other's progress in the accession process.

The Serbia-Croatia and North Macedonia-Bulgaria disputes

In addition to the discussed border disputes between the Western Balkan states and their neighbours, two official candidates for EU membership from the region – Serbia and North Macedonia – have some serious problems in bilateral relations with their two neighbours that are not related to the geographical demarcation of their borders. Although the 2018 Commission's enlargement strategy emphasises the necessity for pre-accession resolution of border disputes (bilaterally or by 'binding, final international arbitration' – p .7) it, in fact, insists that the candidate countries 'must unequivocally commit, in both word and deed to solving [*all*] open issues [between them] well before their accession to the EU [as]...the EU cannot and will not import **bilateral disputes** [bold in original]' (pp. 6-7). Therefore this section investigates two 'non-border' bilateral disputes in the Western Balkans that may negatively affect the accession process of the EU membership candidates, especially because the other parties in these disputes are two existing EU member states.

Almost three decades since Croatia declared independence on 27 June 1991, Croatia and Serbia remain at odds over many issues. Particularly intriguing and problematic for Serbia is the fact that the number of disputed issues between the two countries has increased over the years, and that Croatia's officials and political representatives have already tried to use (and on a few occasions, succeeded in using) Croatia's membership in the EU to block or at least slow down progress in Serbia's accession negotiations. Having always been strained by a different interpretation of the events that led to the collapse of the former Yugoslavia and the outbreak of ethnic conflicts and the war in Croatia in 1991 as well as the outcomes of this war^{xvi} official relations between the two countries further deteriorated after the centre right populist Serbian Progressive Party (SPP) of current Serbian President (Prime Minister between 2014-2017) Vučić won the Serbian parliamentary and presidential elections in 2012. While former Serbian President Tadić of the centre left Democratic Party and his Croatian counterpart Social-Democrat Josipović were able to significantly normalise relations between the two countries in the early 2010s, Vučić and his party boss Nikolić (Serbian President from 2012 to 2017) struggled to build any closer ties with President Josipović and his party affiliate Prime Minister Milanović. Bilateral relations worsened further after Kolinda Grabar-Kitarović and Andrej Plenković from the centre-right Croatian Democratic Union (CDU) replaced Josipović and Milanović in 2015 and 2016 (respectively), leading to several serious diplomatic incidents.

Particularly inflammatory are annual "Operation Storm" celebrations (see endnote 19) as a Croatian public holiday ("Victory Day") on 5 August, which is perceived in Serbia, primarily by the governing political elite, the Serbian Orthodox Church and refugees from Croatia, as a cynical celebration of Croatia's 'ethnic cleansing' (Vladislavljjevic, 2019). This, alongside some other public events organised by various groups that glorify 'Domovinski rat,' but often simultaneously the fascist Ustasha movement and Croatia's Nazi puppet regime during the Second World War^{xvii} (B92net/Tanjug 2015a; Mikelic, 2015 and 2017), which the Plenković government somewhat tolerated, have regularly found (often disproportionately) strong responses from leading Serbian politicians and government officials, which further inflame nationalistic rhetoric and activities on both sides. Particularly 'strong messages' to the Croatian government and 'Ustashes' were on several occasions sent by the Serbian Defence Minister, Vulin, and by the ultra-nationalist Serbian Radical Party leader, Šešelj, himself convicted by the International Court in The Hague for war crimes (mainly committed against Croatian civilians). While Vulin at one point stated that 'Croatia has a problem with common sense, and not with Serbia' (B92/Tanjug 2018), Šešelj publically burn the Croatian national flag on two occasions in April and August 2015 (Poznatov 2015; B92net, 2015b). In May 2018 he verbally assaulted members of a Croatian parliamentary delegation and trampled the Croatian flag in the Serbian Parliamentary building during their official visit to Belgrade (Rudic, 2018). Apart from official apologies and regret the Serbian government undertook no reprisals.

Although incidents in relations between Serbia and Croatia have significantly increased in recent years, they represent only the tip of the iceberg of relationship problems between the two countries. Even in the 'good times' of Tadić's and Josipović's presidency, the two countries continued to sue each other for genocides committed during the 1991-1995 war. The process ended at the International Court of Justice (ICJ) only after the Court dismissed their respective claims in early February 2015 (BBCNews, 2015). However, the Court's decision

did not contribute much to a decrease in tensions between the two governments and relations have continued to deteriorate.

Among the remaining issues, Serbian officials highlight the unsatisfactory status of the Serb ethnic minority in Croatia, which is (according to them) too often exposed to intimidation and mistreatment by Croatian nationalists and local governments that remained unsanctioned. Often advanced is the central government's inability to 'enforce' the local authorities to give official status (guaranteed by the Croatian constitution) to the Serbian language and Cyrillic alphabet in the communities with a large Serb population (Langston and Peti-Stantić 2014, 130-132; Lozančić 2019). Croatia for its part has also expressed dissatisfaction with the status of the Croatian minority in Serbia^{xviii} but particularly insists that the Serbian government provides precise identification' of all unidentified Croats among (still) 2,000 missing persons from the 1991-1995 war and gives up on its self-proclaimed jurisdiction over the war crimes committed outside the territory of Serbia and right to prosecute its non-citizens (Dinić 2015; Kmezić 2016;). The Croatian delegation to the European Parliament used the latter only a few weeks after the ICJ issued the above ruling dismissing the two countries' claims of genocide against each other in an effort to block adoption of the Parliament Resolution on the opening of accession negotiations with Serbia. Although this Croatian attempt (i.e. submitted amendment) was then criticised by European Commission representatives and rejected in its original form (*Euroactiv* 2015), the Croatian government and its representatives in EU institutions have continued to insist that this and the other 'open issues' in bilateral relations between the two countries ought to be considered in Serbia's progress in accession.

In early April 2016 Croatia was the only EU Council member which objected to approving the opening of the very important accession Chapter 23 (judiciary and fundamental rights) for more or less the same reasons used a year before in opposing the European Parliament's resolution (*Euroactiv*, 2016) and in December of the same year Croatia blocked the opening of Chapter 26 (on education and culture) over issues related to teaching Croatian language in the Serbian education system (Pavlic, 2016). While Croatia, (pressured by the Commission and more influential EU members states) later agreed that all these problematic chapters could be opened, such episodes have clearly shown that Serbia's accession negotiations cannot count on much support but indeed more obstruction by the governing political elite in Croatia, at least as long as the bilateral relationship between the two countries remains at its current low level. EU officials and the Commission have so far been able to suppress Croatia's opposition but the increased challenges that the process of European integration has been facing in recent years (including the latest one related to the Covid-19 pandemic), along with the earlier discussed decline of enthusiasm for further enlargement, may make them less successful in thwarting Croatia's opposition in coming years.

After solving its nearly three decade long dispute with Greece over its very name in 2018, the country which was then renamed North Macedonia has had to face another challenge to its progress towards EU accession, the one raised by its other neighbour – Bulgaria. Although Bulgaria's objections regarding the existence of a unique Macedonian nation and language can

be traced throughout the very long period before and after these were recognised in the communist Yugoslav federation (Roucek, 1947; Sfetas, 2012) and have continued after the former Yugoslav Republic of Macedonia declared its post-communist independence, they have been largely overshadowed by the latter's name dispute with Greece in the last two decades. While being generally supportive of North Macedonia's aspiration to join the EU (and NATO, both of which were strongly opposed by Greece before 2018) and even ready to sign with it a joint declaration in 1999 and then an even broader friendship agreement in 2017 on good neighbourly relations and cooperation (Marolov, 2014, Vankovska 2020), Bulgaria has not hesitated to occasionally side with Greece and raise its voice in EU institutions against its eastern neighbour's accession aspiration. This most dramatically happened in 2012 when it joined Greece in vetoing the Commission's recommendation for the opening of accession negotiations with (then FYR) Macedonia because of "stealing from Bulgaria's history and badmouthing [it]" (Gotev 2012). After the Greek veto was lifted in 2018, Bulgarian officials 'surprised' again their North Macedonian counterparts with openly questioning their national identity and language, first on the eve of the Council's (and European Council's) meeting in October 2019 and then again several months later after the Council's March 2020 meeting finally decided (eleven years after the European Commission first recommended it in 2009) to open accession negotiations with this country.

Although Bulgaria at the October meeting officially supported the opening of the accession talks with North Macedonia (which were then rejected by France) it presented more than twenty demands for the North Macedonian government to fulfil during accession negotiations (Marusic, BIRN, 2019;...). These ranged from the request that the North Macedonian government and the EU avoid 'using the term "Macedonian language" during the accession talks', that the former stops claiming that there is a Macedonian ethnic minority living in Bulgaria and remove all references to 'Bulgarian Fascist Occupation' from historical landmarks in the country to the demand that the Macedonian representatives in the joint history commission (set up by the 2017 friendship agreement) be more active in trying to 'bridge' disputes in the different interpretations of historical events and figures (ibid). Not being pleased with the received responses, Bulgaria's officials had again firstly voted at the GA Council's meeting on 24 March (GA Council, 2020) *for* the opening of accession talks with North Macedonia (and Albania) and then asked their October demands to the former to be included in a legally non-binding annex to the Council's conclusions (Maksimović, 2020). Bulgarian representatives in the EU have expressed a lot of frustration with North Macedonia's official stances towards their October demands and one of them (a member of Bulgarian Prime Minister Borisov's party), had even stated:

If the mixed history commission does not recommence its work by June and the authorities in Skopje continue to falsify history, Bulgaria will not agree to start pre-accession talks with North Macedonia (ibid).

While neither North Macedonian officials nor the EU have so far taken these Bulgaria's 'threats' very seriously, expecting that all open issues between the two countries can and will be 'discussed and resolved' (throughout the accession negotiations process) before North Macedonia joins the EU' (Maksimović 2020), some analysts have expressed concerns that 'the Bulgarian demands look more assertive than the Greek ones [and that this can result in] even tougher conditions on the path to EU membership' (Vankovska, 2020, 353). The European

Commission presented its draft negotiating frameworks for North Macedonia and Albania to the Council on 1 July 2020 (as planned) but it remains to be seen how long it will take all EU member states, and particularly Bulgaria, to individually adopt the framework that will allow the formal start of the accession negotiations process (European Commission, July 2020). It is hard to believe that Bulgaria will easily give up on its above demands. This is not only because of its strong insistence on these demands expressed throughout many decades and the fact that they were (although as a non-binding annex) even included in the Council's March conclusions, but also due to the increased involvement and more influence which the newly adopted Commission's 'revised enlargement methodology' (European Commission, 2020a, 2020b) gives to individual member states in the accession process.

Conclusion

Problems in bilateral relations between the Western Balkan states and their neighbours are complex and deeply rooted in the history of the region and particularly the legacy and consequences of the violent dissolution of the former Yugoslav federation. The Serbia-Kosovo dispute over the latter's statehood is by far the most serious among them as it not only contributes to continuous regional instability but directly prevents both countries from progressing towards EU accession. The European Commission's decision to include in its enlargement strategy a request for the resolution of this dispute as a necessary pre-accession condition for these two countries can therefore be justified by both respect for the EU's desire not to 'import ...the instability [this dispute] could entail' and to overcome the formal and administrative obstacles which prevent it from admitting these two states as members under the current status quo. Such rationale for introducing this pre-accession condition combined with a strong motivation by both disputed parties to resolve the dispute (and advance their accession prospects), and a strong commitment by the EU (most notably demonstrated by the two previous High Representatives) to assist them in finding a mutually acceptable solution have resulted in a significant narrowing of the two parties' stances despite their initially deeply polarised positions. At the time of writing, two years after the last meeting between the presidents of Serbia and Kosovo, it seems that the divergent views between the Commission and the (most influential members of the) Council were more responsible for Mogherini's inability to strike a deal and resolve this dispute during her mandate than the opposite stances of the disputed parties.

The rationale for the Commission's decision to broaden the scope of the request for pre-accession 'bilateral dispute resolution' beyond the Serbia-Kosovo dispute to '[all] open issues' between the Western Balkan states and their neighbours is, however, far less convincing. As the discussion in this paper has shown, most of these 'open issues' are between an existing EU member state and a candidate state and the EU cannot offer the 'carrot' of enlargement to the party in the dispute which is already a member state. The motivation by a member state to solve a dispute is, therefore, lesser than that of a candidate state which may (potentially) face unreasonable demands by the other party even if it is willing to make significant concessions. As shown in the cases of the Serbia-Croatia disputes and the North Macedonia-Bulgaria dispute, the European Commission and the influential EU member states have so far used informal measures of pressure on Croatia and Bulgaria (and possibly bargain with them by offering

assistance and support in other issues and/or projects) to ‘convince’ them to be ‘flexible’ and not to block progress in the accession process of their two neighbours. This practice will very likely continue in the future but the inclusion of the demand that ‘all open issues’ between the candidate states and their neighbours (for the first time in the history of EU enlargements) in the Commission’s ‘optimistically designed’ 2018 Enlargement strategy can hardly contribute to speeding up the accession process for the current candidates.

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- ⁱ By that time Turkey's accession had effectively fallen from the enlargement agenda. In addition to increased opposition among leading EU member states to further enlargement, the key reason for it were internal developments in Turkey, particularly President Erdogan's increased authoritarianism and his lack of desire to comply with EU demands and accession conditions.
- ⁱⁱ Conditions defined by the Copenhagen European Council of 1993 regarding the establishment of a political democracy, market economy, respect for and protection of human and minority rights 'as well as the capacity to cope with competitive pressure and market forces within the Union [and] the candidate's ability to take on the obligations of membership (European Council 1993, 7.A.iii) that were the 'only' ones which the countries that completed the 2004/07 enlargement round had to meet.
- ⁱⁱⁱ 'International Criminal Tribunal for the former Yugoslavia', established by UN Security Council resolution 827 of 25 May 1993.
- ^{iv} Cyprus joined the EU in 2004 despite not being able to resolve its (still existing) partition on the northern (Turkish) and southern (Greek) part. Even Croatia, as a Western Balkan state, was admitted in 2013 without resolving its (still ongoing) dispute with Slovenia over their maritime border.
- ^v This was similar to the other two former communist federations – the Soviet Union and to a lesser extent communist Czechoslovakia, both of which also disappeared in the wake of the collapse of communist rule.
- ^{vi} Although it was included in the original 1993 Copenhagen accession conditions, this criterion did not play any significant role in the 2004/07 enlargement round (see e.g. Lavigne 1999, 228-239 and Emerson et al. 2006).
- ^{vii} These are addressed in the Commission's annual reports on country developments and other documents and actions of the Commission and the Council in which they recommend to the individual countries (how) to address these issues.
- ^{viii} After in October 2016 the Montenegrin police had arrested 20 Serbian nationals, led by two Russians, who were accused of preparing a 'coup' against the Montenegrin government, it hesitated to blame official Serbia for involvement in the 'incident' (blaming instead the 'criminal groups' from Russia, Serbia and Montenegro). On the other side, the Serbian government took low profile and was even ready to provide assistance in deporting some suspects to Montenegro (*The Guardian*, 2016).

^{ix} It is interesting that this ‘agreement’ was only initialled and never signed by the two prime ministers (see e.g. International Crisis Group, 2013). The agreement in full is available at: <http://www.kord-kim.gov.rs/eng/p03.php>

^x Subject to the condition that these would continue to be run by Kosovo Serbs (as specified in points 9 and 10 of the Agreement).

^{xi} The latter has, however, been differently interpreted by the two parties on some occasions as was the case with the above mentioned visit and arrest of the Serbian official to North Mitrovica in March 2018 (see e.g. *Euractiv*, 2018a).

^{xii} There were earlier differences regarding the demarcation of the borders between North Macedonia and Kosovo and between Montenegro and Kosovo which were resolved with the signing of separate agreements between the parties involved in 2009 and 2015 respectively (see e.g. *Morina* 2018 and *Euroactiv* 2009).

^{xiii} Or more precisely to the Bosniak representatives in it as the Bosnian Croats’ political leadership actually supports Croatia’s argument in the dispute (see e.g. *HRTVijesti*, 2017).

^{xiv} Whether the inter-state border should follow the middle of the current course of the river (Serbia’s position) or whether it should follow the cadastral records which were made in line with an old course of the river (Croatia’s stance) which would leave some 10,000 hectares of Croatian land on the Serbian side and 1,000 Serbian hectares on the Croatian side of the current course of the river (Pavlic, 2017).

^{xv} The cadastral records currently leave several small Serbian and Bosnian villages on the ‘wrong’ side of the river, but the dispute over the two hydro-electric plants, whose facilities officially belong to Serbia, but which are partially located on the Bosnian side of the river, is even more complex. Serbia has proposed a land exchange but the Bosnian side is very reluctant to discuss it (Anđelković 2017). Similar to B-H’s dispute with Croatia over the Peljsac bridge (see endnote 16), the B-H’s position in the dispute is almost exclusively advocated by Bosniak officials, as Republika Srpska fully supports Serbia’s stance (*ibid*).

^{xvi} This was the war that the Croatian police (and later army) waged against the remnants of the Yugoslav federal army and the rebellious Croatian Serbs in the early 1990s. The war, called in Croatia ‘Domovinski rat [Homeland war]’, lasted more than four years and resulted in about 18,000 dead or missing persons (HINA 2015; Ponoš 2017). It ended in early August 1995 after a military offensive of the Croatian army (so-called ‘Operation Storm’) crushed the Serb forces in the rebel Krajina region and triggered the emigration of some 150,000 Serb civilians to B-H and Serbia (Biondich 2011, 235; Crampton 2002, 266), although the total number of ethnic Serbs who left Croatia during and after this war was much higher (Djuric, 2010).

^{xvii} A regime which featured massacres, forced exodus and conversion (from Serbian Orthodoxy to Roman Catholicism) committed against hundreds of thousands of ethnic Serbs who lived in Ustasha Croatia (Lampe, 1996, 206-207; for more details see e.g. Tomasevich, 2001 and Pavlowich, 2008).

^{xviii} Although the EU and the Commission have so far found the status of national minorities in Serbia solidly regulated and have not expressed serious concerns about it (see e.g. European Commission, 2019, 29).