Policy Brief: The Working Group on the Western Balkans

Although the EU and the US agree that the long-term goal for the Western Balkans is European integration, progress has stalled. This series of working group meetings aims at launching a discussion on the hurdles to enlargement in the Western Balkans, the tools available to various international actors in the region, and how these resources might best be applied to reach the goal of integration most efficiently. These meetings, therefore, address issues that are at the core of the making the Transatlantic relationship work.

Policy Brief from Meeting IV: Confronting Illegitimacy

Democracy and legitimacy are closely linked. Legitimacy to govern is tested through elections, of course, but the challenge should not end there: throughout their terms, politicians' legitimacy is linked to their ability to adhere to constitutional and legal constraints. State institutions are similarly held to account. Courts must ensure that remedies are provided to disputing parties and all cases are judged fairly; the legislature must operate according to predetermined rules for adopting laws; ministries must follow their protocols; and all of the branches of government must operate under the checks and balances envisioned by the Constitution. The media, oversight institutions, opposition political parties and NGOs maintain a careful watch on leaders and state institutions to ensure that people with power continue to operate within the law. In a democracy, maintaining legitimacy is as important as the elections themselves.

In many of the Western Balkan countries, however, political leaders operate as though elections are the *only* test of legitimacy. Once elected, there is little interaction between elected officials and their constituents and government transparency is low. There are few incentives for political leaders to change this situation and invite closer scrutiny. This situation creates obvious problems for democratic consolidation. Less obvious are how legitimacy impacts the EU accession process and the ability of the international community to compel leaders to adopt institutional and legal reforms that might challenge the status quo. Because effective, democratic and legitimate institutions are crucial for EU conditionality to work, it is important to assess how the current environment in the Western Balkans understands legitimacy, how these beliefs were created, and how the international community might be better able to affect change in the region.

Politics in the Balkans
In Albania, extremely close elections in 2009 led to allegations of electoral fraud, which were rebuffed by the ruling party. In response, the opposition consistently blocked votes in Parliament and organized demonstrations, to which the republican guard reacted with

violence against its own citizens. In Bosnia-Herzegovina, political parties could not agree on forming a government for more than a year after the October 2010 elections. In this environment, legitimacy, responsibility and responsiveness to citizens' interests seem to carry no political weight.

These and other examples of the political dynamics in the Western Balkans illustrate that attaining public office leads to personal enrichment and judicial protection. It is not surprising, therefore, that stakes during elections are very high, and that after elections, politicians do not feel a strong responsibility to govern. To win elections, political parties employ symbolic politics, often resorting to ethno-nationalist claims that link their election with the survival of the nation, rather than focusing on concrete policy goals or delivering public goods. In this environment, where political contests are divorced from clear policy goals, it is not surprising that brinkmanship and political impasse dominate the periods between elections. More worrying is that the electorate is complicit and nationalist rhetoric continues to draw votes.

The electoral success of nationalist rhetoric is a mystery to outside observers. Identification with the nation and its protection continue to be primary motivators for citizens' political activity. The horrors of war did not discredit nationalism. Instead, for many people in the Western Balkans, the wars of the 1990s were viewed as legitimate responses to real or perceived threats to their nations. This perception of legitimacy continued to hold even after the leadership of those countries changed. New political leaders never condemned the actions taken during the war, and the nationalist matrix of the state was never transformed. Even in Croatia, where the most significant progress toward reforms has been made, the vast majority believes that criminalizing Operation Storm (the battle that drove the Serbs from the Krajina region) would be tantamount to criminalizing the Croatian nation, and the ICTY trials against Croatian military leaders remain unpopular. President Boris Tadic and the Serbian Parliament's apologies for the role of Serbians in the Srebrenica massacre are significant steps toward reconciliation, but the popular discussion treats these gestures as the tax levied on Serbia by the EU, rather than on the admission of fault.

In this environment, the international community should not be surprised that the political priority in Macedonia is constructing monuments to Alexander the Great, or that in Serbia, EU conditions are seen as blackmail. The legitimacy of the nationalist project has been reinforced by its success: years of war and conflict in the region of the former Yugoslavia is justified on a daily basis through the existence of six new states in the region. Given this perception of success, nationalism continues to dominate political rhetoric and complicates external efforts to change the political motivations through the enlargement process.

So far, the policies of the EU and the U.S. have failed to elicit an emotional response from Balkan electorates that is equivalent to nationalists' rhetoric. In effect, nationalists have succeeded in making European integration a second tier priority, below the more immediate concerns about preserving the nation and/or resolving the injustices of the war. The inability of the EU and the US to engage with the public at that level is an

impediment to convincing them that the process of EU accession will preserve the nation and resolve the injustices of war more effectively than spurious nationalist political achievements.

The legacy of international intervention and differences in perception of legitimacy
Different perceptions of legitimacy inside and outside the region complicate the international community's success in the Western Balkans. In some cases, the dissonance between the international community and the Western Balkans has its roots in external policy towards the region. The most visible international presence in the region are the international institutions that were set up as stop-gap measures—such as the Office of the High Representative (OHR) in Bosnia, the EULEX in Kosovo and the International Criminal Tribunal for the Former Yugoslavia (ICTY)—which were intended to operate temporarily while domestic governance and judicial institutions found their bearings. The EU and United States never intended for these institutions to take the place of local governance, but over time, these institutions have been preserved because locals, in a sense, could not be trusted to implement the right policies. This creates a difficult tension between locals and internationals, in which local leaders have come to rely on international institutions to take the lead in driving the political process and making politically unpopular decisions. Yet, if the goal of the international community is to consolidate democracy in the Western Balkans, it is counterproductive to rely on fundamentally undemocratic, externally-imposed institutions to make the most important decisions.

Despite its best efforts to distance itself from the intervention institutions and underscore the importance that local leaders adopt EU conditions on their own, the precedent of the international intervention causes populations in the Western Balkans to see the EU as just another external power imposing its norms on the region. In Bosnia, locals have come to expect that the EU will tell leaders what to do, despite the EU's insistence that all reforms must be conceived and adopted by elected officials. The importance of EU membership in Bosnia is that it is seen as the only alternative to state partition. The seeming impossibility of the government to operate according to the mechanics of conditionality leaves the population so frustrated that they return to retrograde solutions, such as considering partition. Moreover, when the EU does not meet the expectation that external powers ought to impose reforms, many interpret it as a sign that the EU does not want to pursue enlargement in Bosnia, or that it just does not care. Worse still, local leaders take advantage of this disappointment in the EU by blaming the lack of progress on the EU and thus escaping electoral penalties for their own inaction.

In Serbia, the EU accession process is seen as transactional, with the EU making demands in exchange for material benefits. Yet, when the conditions touch upon nationalist interests, such as resolving the Kosovo issue, government leaders begin to question whether or not Serbia ought to pursue EU membership, or if there might be a "third way" available through the non-aligned movement, or through strengthening their relationship with Russia.

From the perspective of international organizations and foreign policy makers, there seems to be a simple equation to bringing peace and prosperity to the war-torn Balkans: replace nationalism with liberal democracy through privatization and the rule of law. This formula worked in other post-communist countries, and there is a blind faith in the positive transformation that will naturally follow these reforms. However, new research suggests that the manner in these policies were applied contributed to the current context of corruption, nationalism and illegitimacy.

Privatization is generally seen as a liberal economic imperative, since it is understood to be the only way to create a legitimate basis for market economies. The assumption is that private owners will manage firms and property better than states, and that a new class of private owners will create demand for effective, efficient and predictable state institutions. In practice, however, the experience of other postcommunist countries has taught the Western Balkans that privatization is a power-building mechanism that determines political winners and losers. Selling government property becomes the kind of high-stakes, short-term game in which unusual and often illegitimate means are used to win. These new owners, therefore, are less likely to support liberal institutions because they would destroy the illegitimate pathways that had made them rich. Rather, when privatization is combined with a highly competitive election process, new owners are compelled to buy political influence in order to build monopolies. Privatization, therefore, does not automatically create a new class of liberal democrats but, under the right conditions, can also produce tycoons and plutocrats.

Circumstances in the post-war Balkans have created conditions in which externally-driven policies, such as privatization, are even more problematic. In Kosovo, for example, ownership disputes with Serbia and a lengthy design and debate process that was intended to improve transparency extended the privatization process to 11 years. During this period, property lost value or was stripped, which decreased state revenue from privatization and failed to generate economic growth as a consequence.

In this environment, the rule of law never really becomes part of the privatization policy, and instead becomes the enemy of the new owners. Because maintaining the status quo is desirable to the new owners as well as the politicians they support, local leaders have incentives to work against EU conditionality, by impeding the pace of reform. Often, this is done by presenting EU conditions as conflicting with symbolic or nationalist goals. While some international observers lay the blame on individual politicians or parties for such behavior, it is important to recognize the role that the current incentive structures play in supporting this behavior.

Changing the incentive structure will require rethinking the state-building project that is currently in place in the region. There has already been strong rhetoric from the international community that the institutions that have been created need local ownership, but without addressing what, specifically, that ownership entails or who those locals are. Instead, international institutions, such as the European Union, are more comfortable talking to the political elite. Engaging solely with the elite is inadequate because the political elite is unable to discipline itself and elections alone have been ineffective in

constraining their power or weeding out poor performers. Institutions take decades to consolidate and require social and cultural retooling as much as legal changes.

Therefore it is essential that the international community's pressure from above be allied with civil society's pressure from below. It is important to recognize that all of the things that frustrate the international community about the Western Balkans (the broken promises, the slow progress on reforms, the continued mismanagement of public funds, and the ineffective institutions) frustrate local populations even more. External policy toward the region could tap into that shared frustration. EU engagement with civil society would empower NGOs and other groups that struggle to be heard in political debates. This would also contribute to closing the democracy gap created by illegitimacy and international intervention.

In terms of policy prescriptions, these observations lead to at least three. First, external policies that seem coercive (closed-door meetings chaired by the internationals on constitutional reform in Bosnia) will backfire because local politicians will be able to sell their failure to the public as a successful defense of the nation, which can also reinforce the ethnic frame on political debate. Rather than coercive and closed measures, the international community could openly engage with existing civil society groups on issues that do not threaten ethnic groups. Second, the international policy towards the region should give locals something else to talk about besides nationalist goals or symbolic politics. For example, where issue-based organizations exist, the international community can link local demands to institutional strengthening projects that are linked to EU accession requirements. Third, the international community ought to recommit to democracy-building efforts, not only by insisting that EU conditions are met, but by creating social accountability mechanisms to reinforce democratic practices while state institutions are still immature.

Ultimately, the international community must find ways to deliver its message of integration so that it can compete with nationalist rhetoric. This can be done by more clearly identifying the region as European and building closer ties at every level. In order to win back skeptical populations, the EU should appeal to national pride by delivering its messages in such a way that local populations feel accepted by Europe. Increasing the number of high-level visits from EU member state leaders and EU officials would be helpful, as would associating the EU accession process with large-scale investments from Europe to the region, such as the FIAT plant in Serbia. Engaging with the population's feelings of national pride. In this way, the EU can create new narratives about the future of the Western Balkans in a wider European family. Including the region as a whole in this dialogue would allow the EU to convince people that their interests will not be jeopardized by neighboring countries' gains, and that they can begin to pursue enlargement as a wholly regional endeavor.

A key to the success of the international community's policies will be the ability of the EU and U.S. to engage with a wide range of actors, not just the political elite. Expanding the scope of engagement will enable external actors to view the complex social and cultural terrain, which has as much to do with democratic consolidation as the adoption

of new laws and institutional capacity building. In order to transfer "ownership" to local actors, they need to feel that they have authorship in the reform process. Acknowledging local culture will reveal assets as well as obstacles that can help the international community find traction on the integration policy. Expanding the scope of actors with which the international community engages creates an environment for negotiation between the governors and the governed, reinforcing the social contract. In this way, pressure exerted by the international community from above can ally with pressure from the citizens from below, who are the strongest supporters for EU and NATO accession.