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Political Affairs Committee

Reconciliation and political dialogue between the countries of the former Yugoslavia

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Introductory Memorandum

¹ This introductory memorandum was made public by decision of the Political Affairs Committee, meeting on 6 September 2010.

1. Introduction

1. On 22 June 2009, the Political Affairs Committee appointed me as Rapporteur for the preparation of a report on "Reconciliation and political dialogue in the countries of the former Yugoslavia."
2. In this context, I met and held discussions with the Croatian and Serbian delegations to the Assembly during the June 2010 part-Session.
3. This introductory memorandum has been prepared in to give a brief overview of the state of play on reconciliation in the region and to provide a contribution to the hearing on "Peace-building in the countries of the former Yugoslavia" to be held in Belgrade on 6 September 2010 (organised by the sub-committee on conflict prevention through dialogue and reconciliation).

2 Overcoming the legacy of the war

4. The conflicts which ravaged the territory of the former Yugoslavia, between 1991 and 1995,¹ were the deadliest in Europe since the second world war. According to estimates, the various conflicts cost the lives of approximately 140,000 people, a quarter of whom simply disappeared.²
5. The war was characterised by heinous war crimes, including genocide, ethnic cleansing and mass rape, and provoked mass population displacement, within the region and beyond. 15 years since the end of the war, 340,808 persons are internally displaced and there are over 120,000 refugees, unable or unwilling to return to the areas they lived in before the outbreak of war. The identification of missing persons and the discovery of mass graves is still ongoing but approximately 17,000 people are still unaccounted for.
6. The conflicts have left deep scars, which have no yet healed. In spite of the democratic character of their institutions, their common membership in the Council of Europe and the OSCE and their aspirations towards EU membership (or EU membership, as is the case for Slovenia), the states of the former Yugoslavia are still affected by the legacy of the war in their mutual relations.
7. That said, there have been encouraging developments in the region in recent times that can only be seen as positive steps towards reconciliation. Notably, the capture and handing over to the ICTY of the wartime leader of Republika Srpska, Radovan Karadzic, by the Serbian authorities in 2008, demonstrates that key actors are trying to overcome the legacy of the past.

3. Nationalism, ethnicity and civic states

8. The conflicts in the former Yugoslavia were characterised by inter-ethnic violence and mass population transfers between the new States that emerged from the former Yugoslavia as people were either forcibly moved or fled to neighbouring states where they felt that they would be better protected.
9. At the end of the conflicts, the solution proffered by the international community was the concept of civic states, whereby citizens and public officials owed their allegiance to the newly formed state institutions rather than to the ethnic group to which they were perceived to belong. In principle, this was a positive basis from which to begin the peace-building process in the region. However, in practice, minorities have often been discriminated against or have been unable to participate in public life in the way that they should, which has hampered reconciliation in the region. This is particularly the case in Bosnia and Herzegovina where the complex constitutional architecture that it was left with following the 1995 Dayton Peace Agreement, has facilitated voting along ethnic lines. Furthermore, minorities or the "others" that do not belong to the "three constituent peoples" (Bosniaks, Croats and Serbs), are unable to stand in elections for the House of Peoples or the Presidency, which has recently been held to be in contravention of the European Convention on Human Rights.³
10. Steps have been taken across the region to bring in measures to combat discrimination. All States are party to the Framework Convention for the Protection of National Minorities⁴ and Protocol No. 12 to the

¹ N.B. This document focuses only on the consequences of the wars between 1991 and 1995. Some of the statistics contained in it will be affected by the later conflict in Kosovo.

² <http://www.icrc.org/Web/fre/sitefre0.nsf/html/missing-lives-060710>

³ *Sejdic and Finci v Bosnia and Herzegovina*, judgment of 22 December 2009, (Application Numbers 27996/06 and 34836/06)

⁴ ETS No. 157

European Convention on Human Rights⁵, which, among other things, prohibits discrimination on the grounds of race, colour, language, national or social origin and association with a national minority. Croatia, Montenegro, Serbia and Slovenia have all ratified the European Charter for Regional or Minority Languages⁶. Bosnia and Herzegovina and "the former Yugoslav Republic of Macedonia" are signatories but have yet to ratify it.

11. Anti-discrimination laws have been adopted in and Bosnia and Herzegovina,⁷ Croatia,⁸ Serbia⁹ "the former Yugoslav Republic of Macedonia"¹⁰ whilst Montenegro is currently in the process of drafting one with the assistance of the Venice Commission. National minority councils have also been established in BiH and Serbia to represent the rights of interests of minorities.

4. Pending issues affecting reconciliation and political dialogue

4.1. Missing persons

12. At the end of the conflicts, there were over 34,000 people reported as missing. The unearthing of mass graves and DNA assisted identifications have shed light on the fate of many of them. Mass graves continue to be discovered, yet approximately 17,000 people remain unaccounted for.¹¹ This has a devastating impact on the missing persons' family members who do not know the fate of their loved ones and who are unable to claim inheritances or sell property while their whereabouts remains unknown.

13. The problem is particularly acute in BiH, where 11,426 are listed as missing.¹² The International Committee for the Red Cross (ICRC) has been assisting the Bosnian authorities in building up the capacity of the National Institute for Missing Persons. It has also published a list of the names of those missing on its website.¹³ Republika Srpska is supporting a parallel entity called the RS Operative Team for Finding Missing Persons.

4.2. Refugees and long-term displaced persons

14. According to statistics produced by the UNHCR in 2010, there are some 340,808 internally displaced persons (IDPs) in the region as a result of the war. The vast majority are located in Serbia (224,881¹⁴) and BiH (113,642¹⁵). Added to this there are over 120,000 refugees that fled from one state to another as a result of the conflicts.¹⁶

15. Some IDPs and refugees continue to live in collective centres in appalling conditions. In general, IDPs and refugees face inadequate housing, poverty and unemployment and local integration is not always facilitated by the authorities. Obstacles to return to their previous homes include poor economic prospects, lack of documentation, difficulties in accessing adequate healthcare and the hostile attitude of local populations.

16. Another obstacle to return is the question of repossession and compensation for the homes that were lost during the war. Positively, in BiH the restitution process was largely completed in 2003 through the "Property Implementation Plan"¹⁷. Nearly 200,000 homes, including roughly equal numbers of private and socially owned properties, were returned to their pre-war residents. This facilitated the return of some one million persons, being almost a half of the population which had been displaced by the conflict, to their original homes.¹⁸ Nevertheless, some Serbs were not able to reclaim their properties at the end of the war as they were considered to have demonstrated disloyalty to BiH after joining the armed forces of the Federal Republic of Yugoslavia. The European Court of Human Rights has recently ruled that the authorities must

⁵ CETS No. 177

⁶ ETS No. 148

⁷ Adopted on 23 July 2009

⁸ Adopted on 10 July 2008

⁹ Adopted on 26 March 2009

¹⁰ Adopted on 8 April 2010

¹¹ <http://www.icrc.org/Web/fre/sitefre0.nsf/htmlall/serbia?OpenDocument>

¹² http://www.icrc.org/Web/fre/sitefre0.nsf/htmlall/bosnia_herzegovina?OpenDocument also ICRC Annual Report 2009

¹³ www.familylinks.icrc.org

¹⁴ <http://www.unhcr.org/pages/49e45b906.html>

¹⁵ <http://www.unhcr.org/pages/49e45b906.html>

¹⁶ UNHCR <http://www.unhcr.org/pages/49e45b906.html>

¹⁷ See "PLIP Inter-Agency Framework Document (2000) and "New Strategic Direction" (2002)

¹⁸ See *Solving property issues of refugees and displaced persons* Doc.12106 8 January 2010 – Committee on Migration, Refugees and Population, p.16

pay adequate compensation to those who were not able to reclaim their properties.¹⁹ The BiH Federation Premier has expressed concern that the Federation could become bankrupt if it is forced to compensate the approximately 20,000 people that the ruling could affect.²⁰

17. Similarly, the issue has still not been resolved in Croatia. There were significant delays in the restitution of property to those that lived in privately owned accommodation before the war, which was found to be in violation of the European Convention on Human Rights.²¹ Although this issue has now largely been resolved, no legal remedies have been offered to the estimated 30,000 Serb families, who had to flee from socially owned apartments and who were stripped of their occupancy/tenancy rights as a result.

18. In 2005, BiH, Croatia, and the erstwhile Serbia and Montenegro came together and signed the so-called "Sarajevo Declaration" in which they agreed to find a solution to the problem of IDPs and refugees by the end of 2006.²² "Road maps" were created for each of the state parties but little action was taken subsequently to find a durable solution to the plight of IDPs and refugees in the region.

4.3 Erased people

19. Almost 26,000 people, mainly nationals of other former Yugoslav republics, were deleted from Slovenia's permanent registry in 1992 as they had not filed their applications for permanent residency in time following Slovenia's declaration of independence. Many left and others were deported as a result but those that stayed were evicted from apartments, unable to work or travel and ended up living in hardship. A July 2010 judgment of the European Court of Human Rights found that Slovenia's treatment of the "erased people" amounted to a violation of the ECHR.²³ The Court concluded that it was necessary for Slovenia to pass legislation to regulate the situation of the several thousand people that are estimated to be in the category of "erased" and issuing them with retroactive permanent residence permits.

4.4 Territorial disputes

20. Owing to the complicated history of the former Yugoslavia, there are a number of ongoing territorial disputes between the various States, which need to be resolved before there can be full reconciliation in the region. The dispute between Croatia and Slovenia over their maritime border threatened to stall Croatia's application to become a member of the EU for some time. In October 2009 the parties agreed to have the issue settled through an independent international arbitrator. Similarly, Croatia and Montenegro have agreed to take a case to the International Court of Justice to resolve their border dispute and are currently cooperating on preparing their submissions.

21. There are further border disputes between BiH and Croatia, Croatia and Serbia and BiH and Serbia, which are yet to be resolved.

5. Accepting the past while looking at the future

5.1 Identifying individual responsibilities: investigation and prosecution of war crimes

22. Justice and accountability for war crimes committed in the conflicts that occurred on the territory of the former Yugoslavia are essential to regional reconciliation. The work of the International Criminal Tribunal for the former Yugoslavia (ICTY) has been fundamental in establishing the legal and therefore historical truth about the crimes committed during the conflicts.

23. Cooperation with the Tribunal by the states concerned has improved markedly over recent years. This was particularly noticeable with the arrest in Serbia and the transfer to the custody of the ICTY of Radovan Karadzic and Stojan Zupljanin in 2008. Nevertheless, two indictees, Ratko Mladic and Goran Hadzic remain at large.

24. The ICTY was established only to try the most serious of crimes committed during the war and therefore the national courts have been hearing war crime. This does not come without its problems, including lack of appropriate facilities and inadequate protection of witnesses. However, these processes are

¹⁹ *Dokić v BiH*, judgment of 27 May 2010 (Appl. No. 6518/04)

²⁰ *Bosnian Federation entity fears bankruptcy over Strasbourg ruling on real estate*, SRNA, 12 August 2010

²¹ *Kunic v. Croatia*, judgment of 11 January 2007 (Appl. No. 22344/02); *Radanovic v. Croatia*, judgment of 21 December 2006 (Appl. No. 9056/02)

²² Declaration, Regional Ministerial Conference on Refugee Returns (Sarajevo, January 2005)

²³ *Kuric and Others v Slovenia*, judgment of 13 July 2010 (Appl. No. 26828/06)

important as visible justice constitutes an important component of reconciliation. There have been a number of positive advancements from this process. For example, in April 2009, an investigation into the Bukovica case in Montenegro was completed and seven officers were indicted over the deportation of Bosnian civilians in 1992. The Montenegrin Government has agreed to pay an out of court settlement to the survivors and victims of these deportations.

25. The process of trying crimes committed during the war in the national jurisdictions has also meant that the States concerned have had to cooperate with one another. For example, the so-called "Palic Process" has promoted inter-state dialogue and judicial cooperation in war crimes proceedings by bringing together relevant judicial and state administration actors from BiH, Croatia, Montenegro and Serbia.²⁴

5.2. Attempts to identify state responsibilities: applications before the International Court of Justice (ICJ)

26. There have been attempts to identify state responsibility for crimes committed in applications made to the ICJ. In February 2007, the ICJ pronounced its judgment on the application made by Bosnia and Herzegovina against the then Serbia and Montenegro for breaches of the UN Convention on the Prevention and Punishment of the Crime of Genocide.²⁵ The Court held that genocide had occurred in Srebrenica, but that Serbia was not responsible. It went on to find, however, that Serbia had violated its obligations under the Convention for failing to prevent the acts committed and for not acting to bring the perpetrators to justice.

27. Croatia has also brought an application to the ICJ against Serbia for violations of the Genocide Convention. In January 2010, Serbia presented its written submissions on the case, making a counter-complaint against Croatia for crimes of genocide against Serbia. The case is pending.

5.3. The proposal of a truth commission

28. Truth and Reconciliation Commissions have proved to be an important component in peace building across the globe. There have been several failed attempts to create one in BiH and Serbia. Only one commission, the Srebrenica Commission, established by the Republika Srpska, managed to produce any conclusive findings. Its final report, published in 2004, constituted the first public admission on the part of the authorities that its security forces had killed over 7,000 Bosniaks in Srebrenica. Although the findings were crucial, it only represented a part of what went on in the conflict in the former Yugoslavia.

29. A coalition of NGOs from BiH, Croatia and Serbia have proposed the creation of a Regional Commission for Establishing the Facts about the War Crimes in the former Yugoslavia (RECOM). The purpose of the proposed commission would be to collect facts collated by NGOs and the ICTY and act as a forum where victims would be able to have their voices heard. The organisers believe that a regional approach is the best strategy for facing the legacy of the past. The proposal received support from Ivo Josipovic, the Croatian President, on 31 August 2010.²⁶ This was followed by Boris Tadic announcing he was in favour of it on 1st September 2010, after having met with members of the coalition.

5.4. Public discourse concerning the war

30. Although judgments from the ICTY and the ICJ have clarified the historical truth to a degree, it is common for politicians to seize on nationalist rhetoric, particularly in election periods, which have the effect of distorting the truth on what happened during the war.

31. On the other hand, there have been a number of recent encouraging public statements which indicate a more conciliatory attitude in the region. In March 2010, the Serbian Parliament passed a resolution condemning the massacre of 8,000 Bosnian Muslims at Srebrenica in 1995 and stating that Serbia should have done more to prevent it. Furthermore, the heads of state from all the states of the former Yugoslavia, including Serbian President, Boris Tadic, attended a memorial in Srebrenica in July 2010 to commemorate the massacre.

²⁴ See introductory memorandum (AS/Jur (2010) 14 – declassified) by Mr Miljenko Dorić (Croatia, ALDE) on *The obligation of member states of the Council of Europe to co-operate in prosecution of war crimes* (Committee on Legal Affairs and Human Rights). See Resolution 1564 (2007) and the report (Doc. 11281) on *Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)* by Tony Lloyd, United Kingdom, SOC. See Doc.....(AS/Jur (2010) 26 declassified) by Mr Jean-Charles Gardetto (Monaco, EPP/CD) on *The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans*.

²⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007

²⁶ "Croatian President Backs Regional Truth Commission", *Balkan Insight*, 31 August 2010

32. In April 2010, the Croatian President, Ivo Josipovic, made a speech to the two houses of the BiH Parliament. In his address, he stressed the need to promote regional cooperation, presented his condolences for the victims of the war and expressed regrets for Croatia's role in the conflict. The Croatian and Serbian Presidents have also met on a number of occasions in 2010. Most recently, they met in Belgrade in July, where they announced that they wanted to resolve outstanding issues left by the war, including that of refugees and IDPs.

6. The wider context

6.1. *The process of EU integration*

33. Maintaining the European perspective for the countries of the Western Balkans could potentially be the most important incentive for the success of the process of reconciliation in the former Yugoslavia.

34. The States of the former Yugoslavia are in different situations with regard to the process of EU integration. Slovenia has been a member of the EU since 2004, whilst Croatia and "the former Yugoslav Republic of Macedonia" have been candidate countries for membership since 2004 and 2005 respectively. Bosnia and Herzegovina, Montenegro and Serbia are all potential candidates for membership. The European Union has constantly promised States the potential to join the EU once they are considered to be ready.

35. Currently, BiH's prospects of EU membership is being hampered by the constitutional deadlock and an unclear vision between its political leadership over its EU aspirations. The European Commission has said that it will not consider BiH's application for membership until the Office of the High Representative has been closed. In the same way, the question of the name of "the former Yugoslav Republic of Macedonia" is also stalling its bid to become a full member of the European Union.

36. The European Commission has also made it clear that border issues must be resolved before states can join the EU. This has held back Croatia's candidacy but the situation now looks to be resolved.

37. All of states of the former Yugoslavia are members of the Council of Europe. Bosnia and Herzegovina, Montenegro and Serbia are under the Assembly monitoring procedure, "the former Yugoslav Republic of Macedonia" is under post-monitoring dialogue. Compliance with the commitments made when joining the Council of Europe is seen by the European Union as fundamental to candidacy (add refs to AS/Mon reports in footnotes).

6.2. *Regional Integration*

6.2.1 *Regional Initiatives*

38. The European Commission has stated that regional cooperation between the states of the Western Balkans is key to future membership of the EU. There are a number of regional initiatives that the states of the former Yugoslavia are part of that may help to facilitate reconciliation in the region including: the Central European Free Trade Agreement (CEFTA), the objective of which is to expand trade in the region; the Regional Co-operation Council (RCC) which has the purpose of supporting European and Euro-Atlantic integration; the Regional School for Public Administration (ReSPA), a EU financed project, which aims to assist the states of Western Balkans, to train public functionaries for European accession; and the South East European Cooperation Process, which is tasked with promoting multilateral cooperation, strengthening stability, security and good-neighbourly relations in the region.

6.2.2 *Impact of the situation in Kosovo*

39. In June 2010, the Assembly debated a comprehensive report on *The situation in Kosovo and the role of the Council of Europe*²⁷, to which I refer the readers attention to. It is clear that the Kosovo Assembly's unilateral declaration of independence from Serbia in February 2008 has affected reconciliation in the region to some degree. Belgrade declared the Montenegrin Ambassador to Serbia *persona non grata* and withdrew its Ambassador from Zagreb following Montenegro's and Croatia's decision to recognise Kosovo as an

²⁷ See Resolution 1739 (2010) and report (Doc. 12281) on *The situation in Kosovo and the role of the Council of Europe* by Mr Björn von Sydow (Sweden, SOC).

independent state. Similarly, relations between Serbia and "the former Yugoslav Republic of Macedonia" also soured for some time. Full diplomatic relations have now been reinstated.

40. It may be noted in this context that the International Court of Justice (ICJ), in its long anticipated Advisory Opinion on the declaration of independence delivered on 22 July 2010, found that the declaration did not violate any applicable provision of international law.²⁸ Following the publication of the Advisory Opinion, the Serbian Parliament passed a Resolution stating that it will never recognise Kosovo's independence.²⁹ Serbia has also tabled a draft resolution to the UN General Assembly calling on the UN to find a mutually acceptable solution.

7. Final remarks and next steps

41. There appear to have been many advances on reconciliation in the region over the past few years. That said, bilateral relations are still fragile and there are many unresolved issues that could threaten the process of reconciliation, including territorial disputes and the strong nationalistic rhetoric that surfaces from time to time.

42. The purpose of the report will be to offer a constructive contribution to reconciliation in the region by highlighting the positive actions taken by political leaders and other actors that indicate a willingness to foster reconciliation. At the same time, I will look at what sort of recommendations the Assembly should be making in order to strengthen bilateral relations and to enhance dialogue and co-operation between the countries concerned. The report will examine, *inter alia*, the following points:

42.1 after the forthcoming elections in BiH on 3 October 2010, the prospects of bringing the parties together to discuss the reforms that must be made to the constitution in light of the recent European Court of Human Rights judgment;

42.2 the possibility of finding a durable solution to the question of refugees and IDPs in the region;

42.3 the level of consensus over the creation of a regional truth and reconciliation commission which could be endorsed and supported by the international community and the European institutions;

42.4 the feasibility of promoting and supporting a public discourse about the war that departs from nationalist rhetoric. In particular, I would like to look at the role of public education, especially in the teaching of the younger generations and explore what the Council of Europe could do further to promote education on the history of the conflict across the former Yugoslavia.³⁰

42.5 measures to support and further promote inter-parliamentary cooperation. I was encouraged by the level of cooperation that I saw when I met with the Croatian and Serbian delegations in June;

42.6 measures that could be fostered to promote regional cooperation at the level of civil society.

43. It is my intention to visit the region to meet with state officials and NGOs to garner a fuller picture on the prospects of reconciliation in the region before presenting my final report to the Committee.

²⁸ ICJ Judgment *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* 22 July 2010 <http://www.icj-cij.org/docket/files/141/15987.pdf>

²⁹ <http://www.guardian.co.uk/world/2010/jul/27/serbia-parliament-kosovo-independence>

³⁰ The Council of Europe in collaboration with the OSCE has already produced a *Manual for History Teachers in Bosnia and Herzegovina*, written by Luisa Black.