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STATEMENT – THE UNITED NATIONS GENERAL ASSEMBLY,  
THEMATIC DEBATE: ROLE OF INTERNATIONAL CRIMINAL  
JUSTICE IN RECONCILIATION

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AND THE WESTERN BALKANS

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Dear Colleagues and Friends,

At its session of 18 February 2013 the Scientific Council of Institute of International Politics and Economics appointed new Editor-in-Chief of the scientific journal *Review of International Affairs (RIA)*. Marko Nikolić, Ph.D. has been appointed Deputy Editor and Vladimir Trapara, M.A. and Mihajlo Vučić, M.A., Secretaries of the journal. At its session of 14 May 2013 the Scientific Council of Institute of International Politics and Economics appointed new Editorial Council and Editorial Board.

Being honestly thankful to former Editor-in-Chief, Editorial Council and Editorial Boards for their contribution, the new one's main objective will be to improve quality of the journal.

We kindly ask all interested professionals and colleagues to support us sending articles, comments and suggestions.

Sincerely yours,

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## EU INTEGRATION

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### SUCCESSIVE ENLARGEMENTS OF EUROPEAN UNION AND WESTERN BALKANS

Duško LOPANDIĆ<sup>1</sup>

*“And yet, taken all in, the EU is a good thing.”*  
(T. Judt, *Postwar*)

**Abstract:** During the seven rounds of enlargement, the number of original members of the former European Coal and Steel Community (and the EEC) almost quintupled from six in 1957 to 27, that is, 28 in July 2013. This article considers the basic geopolitical circumstances of the successive enlargement of the European Union, especially its conditions, political motives and objectives. We will present the basic conditions and dynamics of the enlargement of the Union, which will gradually spread, to the Western Balkans in the next decade. In the essential sense, the processes of negotiations for membership or joining the EU on a long-term way change the structure of the candidate country, affect the stability of its political system, contribute to democratization, promote and modernize the economy and the state apparatus and the entire legal system. In this way, the effects of EU accession are multiple and generally very positive.

**Key words:** EU enlargement, European Union, Western Balkans, democratization negotiation process.

## 1. INTRODUCTION

The accession of Croatia to the European Union (July 2013) presents a relatively unique case of the EU enlargement involving a single State. In the case

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<sup>1</sup> Duško Lopandić, Ph.D., Ambassador, Ministry of Foreign Affairs, Serbia. Opinions expressed in this article represent the personal opinion of the author. E-mail: dlopandic@yahoo.com.

of the past six enlargement cycles, this happened only once – in 1981 when Greece acceded. Group enlargements were rather a norm since the first enlargement in 1973 (when Great Britain, Ireland and Denmark joined) until the “big bang” in 2004 when 10 new members joined it. In the meantime, the number of EU member countries increased almost by five times.

This article deals with the circumstances and dynamics of the EU enlargements, which will expand progressively to the Western Balkans during this and the next decade. The circumstances of further deepening and expansion of the European integration will affect the future dynamics of negotiations and the prospects of Serbia’s accession.

## 2. “EVEN CLOSER UNION AMONG THE PEOPLES OF EUROPE”

As A. Moravcsik emphasized, the EU has “the most effective form of power projection in the world today (bearing in mind costs-benefits) - the promise of EU membership” (Moravcsik, 2008, p. 64). The process of continuous EU enlargements is, in some way, a corollary to the integration between its Member States. It is the realization of one of most important political goals since the Treaty of Rome established the EEC creating “ever closer union among the peoples of Europe.” (Consolidated version of the Treaty on European Union, 2012) In seven enlargement cycles, the number of European Coal and Steel Community and European Economic Community members increased from six in 1957, to twenty eight (since July 2013). The EU enlargements were seen in this order: 1973 – Great Britain, Ireland and Denmark, 1981 - Greece, 1986 - Spain and Portugal; 1996: Sweden, Finland and Austria; 2004: Poland, the Czech Republic, Slovakia, Hungary, Lithuania, Latvia, Estonia, Slovenia, Malta and Cyprus, in 2007 – Romania and Bulgaria. To this, we may add the very important “invisible” enlargement to the East Germany after the reunification of Germany (1990) when the former territory of the GDR was in a few months incorporated into the then EEC, as part of the FRG.

Article 49 of the Treaty on European Union says that “*any European State which respects the principles set out in Article 2 may apply to become a member of the Union...*”

The EU Copenhagen Summit, held in June 1993, defined criteria for the eligibility of a country to join the European Union. They include:

- a) political criteria (democratic governance, human rights, rule of law)
- b) economic criteria (functioning market economy, competitiveness)
- c) legislative criteria (acceptance of the EU obligations).

There is also - today more important than ever - the special, fourth condition, concerning *the absorption capacity* of the Union. Several authors emphasised these issue (Kovačević, 2009, p. 15-43; Ott, Inglis, 2002, p. 1116; Tatham, 2009, p. 539).

The EU enlargement, in parallel with the expansion of the NATO, represents the most important geopolitical feature in Europe after the end of Cold War. Although the relatively rapid expansion of the EU to Eastern countries caused some negative social reactions, this process is generally considered a major political and economic success. It removed old geopolitical divisions between the East and West of the continent and enabled rapid transformation and modernization of East European countries contributing to the political and economic stabilization of the area located between Western Europe and the borders of the former USSR.

### **3. THE ESTABLISHMENT OF THE UNION AND ITS SUCCESSIVE ENLARGEMENTS IN THE BEGINNING: GERMANY, FRANCE AND ALL THAT...**

The creation and enlargement of the EU/EC might be historically seen as the way of regulating the political architecture of Western Europe after World War II. The creation of the European Union is explained as a way of permanent organisation and stabilization of Franco-German relations based on cooperation and (economic, political and military) integration. In addition, the history of European Communities/EU development can be seen as a continuous process of integration initiatives, which were more or less successful, sometimes unsuccessful or delayed for a few decades. The typical example was the failure in the Sixties with the Treaty establishing the European Political Community and the European Defence Community. Several authors emphasize this issue (Sutu, 2001; Du Rheau, 1996; Olivi, Giaconne, 1998)

Until the signing of the Maastricht Treaty in the late 1980s, the process of strengthening of “federal” and “supranational Europe” was the main option in the evolution of the European Communities. After the Maastricht Treaty, the options of supranational federalism and “neo-functionalism” for integration have gradually lost their attractiveness in comparison to the method of “intergovernmental” (classical) co-operation between Member States (Anderson, 2009, p. 47).

It seemed that the possibility of “federal” option was definitely abandoned after the 2004 referenda in France and the Netherlands on the non-adoption of the “Constitutional Treaty”. But, the prolonged crisis in 2008 and the dominance of Germany as the “indispensable” Member State revived the debate on possible federal option as a real alternative for the future.<sup>2</sup> The key geopolitical event after the fall of the Berlin wall – the unification of Germany- was realized and

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<sup>2</sup> The speech of J. Baroso, President of the European Commission: „Let’s not be afraid of the words: we will need to move towards a federation of nation states. This is what we need. This is our political horizon”, in: [http://europa.eu/rapid/press-release\\_SPEECH-12-596\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-12-596_en.htm?locale=en).

internationally accepted along with the agreement on deepening of European integration. On one hand, German Chancellor Kohl provided consent of France (and the UK) for the rapid German unification, and, on the other, he accepted the propositions on further parallel political integration of the EU and the creation of a monetary union. “In Paris, in March 1991.... the launch of the European construction, with German unification and the dissolution of the USSR ... now indicated as the only tool of controlling Germany “(Sutu, 2001, p. 337).

The German unification and incorporation of the East German “länder” in the FRG legal system and the (then) European Community supposed the expansion of the legal “*acquis communautaire*” on the territory of East Germany. The inclusion of East Germany in the EU law system was a specific, *ad hoc* and unique example of enlargement, which took place in less than a year. Despite the “framing” of Germany in the processes of European integration, as Z. Brzezinski noted, the “late unification of Germany in 1990 resulted in a huge shift in the centre of the European political gravity, as well as at the global geopolitical balance ... a reunified Germany gave a boost to the next wave of European integration and NATO expansion.” (Brzezinski, 2010, p. 38) This statement became even more acute after 2008 and the deepening of euro crisis.

#### **4. UNITED KINGDOM AND EUROPEAN COMMUNITIES – THE FIRST ENLARGEMENT**

From the beginning of negotiations on the establishment of the EEC, the issue of the relations between Great Britain and the European integration process had been opened. The British delegation took part in the preparatory meetings of the Conference of Messina in 1955 (which was preparing the conclusion of the Treaty of Rome on the EEC and the Euratom), but then avoided to sign the treaty. Instead, the UK established, with some Nordic and neutral countries such as Austria, the European Free Trade Association (EFTA) as an alternative to the Communities. Later, its attitude changed (mostly because of the re-evaluation of the political and economic circumstances arising after the Suez Crisis) and applied for European Communities membership.

During the 1960s, France blocked the UK application twice. After De Gaulle’s resignation, the French position changed. De Gaulle regarded Great Britain’s membership as a Trojan horse, representing the interests of the USA. That was somehow a paradoxical attitude as the Communities were established with the strong US support. With Pompidou as President of France, the UK (with Ireland and Denmark) finally acceded to the European Communities. However, this was not the end in the search of appropriate “status” for the UK. As soon as the conservative E. Heath government was replaced by the Labour Party, the British Government organized a referendum on EC membership (1975). The result was

positive. But, for decades, Britain has kept trying to change some terms of its membership, especially during the period of Prime Minister M. Thatcher. She blocked for some time the adoption of the EU budget. The so-called “Compromise of Fontainebleau” (1984)<sup>3</sup> allowed the agreement by which Britain was entitled to get back some of its allocations for the EU budget. In the same spirit of seeking some “special status”, Britain avoided to join the Eurozone as well as the rules on the movement of individuals (Schengen agreements). Euro-scepticism of the British public and its political circles (especially within the Conservative Party) increased with the deepening of the new economic crisis (after 2008). This led to Prime Minister Cameron’s announcement concerning possible renegotiations of EU competences in 2015. At the same time, Cameron announced to organize a referendum on this issue, probably in 2017.

The British approach to the key EU issues tends, in some way, to geopolitically marginalize this country in Europe and to bring it to the status of “a retired geostrategic player, resting on its splendid laurels, largely disengaged from the great European adventure in which France and Germany are the principal actors.” (Brzezinski, 2001, p. 45)

## **5. GREECE, PORTUGAL AND SPAIN – THE MEDITERRANEAN ENLARGEMENT (1981/1985)**

The first EC enlargement was supposed to solve relations in the triangle of “great” Western countries (France, the FRG, the UK). The second and the third enlargement directly ensued as an effort of stabilization and strengthening of „half-baked” young democracies in three Mediterranean countries, which had changed their long-standing right-wing authoritarian regimes. Although, this policy was strategically indisputable and supported by the USA, the enlargement process was not simple.

For Greece, the Commission initially had given a negative opinion about its (economic and administrative) capabilities to adapt to the conditions of EU membership. However, the Commission’s opinion was not followed by the Council of Ministers, which (primarily under the influence of France) gave the “green light” for Greek negotiations. The process of integration of Greece into the EEC lasted six years, and the negotiations themselves lasted three years. This illustrates a relative simplicity of the EU *acquis* at that time.

Spain’s and Portugal’s membership negotiations lasted longer (about seven years) as a consequence of the economic circumstances and especially for the French and Italian fears that the Spanish agricultural production will put their

<sup>3</sup> For Fontainebleau Summit and the role of President Mitterand see (Delors, J. (2004) p. 224-226).

agricultural production into jeopardy. From a geopolitical point of view, membership of the three Mediterranean countries had a very positive economic and political impact in terms of stabilizing and democratizing their political systems as well as providing strong incentives for further “Europeanization” of their administrations and societies. Several authors emphasize this issue (Bitsch, 1996; De Vasconcelos, Seabra 2000; Judth, 2006)

## **6. FOURTH ENLARGEMENT – EFTA COUNTRIES (SWEDEN, AUSTRIA AND FINLAND)**

Fourth enlargement occurred in the first half of the Nineties, after the conclusion of Maastricht Treaty, the unification of Germany, the collapse of Eastern bloc, i.e. in a completely new European geopolitical environment. Therefore, it was not just a consequence of intention of individual EFTA countries to gain a better position in the EU “internal market” (project “Europe 92”). Traditionally neutral countries (Sweden, Finland and Austria) wished to lead more active and more focused international policy (after the fall of the Berlin Wall). Interestingly, the only NATO member in this group – Norway – despite the completion of EU membership negotiations, after the negative referendum, abandoned (for the second time) the prospect of EU membership.

For three other EFTA countries, the enlargement negotiations were not entirely smooth. In fact, the idea of further EU enlargement, especially encompassing neutral countries, caused some resistance from certain EU members. They considered that an overextended Union would face the prospects of “dilution” of traditional federal EU objectives and the gradual abandon of basic ideas of Schuman Declaration and other European Communities founding documents. Therefore, the EC Commission (under the leadership of President Jacques Delors) propose an alternative to the full EU membership, which would be a sort of partial, economic integration for EFTA countries through the „European Economic Area”. However, the establishment of a very complex EEA did not stop three major EFTA countries in their pursuit for full EU membership. (Tuusvuori, 2000, p. 71-87)

## **7. FIFTH AND SIXTH ENLARGEMENT – TOWARDS UNIFICATION OF EUROPE**

The geopolitical changes in the early 1990s in Europe (i.e. disappearance of the Soviet and Eastern bloc) opened the debate on the establishment of a “new European (political) architecture”, i.e. the organization of the new post-Cold War order in Europe. Some new proposals were put forward, such as the initiative of French President Mitterrand on the formation of European “Confederation” from the Atlantic to Vladivostok, which would include the area (at that time still existing)

of the USSR. However, the governments of East Europe countries, supported by the United States, favoured quick integration in Euro-Atlantic structures, primarily into the NATO and the European Union. After 1991, the EU has gained the key role as the centre of the new European architecture - political and economic “denominator” of Europe. This process also meant a deep transformation of the role and structure that the “Little Europe” (European Communities) once had.

Successive EU legal and political reforms (the Maastricht Treaty of 1992, the Amsterdam Treaty of 1997, the Treaty of Nice of 2001, the draft Treaty establishing a Constitution of Europe of 2004, the Treaty of Lisbon of 2007) were more or less successful attempts to adjust to the new organization of wider, post - Cold War Europe (Brzezinski, 2009, p. 31-50). Although the goal itself – integration of the countries of Central and Eastern Europe into the EU – was never questioned after 1992, at the same time it raised the question of size and dynamics of the EU enlargement to the East.

As in previous enlargements, the old EU members showed some reservation with regard to the rapid and under-prepared enlargement. However, the war in former Yugoslavia and the attempted coup in Moscow (1991) strongly influenced the attitude of the EU towards taking into consideration basic geopolitical reasons for enlargement. In Copenhagen 1993, the EU officially announced conditions for the Eastern enlargement. During this period, the EU introduced some more precise criteria for the candidate status and membership. It also introduced the new methodology for the negotiation process (“pre-accession strategy”, “Accession Partnership”) (Inglis, 2002, p. 103-143).

Tony Judt (2006) indicated that the Maastricht Treaty had impeded the EU enlargement process, but at the same time contributed to the faster NATO expansion to the East, as a kind of compensation for the slow EU enlargement process. The wish to go rather slowly in the enlargements process was obvious during the adoption by the EU Commission of the so-called enlargement strategy together with the strategy of internal reforms under the title: “Agenda 2000” (which foresaw the gradual enlargement in several phases). Thus, the candidate countries were divided in two groups - those ready to join (the Czech Republic, Hungary, Poland etc.) and those less ready (Slovakia, etc.). The “advanced” group (the “Luxembourg Group”) included Hungary, Poland, the Czech Republic, Slovenia, Estonia and Cyprus, and the second group (the Helsinki Group “) in addition to Slovakia and Latvia, there were also Lithuania, Malta, Bulgaria and Romania (Judth, 2006; Kovačević, 2009)

It seems that geo-strategic imperatives and especially the fear of regional destabilization at the time of the Kosovo conflict and the NATO bombing of Serbia (1999) were the main reasons for the decision to accelerate and complete the EU (and the NATO) enlargement as soon as possible. Thus, the enlargement in

2004 was historically the largest (by number of countries and territories). Ten new members were soon followed (2007) by Romania and Bulgaria. “As a matter of fact, however, the 1999 Kosovo War was instrumental in redefining the European agendas for the region. Without their supportive role in the Kosovo War and the revised appreciation as relative anchors of stability in South Eastern Europe, Romania and Bulgaria would not have qualified for accession negotiations at the Helsinki European Council” (Kempre, Meurs, 2003, p. 63). The population and the territory of the Union suddenly increased by about a fifth, but the economy increased by only 5%. Studies concerning the economic effects of 2004 enlargement found, among other things, that the enlargement of the Union in the period 2000-2008 had spurred the GDP growth in Eastern Europe candidate countries by an average of 1.75% on top of the expected average growth. The enlargement process contributed to a significant increase in public and private investment in candidate countries. It directly stimulated a cycle of infrastructure building and had a positive effect on competitiveness as well as on the convergence trends, i.e. approximation the development average between the less developed members and the EU average. During the ten-year period (1999-2008), the convergence process was very dynamic. The average GNP of new East European member states reached about 50% (compared to about 40% at the beginning) of the average EU members’ GNP.

Compared to an EU average of 100% in the period 2000-2008 the average of Bulgaria’s GDP increased from 28% to 39%; in the case of the Czech Republic it went from 69% to 82%, while in the case of Slovenia it increased from 79% to 92%. The same process occurred in other Central and East European members.

The EU enlargement to the borders of the former Soviet Union (and beyond these limits, taking into consideration the three Baltic countries), meant actually near completion of the European “unification” in the minds of the main strategic Western decision-makers.

The “big bang” enlargement proved to be successful as the EU institutions continued to operate relatively well. Economic effects of this large enlargement were positive. However, the enlargement to an almost twofold number of Member States (fifteen to twenty-seven) in the period of three years (2004-2007) put some additional challenges to the EU system. A quick and comprehensive enlargement meant a longer period of subsequent “digestion” and adaptation of the organization. It also caused a kind of “hangover” or “enlargement fatigue” in some old Member States (such as France, the Netherlands or the FRG) and opened the old questions of European identity, role of the nation state and integration key goals. The old-new “existential questions” on the “raison d’être” of the EU reappeared with the debates that resulted in the failure of the Constitutional Treaty referenda (in France and Holland) in 2004 and intensified with the deep economic crisis in the Eurozone and the problem of the increased public debt of the southern



EU Member States. The economic crisis from 2008 lasted longer than any previous EU crisis (Lopandić, 2011, p. 5-18).

## **8. FURTHER PROCESS AND THE EFFECTS OF ENLARGEMENT**

In July 2013, Croatia acceded to the EU as the 28th member. Several authors emphasize this issue (Vlašić, Goran, 2010; Stančić, 2005; Tišma, Samardžija, 2012). At the beginning of 2013, three countries (Montenegro, Turkey and Iceland) started accession negotiations; two countries were official “candidates” pending the decision of negotiations (Macedonia and Serbia); two countries have “potential candidate” status. This list should be added the special status of the territory of Kosovo. In that respect, in April 2013, the European Commission proposed closure of “The Stabilization and Association Agreement.” Kosovo was recognized by 22 EU Member States, but it was not recognized by Spain, Romania, Slovakia, Cyprus and Greece. On 28 June 2013, the European Council decided to open membership negotiations with Serbia, which should start by January 2014 at the latest.

Neither “enlargement fatigue” nor a deep debt crisis managed to completely stop the enlargement process, although it is fair to say that the whole process has been quite slowed down. The EU is a “peace project” and the enlargement to the Western Balkans (ex-republics of Yugoslavia minus Slovenia plus Albania) is quite in the logic of the whole process with regard to Central and Eastern Europe. Potential Turkey’s membership caused a lot of opposition, especially in France and Germany. However, the geostrategic logic and “natural” process of Western Balkans memberships has not been questioned. As in previous enlargement rounds, the debate is primarily related to the question of scope, methodology and enlargement dynamics.

As T. Jut (2006) has pointed out, from the very beginning the European “project” has been something of a “schizophrenic”. While on one hand, the main proclaimed principle is the policy of “open doors” to the candidate countries, on the other, the complexity of Union and its organization, policies and procedures present an objective barrier.

The process of integration begins with the analysis of a candidate’s legislation and its comparison with the EU “acquis” (screening process). It continues through the harmonization of legislation of candidate country by chapters and subjects, based on special “criteria” (benchmarks). The aim of negotiation process is to agree on possible transition periods for certain sectors (before or after membership). It concerns especially the sectors for which rapid harmonization is difficult (environment, transport and infrastructure, competition, standards and

technical regulations, etc.). Essentially, in medium-term membership negotiations affect administration and organization of candidate countries, strengthen the political system, contribute to democratization, promote modernization of the economy, of the state apparatus and of the entire legal system. In this sense, EU membership has multiple effects which are generally positive. This conclusion can be drawn from the practice of previous enlargements, especially of the Mediterranean and Central East European countries. EU membership also contributes to geopolitical stability and economic prosperity. Medium and long term enlargement economic effects stimulate the growth of GDP and harmonization of GDPs between less and more developed European countries. In general, EU membership has, among other things, the following effects: strengthens the international and geopolitical position of a candidate country, helps the political and regional stability, facilitates the process of transition towards democratization and the rule of law, supports modernization of administration, legal and economic system (“Europeanization”), strengthens the economic position, market environment and competitiveness, contributes to the growth and improvement of standard conditions, facilitates higher development.

These positive effects are seen early in the negotiation process. For example, an increase in foreign direct investments is seen soon in advance of membership, as foreign companies try to position themselves in the new markets, which are seen as being a part of the large internal market of the Union in the future. The political and economic environment, legal and political guarantees are seen as more favourable and stable once a country becomes candidate for EU membership. Thanks to the EU membership some less developed European countries, such as Ireland, Portugal and Greece have made a large progress in their development process. Some authors emphasize this issue (Berend, 2012, p. 191; Reis, 2007, p. 203–229). For all those reasons, the EU accession is a national interest and the main strategic issue in the further development of the Republic of Serbia.

## 9. CONCLUSIONS

Taking into considerations all what has been said above, some conclusions about the political aspects of enlargement can be made:

- The decision on EU enlargement is essentially based on political assessments and, as seen in all previous enlargement cases, the decisions for opening membership negotiations were never taken easily or rapidly;
- Some Member States have expressed more or less open reservations concerning the future (rapid) enlargements. This attitude will not change soon, especially in the context of growing “Euro scepticism”, which is often mixed with xenophobia;

- Enlargement negotiations took a long time; in previous cases: from five years to a whole decade. With each round of negotiations, it lasted longer and this trend could be expected to continue in the case of the Western Balkans;
- It would be particularly important that during the negotiations the candidate country ensures sufficient political support from some important Member States - primarily including Germany and France as well as Great Britain, Spain, Italy and as many as possible other countries;
- Enlargement process is mutually supportive and politically stimulating. This means, for example, that EU views affect the perspectives and dynamics of the negotiations with the candidate country. At the same time, demonstrated energy and political will of each candidate country affects, on its turn, the negotiations dynamic;
- Political will for enlargement does not automatically mean acquiring shortcuts for solving some technical, economic, social and other issues that can appear during the negotiations;
- During the cycle of Eastern enlargement, the enlargements for the EU and the NATO went almost in synchronization. However, this fact is not a mandatory one. It may not apply in the case of Western Balkan countries;
- The EU enlargement to the Western Balkans will probably be slower than the Central and East European EU accession. The reasons are multiple and can be associated, among other reasons, to a little interest of the EU Members for the Balkans, the EU crisis and a low level of preparedness of the Western Balkans for the EU membership. However, the slow pace of negotiations does not necessarily produce negative effects only. The process of negotiations is important in itself. It brings by itself some important benefits. (Increased foreign investments, the process of “Europeanization”, etc.).
- It is too soon to estimate whether in the future the accession of the Western Balkans will have the form of a “regatta” (“one by one” accession) or of a “convoy” (accession in “package”). Although the principle of regatta is applied for the time being, other criteria (rationality, geostrategic considerations) may determine that in the future the EU goes back to the practice of “package” enlargement;
- Further enlargements will largely depend on the ability of the EU to overcome the current economic crisis. It may be imagined that the future formation of Europe in “concentric circles” (“variable geometry” or “differentiated integration”) would mean that the Western Balkans – after waiting in the EU “lobby” and conducting long negotiations – would become part of the “outer circle” of the EU (i.e. States which would not be included in some projects of “deepening”, such as Eurozone, a “banking union”, the “Schengen” system, etc.).

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Duško LOPANDIĆ

## **SUKCESIVNA PROŠIRENJA EVROPSKE UNIJE I ZAPADNI BALKAN**

**Rezime:** U sedam rundi proširenja Unije broj prvobitnih članica nekadašne Evropske zajednice za ugalj i čelik (i EEZ) skoro se upetostručio, sa šest 1957. godine na 27, odnosno na 28 u julu 2013. godine. U ovom tekstu ćemo razmotriti osnovne geopolitičke okolnosti sukcesivnih proširenja Evropske unije, imajući u vidu uslove, političke motive i ciljeve širenja Unije. Prikazaćemo osnovne okolnosti i dinamiku proširenja Unije koja će se u ovoj i narednoj deceniji postepeno proširiti i na Zapadni Balkan. U suštinskom smislu, proces pregovaranja za članstvo, odnosno uključivanje u EU na dugoročan način menja strukturu zemlje-kandidata, utiče na stabilnost njenog političkog sistema, doprinosi demokratizaciji, podstiče i modernizuje privredu kao i državni aparat i celokupan pravni sistem. U tom smislu, efekti ulaska u EU su višestruki i u načelu vrlo pozitivni.

**Ključne reči:** EU, proširenje Evropske unije, Zapadni Balkan, demokratizacija, proces pregovaranja.

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## THE BRUSSELS AGREEMENT AND DECENTRALIZATION IN KOSOVO<sup>1</sup>

Dragan DJUKANOVIĆ<sup>2</sup>

**Abstract:** In this paper, the author analyses the situation in Kosovo related to the efforts of the international community to regulate and improve relations between ethnic communities through enhanced role of local authorities — through decentralization and local self-government. Special attention was paid to the efforts and ambitions of the international community, especially the United States and the European Union, to improve the status of non-Albanian communities at the local authorities level in the period between 2005 and 2008, with particular emphasis on the conclusions of the Contact Group (November 2005) and the Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari Plan, 2007). The unilateral declaration of Kosovo's independence on 17 February 2008 was followed by the adoption of a new constitutive act as well as a number of laws and by-laws in the sphere of local self-government, which have taken over the solutions of the Ahtisaari Plan. In this sense, the First Agreement of Principles Governing the Normalization of Relations between Belgrade and Pristina (Brussels Agreement, 19 April 2013), starting from the above-mentioned solutions, envisaged the formation of a Community/Association of Serb majority municipalities, the gradual integration of police in northern Kosovo into the Kosovo Police and *modus operandi* of the judiciary. The community/Association of Serb majority municipalities will have a legal basis (the Statute), administrative bodies and responsibilities in the areas of health, education, urban and rural planning and economic development planning. The aforementioned Agreement, according to the author, is the most important in a series of agreements reached between Belgrade and Priština since 2011 and ensures the continuation of Serbia's European integration, the gradual relaxation of relations in the wider region of the Western Balkans and Southeast Europe. The author believes that it certainly has been one of the major achievements of the EU diplomacy over the past few years.

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<sup>1</sup> Kosovo – under the Resolution of the UN Security Council (1999)/the Autonomous Province of Kosovo and Metohija under the Constitution of the Republic of Serbia (2006.)

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**Key words:** Kosovo, local self-government, decentralization, Serbs, Serbia, European Union, First Agreement of Principles Governing the Normalization of Relations, Comprehensive Proposal for the Kosovo Status Settlement, Community/Association of Serb majority municipalities.

## 1. INTRODUCTION

Several months of armed conflicts in Kosovo between Albanian rebels and Serbian and Yugoslav security forces ended on 10 June 1999, after the adoption of the Resolution 1244 of the United Nations Security Council. (Resolution No. 1244, 1999). However, after the conflicts, the territory of Kosovo was deeply ethnically divided. In the central parts of Kosovo, majority of population was of Albanian ethnicity under the jurisdiction of the Provisional Institutions of Self-Government based in Priština, while Serb population dominates in the north, in municipalities of North Kosovska Mitrovica, Leposavić, Zvečan and Zubin Potok. In recent years, some Serbian enclaves in central and southern parts of Kosovo (Gračanica, Štrpce, Klokot and Parteš) have been gradually integrated into local political and security system, especially after the unilateral declaration of independence on 17 February 2008. Kosovo population census of 2011, organized by the Agency of Statistics of the Kosovo Government, has shown dramatic changes in the population structure compared to the census of 1981, which was not boycotted by the members of Albanian ethnic community.<sup>3</sup> According to these results, which do not include the four Serbian municipalities in northern Kosovo, Albanians constitute 92.9% of the total population, followed by Bosniaks (1.6%, with 27,533) and Serbs (1.5%, or 25,532 members) Agencija za statistiku Kosova, (2013, pp. 58-63). It should be noted that in 1981, 77% of Albanians and 13.2% of Serbs lived in Kosovo, but the mass exodus of the Serbian community subsequently followed.

On the other hand, the four municipalities in northern Kosovo almost completely refused any integration into Priština institutions and local legal and political framework. Despite numerous attempts by the United Nations Interim Administration Mission in Kosovo – UNMIK, and since 2008 by EULEX, to establish decentralization on the whole territory of Kosovo, it has failed due to opposition of municipalities in northern Kosovo to previously integrate in Priština institutions. UNMIK, in its regulation of 2005, envisaged significant reform of local authorities and strengthened decentralization in Kosovo, (UNMIK, 22 July 2005). Moreover, in this sense, two new Serbian municipalities in the central parts of Kosovo were formed – Gračanica and Parteš. This was followed by a large

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<sup>3</sup> Albanians massively boycotted the last population census in the former Socialist Federal Republic of Yugoslavia in 1991.



number of negative public reactions of Albanians in Kosovo, who believed that the formation of new ethnic municipalities might affect the potential ideas of its division.

Since the beginning of resolving the crisis in Kosovo, as well as during the negotiations between Belgrade and Priština on its status, the international community has insisted on strengthening mechanisms of decentralization and affirmation of local self-government. Something similar has been previously applied in the Republic of Macedonia, where the conflict between Albanian rebels and Macedonian military and police forces ended with the Ohrid Agreement (August 13, 2001) (Framework Agreement – 2001). This Agreement provided for the possibility to enhance the system of local self-government and ensure proportional participation of the Albanian community in the police force, judiciary and other government structures at state level, but also at the local self-government level. It is evident that behind this stood the aspiration of the leading actors in world politics to avoid the formation of a separate territorial autonomy of the Albanian community in Macedonia and to avoid the possibility of forming mono-ethnic entities, such as the Republic of Srpska in Bosnia and Herzegovina. After the unilateral declaration of independence in mid-February 2008, the same situation was with Kosovo, when the leading countries in world politics, which in the meantime recognized the independence of Kosovo, primarily the United States and the Federal Republic of Germany, refused any possibility of the division of this territory or the formation of some type of mono-ethnic territorial autonomy, which would be established in the four northern municipalities, predominantly inhabited by Serbs, as well as the Serbian enclaves in the other parts of Kosovo.<sup>4</sup>

## **2. INTERNATIONAL COMMUNITY'S EFFORTS TO DECENTRALIZE KOSOVO FROM 2005 TO 2008**

When establishing the principles for resolving the final status of Kosovo, the Contact Group, which consisted of the United States, Germany, Russia, Britain, France and Italy, in November 2005 stated that this territory, under the protectorate of the United Nations, in the future cannot have the same status as before the beginning of the armed conflict in 1999, and that there will be no division of Kosovo and its eventual annexation into neighbouring countries. In

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<sup>4</sup> See the statement of U.S. Ambassador in Belgrade, Michael Kirby, given in Novi Pazar on 5 March 2013 during negotiations between Belgrade and Priština on the status of Serbian municipalities in northern Kosovo— 'Kirby: We do not want the Republic of Srpska in Kosovo', *Radio-televizija Vojvodine*, Novi Sad, 5 March 2013, Accessed May 12, 2013 from [http://www.rtv.rs/sr\\_lat/politika/kirbi:-ne-zelimo-republiku-srpsku-na-kosovu\\_375477.html](http://www.rtv.rs/sr_lat/politika/kirbi:-ne-zelimo-republiku-srpsku-na-kosovu_375477.html), Accessed May 12, 2013.

the fourth point of the Guiding Principles of the Contact Group for a Settlement of the Status of Kosovo, it was stated that a “coexistence of different ethnic communities” can be ensured through decentralization and strengthened local self-government mechanisms.(Contact Group, 2005),

This position was also adopted by Martti Ahtisaari, United Nations Special Envoy of the Secretary-General in the Comprehensive Proposal for the Kosovo Status Settlement, which was presented to the public on 26 March 2007. (United Nations Office of the Special Envoy for Kosovo, 2007), This document, colloquially called the Ahtisaari Plan, was released one year after the beginning of unsuccessful negotiations between the authorities in Belgrade and Priština related to defining the final status of Kosovo. Due to the obvious opposition of the Russian Federation, and potentially of the People’s Republic of China in the United Nations Security Council, this document has not been supported by the world organization, but it served as a basis for establishing the legal, political and security system in Kosovo after Priština institutions proclaimed independence in mid-February 2008.

In the introductory section of the Ahtisaari Plan, it was pointed to defining a new system of local self-government in Kosovo and the process of necessary decentralization. That is why it was pointed out that the municipalities will be the basic units of local self-government, as well as that there would be a possibility of their mutual and cross-border cooperation. It was particularly noted that mechanisms for the protection of non-dominant ethnic communities in Kosovo municipalities would be established. (Recommendation: Kosovo’s status should be independence, supervised by international community, Articles 1-15.)

The entire Annex III of the Comprehensive Proposal for the Kosovo Status Settlement was dedicated to decentralization, with special emphasis on the fact that Serbs and numerous other non-Albanian communities will be granted rights in the accordance with the European Charter of Local Self-Government of the Council of Europe. In this sense, it was envisaged that the Kosovo institutions adopt fundamental laws on local self-government – on municipal boundaries, local elections, local finance, etc.(Ibidem, Article 4.2.) Municipalities were given rather high powers, which are related to traditional areas of local self-government in European countries – local development, urban and rural planning, land use, implementation of building regulations, organization of public services, local transport, civil protection, pre-primary, primary and secondary education, primary health care, etc.(Ibidem, Article 3, 3.1) Municipalities are responsible for licensing markets, cultural facilities, public transport, as well as naming of streets, squares, parks and other public places. The cultural, educational, tourist and sporting activities and events are also under the jurisdiction of the municipalities. (Ibidem, Article 3, 3.1.)

It was planned to give additional responsibilities in the field of higher education to the newly formed municipality of North Kosovska Mitrovica, which represents parts of the pre-war municipality of Kosovska Mitrovica north of the Ibar River, predominantly inhabited by Serbs (University of Kosovska Mitrovica). (Article 4, 4.1.1. and 4.1.2.) It was defined as “an autonomous institution“, (Article 7, 7.2, 7.2.1.) which can independently pass its statute and other legal frameworks. In addition, North Mitrovica, Gračnica and Štrpci were given the possibility, given the existence of local health centres, to organize secondary health care in the territory of these municipalities. The Ahtisaari Plan stipulated that, when appointing police station commanders in the predominantly Serbian municipalities, the proposals of the local municipal assemblies should be taken into account, although the final decision on their appointment should belong to the Ministry of Internal Affairs of Kosovo. (Article 4.1.3, b)

The authorities in Priština, in accordance with the Comprehensive Proposal for the Kosovo Status Settlement, may delegate responsibilities to municipalities related to civil registries and cadastral records, voters and businesses registration, the distribution of social assistance payment and forestry protection. (Article 5, 5.1.) Also, this document envisaged that the additional responsibilities might be delegated from the central to local authorities in Kosovo. (Article 5, 5.2.) Supervision (administrative review) over the work of Kosovo’s municipalities, as envisaged, should be performed by the central authorities and the competent ministry for local self-government. (Article 6.)

This document also stipulated that teachings in Serbian language could be carried out in different municipalities in Kosovo according to the curricula of the Ministry of Education of the Republic of Serbia, with notification to the competent Kosovo ministry. (Article 7, 7.7.1.) If, as stated, there is non-conformity of mentioned curricula with the constitutional system and the laws of Kosovo, a special Independent Commission should be formed, which should assess the aforementioned matter. (Article 7, 7.7.2.)

The Ahtisaari Plan has incorporated all the principles of the European Charter of Local Self-Government of the Council of Europe related to the inter-municipal and cross-border cooperation. According to it, forming of two types of inter-municipal cooperation was envisaged — ‘municipal partnership’ and the ‘community/association of municipalities’. (Article 9.) Communities/ associations of municipalities should act according to the Kosovo Constitution and laws related to the local self-government. They were designed as an instrument of inter-municipal cooperation in Kosovo, and the possibility of their cooperation with similar international associations was also envisaged. In this sense, the competent Kosovo ministry must be informed on initiatives for the establishment of communities/associations of municipalities, and plan of activities of this type of inter-municipal cooperation must be submitted.

It is particularly important to note that the Ahtisaari Plan planned formation of new municipalities, including Novo Brdo, Gračnica, Ranilug, Parteš and Klokot, and the division of the former municipality of Kosovska Mitrovica to North and South Mitrovica has been recognized. (Article 12.)

Belgrade's rejection of the Ahtisaari Plan, as well as significant support by the United States and the European Union related to its implementation, have resulted in the declaration of independence by the authorities in Priština on 17 February 2008, which *de facto* saw in it new basis of legitimacy and legality. The said act has not been recognized by Kosovo's northern Serb-populated municipalities; hence, to date there has been a particular form of high ethnic division of Kosovo, because Priština institutions have not had jurisdiction over any segment in this part of Kosovo.

### **3. KOSOVO REGULATIONS IN THE SPHERE OF LOCAL SELF-GOVERNMENT (2008-2013)**

Immediately after the declaration of independence, the Kosovo Assembly passed the new constitutive act, which replaced the Constitutional Framework for Provisional Self-Government in Kosovo (2000). (UNMIK, 2001), The Kosovo Constitution (Kosovo Assembly, 2008), came into force on 15 June 2008 and provided for specific frameworks for the organization of the local self-government and the main guidelines for implementation of the principle of decentralization. Under Chapter X of the Constitution (the Local Self-Government and Territorial Organization), it was envisaged to adopt a special law on local self-government, and it was stated that local authorities must act within the Kosovo constitutional system, and in accordance with the European Charter of Local Self-Government of the Council of Europe, but to "the extent as that required of a signatory state". (Article 123, Point 3.) In further text of the Kosovo Constitution, the competences of municipalities, the manner of defining their boundaries, the possibilities of inter-municipal and cross-border cooperation, way of financing and monitoring their work, were defined. However, the Constitution of Kosovo did not literally take over parts on decentralisation and local self-government of the Ahtisaari Plan, that is, the Comprehensive Proposal for the Kosovo Status Settlement, particularly parts related to the protection of non-dominant ethnic communities in local communities.

On the other hand, the Law on Local Self-Government of Kosovo (Službene novine, 2008b). has almost completely taken over all parts of the Ahtisaari Plan, including parts related to the special rights of members of non-Albanian communities in certain parts of Kosovo in the field of higher education, health care and inter-municipal cooperation. (Article 21) .Moreover, this law enables the opportunity for local self-governments to cooperate, but within the cross-border

cooperation with the Republic of Serbia, with prior notification to the competent Kosovo ministry of local self-government, as well as some kind of control of these activities. (Article 30.) Community/Association (Alb. Asociacioni), as set out in the Law on Local Self-Government of Kosovo, must be transparently established, with publically available founding documents. (Article 31 and 32.) These associations of municipalities were also given the option of establishing cross-border co-operation with other international associations.

The Article 23 of the Law on Local Self-Government determines that the Serbian majority municipalities have certain rights related to the appointment of the local police stations commanders, which is also governed by the Article 42 of the Law on the Kosovo Police (*Službene novine*, 2012), which stipulates that Ministry of Internal Affairs of Kosovo appoints mentioned persons upon proposals of the municipal assemblies.

After 2008 – after unilateral declaration of independence, Kosovo also adopted other laws related to functioning of local self-government. These are the laws on local self-government financing, public-private partnerships, immovable property of municipalities, local elections.<sup>5</sup> The Law on Inter-Municipal Cooperation (*Službene novine*, 2011) of Kosovo was adopted in 2011, and did not provide a clear framework for the establishment of communities/associations of municipalities. It bypassed all the possibilities set out in the Ahtisaari Plan and the Law on Local Self-Government of Kosovo, which was passed three years ago. Under the Article 11 of this Law, circumstances under which certain administrative authorities within the inter-municipal cooperation may be established were listed, as well as procedures and scope of their work and composition. However, in order to circumvent such adverse conditions for inter-municipal cooperation, the Government of Kosovo adopted the Regulation on the Stimulation of Inter-Municipal Cooperation<sup>6</sup> on 27 March 2013. The inter-municipal cooperation, as stated in the Regulation, aims to improve the socio-economic development of certain areas, development and land use, urban and rural planning, environmental protection, tourism development, promotion and protection of cultural heritage and the development of municipal infrastructure. (*Ibidem*, Article 6) This Regulation provides that the communities/associations of municipalities can be funded from the Kosovo budget, international funds, including the European Union funds and local self-government budgets. (Article 7) At the same time, it was emphasized that all activities related to coordination, as well as supervision of inter-municipal cooperation in Kosovo, are carried out by the Ministry of Local Self-Government Administration. (Articles 9 and 11.)

It is clear that the above analysis of the Constitution of Kosovo shows that it is not completely in line with provisions of the Ahtisaari Plan for decentralization and local self-government, but it is evident that the Law on Local Self-

<sup>5</sup> See the integral texts and the chronological overview of adoption of the Kosovo laws on local self-government: <http://mapl.rks-gov.net/Main-menu/Legislacioni/Ligjet-e-miratuara-2012.aspx>.

Government (2008) and the Regulation on the Stimulation of Inter-Municipal Cooperation (2013) are in full compliance with the mentioned document.

#### **4. THE FIRST AGREEMENT OF PRINCIPLES GOVERNING THE NORMALIZATION OF RELATIONS BETWEEN PRIŠTINA AND BELGRADE AUTHORITIES**

In the period from 2008 to 2011, after the unilateral declaration of independence of Kosovo, there was no dialogue between the authorities in Belgrade and Priština. At the initiative of the United States and the EU in early March 2011, negotiations process began, as stated, on technical issues. This gradually influenced the resolution of the status of citizens in Kosovo and the gradual relaxation of previously deteriorated relations between Belgrade and Priština. In the period after 2011, the agreements were reached between Belgrade and Priština on the civil registries, freedom of movement, recognition of diplomas, cadastral records and customs stamp.<sup>7</sup> One of the most important agreements was related to integrated border management, as well as an agreement on Kosovo's participation in numerous forms of multilateral cooperation in Southeast Europe (regional initiatives). In the meantime, an agreement on the exchange of liaison officers between Belgrade and Priština was signed.

“The First Agreement of Principles Governing the Normalization of Relations” (the Brussels Agreement) between the authorities in Belgrade and Priština, was signed in Brussels, with the mediation of the European Union, on 19 April 2013.<sup>8</sup> A few days later, it was accepted by the Assemblies of Serbia and Kosovo. This was after eight rounds of unsuccessful negotiations and a very long process of negotiations about how to protect the rights of Serbs in Kosovo and the manner of their participation in the judicial and law enforcement authorities in Kosovo. The Agreement stated that the Association/Community of Serb majority municipalities in Kosovo will be formed, which would include the four municipalities in northern Kosovo, as well as central and southern parts. (Point 1). In this sense, municipalities with Serbian majority population were mentioned – Štrpce Klokot, Patreš, Gračanica, Novo Brdo and Ranilug.

The Agreement provided that Association/Community of Serb majority municipalities would have its own statute, and its survival will be ensured, as stated in the Agreement, in accordance with applicable law and constitutional law of

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<sup>6</sup> During the Brussels negotiations on the status of Serbian municipalities in the north, the Kosovo Government adopted *the Regulation No.09/2013 on the Stimulation of Inter-Municipal Cooperation* on 27 March 2013. See: <http://mapl.rks-gov.net/getattachment/2af09bff-d846-4924-9adf-92cd098f722b/Uredba-Br-09-2013-O-Podsticanju-Me%C4%91uopstinske-Sara.aspx>.

<sup>7</sup> See the list and full texts of the agreements that have been made since 2011 between the authorities in Belgrade and Priština: <http://www.srbija.gov.rs/kosovo-metohija/?id=164576>.

Kosovo. (Point 2.) In this way, the implementation of the previously passed laws of Kosovo, namely the Law on Local Self-Government, the Law on Elections, the Law on Local Government Finance, the Law on Administrative Municipal Boundaries, as well as numerous by-laws, will follow. The aforementioned Association, as stated in the Agreement, can be dissolved only in accordance with the previously adopted decision of the participating municipalities assemblies. (Point 2.)

The Statute of the Association/Community of Serb majority municipalities will govern the existence of President, Vice President, Assembly and Council, which would be a sort of executive body of the Association. (Ibidem, Point 3.) However, it is stated here that the model for the institutional framework of the Association will be the Association of Kosovo Municipalities (alb. Asociacioni të Komunave të Kosovës), which was established in 2001 as an association of local self-governments responsible for protecting the rights of local self-governments, and it has an advisory role in the adoption of legislation on local self-government.<sup>9</sup>

Starting from the jurisdiction of local self-government as defined in the European Charter of Local Self-Government of the European Council and the Law on Local Self-Government of Kosovo, the Association/Community of Serb majority municipalities will be able to coordinate the cooperation of its member municipalities within the original jurisdictions of local self-government, as well as in the areas of “economic development, education, health care, urbanization and rural planning.” (First Agreement of Principles Governing the Normalization of Relations, 2013), Point 4. The listed powers are in full compliance with the Regulation on the Stimulation of Inter-Municipal Cooperation in Kosovo of 27 March 2013. The Agreement also stipulates that the Priština authorities may delegate additional responsibilities to municipalities, (Ibidem, Point 5.) which is also in accordance with the Law on Local Self-Government of Kosovo.

The Association/Community of Serb majority municipalities will have representative in the Communities’ Consultative Council, an advisory body within the Office of the President of Kosovo. (point 6) The aforementioned body was established in accordance with the Constitution of Kosovo representing an institutional framework for the protection of ethnic minority groups and having a right to give advisory opinions on legal solutions related to their status.

The Agreement stipulates that during 2013, the local elections will be held in four municipalities in northern Kosovo, with the support and supervision of the Organization for Security and Cooperation in Europe (OSCE). (Ibidem, Point 11). These elections should be organized, as mentioned in the Agreement, in

<sup>8</sup> The integral text of the document First Agreement of Principles Governing the Normalization of Relations (2013).

<sup>9</sup> More about the Association of Kosovo Municipalities see on: [komunat-ks.ne](http://komunat-ks.ne).

accordance with international standards and the Law on Local Elections in Kosovo. (Službene novine 2008a).

After almost a month-long negotiations on the implementation of the First Agreement of Principles Governing the Normalization of Relations between Priština and Belgrade, an agreement on the principles of its implementation was reached in Brussels on 22 May 2013. However, the presidents of the four Serbian municipalities in northern Kosovo have continued to refuse participation in the implementation of this Agreement between Belgrade and Priština.

The First Agreement of Principles Governing the Normalization of Relations between the authorities in Priština and Belgrade envisaged that the Kosovo Police will also take over all jurisdiction in northern Kosovo and will be the only one operating in Kosovo. (First Agreement of Principles Governing the Normalization of Relations (2013), Point 7.) This includes full integration of all existing police forces in the northern Kosovo into the Kosovo Police. However, it is not clear whether this includes full integration of parts of the existing structure of the Ministry of Internal Affairs of the Republic of Serbia that operate in northern Kosovo into the Kosovo Police, however, the Article 8 of the Agreement highlighted that members of “Serbian other security structures” will have the opportunity to be employed in the equivalent Kosovo bodies, agencies and institutions.

Although the Law on Local Self-Government of Kosovo (2008) and the Law on the Kosovo Police (2012) stipulate that local government structures in Serbian majority municipalities in Kosovo can submit proposals for local police commanders, on which a final decision is passed by the Ministry of the Internal Affairs of Kosovo, the Agreement introduced position of the police regional commander for northern Kosovo (Kosovska Mitrovica, Zvečan, Leposavić and Zubin Potok), who would be a member of the Serbian community. (Point 9.) A person who would perform this duty would be nominated by the four mayors on behalf of the Community/Association of Serb majority municipalities, and would be selected by the Ministry of Internal Affairs of Kosovo. The ethnic composition of the northern part of Kosovo, that is, domination of Serbs, will be proportional to the structure of employees in local units of the Kosovo Police. (Point 9.)

Integration of judicial structures of four Serbian municipalities in the north into the framework of constitutional and legal system of Kosovo will be achieved by establishing a special panel within the Appellate Court in Priština, which will consist of Serbian judges. This panel will be responsible for court disputes in Serbian municipalities. (Point 10.) A special department of the Appellate Court will be established in North Kosovska Mitrovica, which will predominantly consist of judges of Serbian nationality. (Point 10.)

The aforementioned Agreement between Belgrade and Priština envisaged that discussions on energy and telecommunications of Kosovo would be completed by mid-June this year. (Point 13.) In these negotiations, although at first glance it



seems that they will not be dominated by political and status issues, but that they are ‘technical’, a problem of a separate international telephone code for Kosovo may arise, against which Belgrade strongly opposes.

Under the Point 14 of the Agreement, it is stated that the authorities in Belgrade and Priština will not block each other on the path to European Union membership, as well as that they will not encourage third entities to do so. This is especially important given that Serbia expects to get the date for start of the negotiations with the European Union by the end of June, as well as that Kosovo expects the start of negotiations on the signing of the Stabilisation and Association Agreement with the European Union. However, despite visible efforts of both sides, it is clear that the EU’s decision to set a date for the start of membership talks with Serbia is still quite uncertain.

## 5. CONCLUSION

Reaching an agreement between the Belgrade and Priština authorities on the formation of the Community/Association of Serb majority municipalities represents the first major foreign policy success of the EU diplomacy. Of course, the fact that the United States had a significant influence on the authorities in Priština and Belgrade to reach the existing compromise should not be denied.

With this Agreement, Serbia managed to show good will in overcoming the problems that exist in Kosovo, but also in a certain way to try to accelerate its European path. In addition, Serbia has accepted the existing, that is, factual situation in Kosovo, but did not legally recognize its unilateral declaration of independence. It is also very important that for the first time in the dialogue between Belgrade and Priština, which has been led since 2011, the question of protection of rights of Serbian population in Kosovo was posed, along with prevention of their outvoting and marginalization. Also, the European Union and the North Atlantic Alliance have emerged as the guarantors of this Agreement, which is particularly important bearing in mind the possible intentions of the Kosovo authorities to somehow avoid its implementation or modify it in the course of its implementation.

Kosovo Serbs will be given the option to maintain relations with the authorities in Belgrade, although it still has not been specified whether they would have the citizenship of Serbia and whether they would have the right to use the Serbian identity documents. (Vučić, 25. maj 2013). Serbia, on the other hand, should insist on the strict application of the Agreement in order to avoid the possibility of certain forms of discrimination against Serbs in Kosovo related to the participation in the judiciary or the Kosovo Police. Priština authorities also need to fully implement the Agreement without any attempt to perform selections of ‘eligible’ employees of Serbian nationality in the judiciary and the police.

Therefore, they should display good will and intention to truly integrate the often marginalized Serbian community in Kosovo.

In this regard, the European Union may have a special role in correcting behaviour of the authorities in Priština towards members of the Serbian ethnic community. This is very important given the explicit European aspirations of the Priština authorities and their efforts to accelerate the path towards the European Union membership. At the same time, it is important to emphasize that the First Agreement of Principles Governing the Normalization of Relations between Belgrade and Priština can also relax wider relations in the Western Balkans and Southeast Europe, which may particularly affect certain latent crisis in Macedonia and complex inter-ethnic relations in Bosnia and Herzegovina.

The further course of the dialogue between Belgrade and Priština will soon be confronted with new, very important challenges. In the first place, this includes Kosovo's participation in international organizations (UN, OSCE, Council of Europe, etc.), the return of internally displaced persons and the functioning and protection of the property of the Serbian Orthodox Church. In this regard, the future course of these negotiations is likely to include parts of the Ahtisaari Plan of 2007. Also, a very important issue will be related to the position of state property in Kosovo, which also can be a very sensitive issue, given that many companies have been privatized after 2000. Of course, one of the most problematic issues in the further course of the dialogue between Belgrade and Priština will be the full implementation of the rights of members of the Serbian community in accordance with international standards, as well as their adequate representation in Kosovo institutions.

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Dragan ĐUKANOVIĆ

## BRISELSKI SPORAZUM I DECENTRALIZACIJA NA KOSOVU

**Sažetak:** U ovom radu autor analizira situaciju na Kosovu u vezi sa nastojanjima međunarodne zajednice da se kroz ojačanu ulogu lokalnih organa vlasti kroz decentralizaciju i lokalnu samoupravu regulišu i poboljšaju odnosi između etničkih zajednica. Posebnu pažnju autor je usredsredio na pokušaje i težnje međunarodne zajednice, a pre svega Sjedinjenih Američkih Država i Evropske unije da u periodu od 2005. do 2008. godine, poboljšaju status nealbanskih zajednica na lokalnom nivou vlasti, sa posebnim akcentom na zaključke Kontakt grupe (novembar 2005) i Sveobuhvatni predlog za rešenje statusa Kosova (Ahtisarijev plan, 2007). Posle jednostrano proglašene nezavisnosti Kosova 17.

februara 2008. godine usledilo je usvajanje novog konstitutivnog akta, ali i niza zakona i podzakonskih akata iz oblasti lokalne samouprave, kojima su preuzeta rešenja iz Ahtisarijevog plana. U tom smislu i Prvi sporazum o principima normalizacije odnosa između Beograda i Prištine (Briselski sporazum, 19. april 2013) je, polazeći od navedenih rešenja, predvideo formiranje Zajednice/udruženja većinski srpskih opština, postepenu integraciju organa unutrašnjih poslova na severu Kosova u Kosovsku policiju i način delovanja pravosudnih organa. Zajednica/udruženje većinski srpskih opština će imati svoje pravno utemeljenje (statut), administrativne organe i nadležnosti u oblastima zdravstva, obrazovanja, urbanog i ruralnog planiranja i planiranja privrednog razvoja. Navedeni sporazum, ocenjuje autor, najznačajniji je u nizu sporazuma koji su od 2011. godine postignuti između Beograda i Prištine i osigurava nastavak evropskih integracija Srbije, postepenu relaksaciju odnosa u širem regionu Zapadnog Balkana i Jugoistočne Evrope. On zasigurno predstavlja i jedan od značajnijih uspeha diplomatije Evropske unije tokom proteklih nekoliko godina, smatra autor.

**Ključne reči:** Kosovo, lokalna samouprava, decentralizacija, Srbi, Srbija, Evropska unija, Prvi sporazum o principima normalizacije odnosa, Sveobuhvatni predlog za rešenje statusa Kosova, Zajednica/Udruženje većinski srpskih opština

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## EUROPEAN INTEGRATION OF THE REPUBLIC OF SERBIA AND THE ROLE AND CAPACITIES OF ENVIRONMENTAL CIVIL SOCIETY ORGANISATIONS: BETWEEN NORMATIVE AND REALITY<sup>3</sup>

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Maja BOBIĆ<sup>2</sup>

**Abstract:** The paper emphasizes certain general elements and the existing literature relevant to the understanding of the role of the civil society organizations in the contemporary society in the context of the importance of citizen participation in decision-making, contributing to the democratization of the society, the improvement of relations between public authorities and interested citizens, strengthening European integrations and solving environmental problems in general. The importance of the CSOs participation is especially emphasized in the following activities: participation of CSOs in harmonization of national legislation with the EU regulation and participation of CSOs in decision-making regarding environmental issues. In the second part of the paper, the assessment of CSOs capacities in this respect in the RS is provided. The main thesis examined in this article is that the role of CSOs in European integration is partly regulated but the question of the capacity of CSOs to participate in the activities related to accomplishing objectives of the European integration is not adequately overviewed.

**Key words:** European integration, civil society organisations, public participation, capacities, environment, legal harmonization

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## 1. GENERAL FRAMEWORK

Regardless of different possible theoretical approaches in the literature, there is almost a general consensus that the role of civil society organizations in the social processes is associated (or may be associated) with the key theoretical issues of the contemporary political science, law, sociology, philosophy, etc. (Baker, 1998). The basic assumptions for the development of the modern democracy are strongly associated with the question of the relation between citizens and public authorities, the position of citizens, human rights and the possibilities of the active participation of citizens in decision-making processes. Nevertheless, there is more than one general factor that determines the directions of the possible discussion. Podger *et al.* consider three crucial general factors of direct relevance for understanding the concept of enhancing the role of citizens and they are as follows: the role of governments, functions of markets and wider community needs (Podger *et al.*, 2012, p.102). “Whereas the ‘static society’ model sees the citizen first and foremost as a citizen of the state (in relationships determined by the state), the ‘market society’ model sees the citizen as a market player. The citizen as a member of civil society (*homo civicus*) mediates between the two, by embodying all three aspects (*homo politicus*, *homo economicus* and *homo civicus*).” (Machiavelli, 2001, p. 35).

Globalization and interweaving of internal and international aspects of certain problems have acted so that the position of the citizen is increasingly placed in the centre of debates about the functioning of the government, the role of the public authorities, respecting human rights (Zavala, 2012; 2010; Soveroski, 2007) and relations between state and non-governmental organisations (McLoughlin, 2011). Reform of the governance is associated with strengthening of the position of citizens at all levels from local to global (Scholte, 2004; Jaeger 2007; He and Murphy, 2007; Bohmelt, Koubi and Benauer, 2013). Strengthening citizen participation is seen as a response to changes in the modern society, including changes in the environmental field (Soma and Arild 2010)<sup>4</sup> and it is more clearly associated with

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<sup>4</sup> In this paper, the question of the role of civil society organizations is seen primarily through the prism of their relations with public authorities, i.e. participation in the activities that are normatively defined as the area of their activities. Thus, the defined process is observed, and the question of the possible results is solely pointed out. For more on certain methodological aspects and advantages of the combined method, see for example: Rauschmayer *et al.*, 2009; Newcomer, *et al.*, 2013). To strengthen the transparency of the procedure, Soma proposes introducing of “multicriterion evaluation” as a tool for designing the participatory process. (Soma, 2010). Here it is not specifically discussed the question of relations between civil society organizations and the business sector, although this deserves a more detailed analysis. (See, for example, Ahlstrom and Sjostrom, 2005; Beare, Buslovic and Searcy, 2013). The importance of this question is particularly emphasized by the fact that the participation of the civil society in decision-making partly refers to the decisions that affect the business sector. In circumstances such as those in the countries in transition, such as the RS, where the imperatives of development are strongly associated with numerous systemic difficulties (corruption, functioning of the rule of law, etc.), the scope of activities of civil society organizations have certain characteristics that should be analyzed separately.

the management models, i.e. the question of effectiveness of the policies in the field of the environmental protection (Van der Heijden and Heuvelhof, 2012). In various theoretical explanations concerning the importance of public participation in creating the public policy the significance of contribution of the public participation in building of confidence in the government and administration (Wang and Wart, 2007) and partnership building is emphasized,<sup>5</sup> although evidence suggests that this correlation is not straightforward and the effects of the public participation depend on various factors (Yang and Pandey, 2011). Progress in achieving results of public participation in the preparation of regulations Woods sees in the substantial improvements in relation to the interested public (public notification and access procedures), although some questions remain open regarding the role of certain interest groups and the costs (direct and indirect) (Woods 2009, p. 525-526). It discusses the need to build ... “new diagnostic tools to assess the conditions for citizen participation and measure the impact of participation on effective and democratic governance”, i.e. the need to ‘develop new experimental research designs where key research findings serve as the basis for concrete attempts to improve the functioning and impact of actual and on-going processes of participatory governance.’ (Skelcher and Torfing, 2010, p. 72).

In the technical sense, public participation in matters pertaining to public administration is closely associated with various practices of detailed regulatory impact assessments, i.e. reforms of the systems of preparation and adopting of regulations. Although public participation in drafting legislation is also possible without the use of regulatory impact assessment, the implementation of this instrument creates the conditions for a more complete awareness of stakeholders and public participation of better quality. Previous experiences in the implementation of the regulatory impact assessment show that it provides much more thorough the assessment of the possible impact of regulations by creating conditions for the decision-maker to properly apply the most suitable solution (Jacob *et al.*, 2011; Dunlop *et al.*, 2012; Radelli, 2004).<sup>6</sup> Public participation in the processes related to the accession of the RS to the EU should be viewed in the context of the growing importance of this issue in the framework of the EU as an organization, as well as the dilemmas that appear on this issue. The issue of public

<sup>5</sup> In the literature, dealing with the question of the partnership Brinkerhoff recognizes three categories of partnership (partnership based on a normative approach, critical approach as a reaction to a normative approach, partnership as a means of achieving other goals). To this he adds also a “network theory, political economy, and the NPM and new governance models literature” (Brinkerhoff 2002, pp. 20-21).

<sup>6</sup> The legislative decision-making process and policy output are key elements in a theoretical analysis. Apart from the “institutional veto players” and “government strength”, Jahn and Muller-Rommel emphasise two additional factors (when analysing the state in Central and Eastern Europe): the communist legacy and the impact of international factors. Jahn and Muller-Rommel, 2010, p. 24, 25).

participation is increasingly discussed in the context of “democracy deficit” (Bobić and Todić, 2012) and the need to overcome the problems encountered in functioning of certain institutions of the EU (Smismans, 2003). The results of the hitherto development of the EU legislation relating to public participation in decision-making and the results of the development of international legal regulation (Lee and Abbot, 2003; Ebbesson, 2011) point to the attempts for building a comprehensive system that, despite serious obstacles, could provide appropriate standards for protecting citizens and enabling the civil society a more equal relationship in decision-making procedures. Public participation is related to the expectations of the public, too. Although the expectations of joining the EU in countries that are in some stage of accession process is often associated with strengthening of democracy, there should be taken into account various specific circumstances in each country individually.<sup>7</sup> Joining the EU is a particularly sensitive issue, especially for the societies that have for many years been exposed to the conditions that existed in the RS (collapse of the state old for over 70 years, the so-called collapse of the socialist-communist legal, political and economic system that was developed over 50 years, war destructions, privatization and changes in the economic structure of the society, etc.). To this it should be also added as a separate aggravating circumstance - the establishment and building of a completely new system of values in the society with/after dissolving of the previous one. Keeping all this in mind, it may be interesting to compare the previous experience of Serbia in the transposition of EU regulations and their implementation with the experience of other countries that have already gone through the process (See, for example, Falkner, 2010; Farmer *et al.*, 2004; Inglis, 2004).

There should be no doubt that the importance of the problem in the environmental field (as it is now understood) has its globalization and value foundation of why public participation in decision-making affecting the environment should be considered in the context of achieving broader goals of the organized society and planning process as a whole (McKinney and Harmon, 2003).<sup>8</sup> The objectives to be achieved by EU regulations on public participation in decision-making on matters affecting the environment are to facilitate the implementation of the obligations under the Aarhus Convention (Todić, 2003). One of the main EU

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<sup>7</sup> “In the end, the most fundamental positive effect will be at a macro- rather a micro-level: by providing the democratic forces within the post-Communist states with additional support, encouragement, and discursive assets against the threats from authoritarian, populist, or nationalistic forces, the democratic transition itself has been safeguarded.” (Sadurski, 2004, p. 400).

<sup>8</sup> While different definitions of the term ‘public participation’ (or ‘citizenship’) and the related terms (‘public’, ‘public interest’, etc.) can be discussed, the idea of this contents should be considered primarily in the context of the objective of public participation and technical instruments by which public participation is carried out in practice.



instruments to achieve goals related to public participation in decision-making on matters affecting the environment is Directive 2003/35/EC of 26 May 2003.<sup>9</sup>

Regardless of the type and nature of the issues on which public participation in decision-making is implemented, it can always, in some way, be seen as a discussion on the current trends in the development of public administration. The links between public participation and organizing the public administration deserve a separate analysis. Riggs considers one of three key trends in the comparative study of the public administration the shift from non-organic to organic ways of thinking (Riggs 2010, p. 756).

In the following analysis, the policy in the environmental field is placed in the context of the reform of the legislative framework in the RS on its path towards the EU accession. The analysis seeks to answer the question whether civil society organizations have the appropriate regulatory framework and capacity to participate in the processes of the European integration of the RS. Given the fact that the EU accession process involves a series of obligations not only from the aspect of the states that are in this process (Józson, 2005), but also from the aspect of the EU, there can be set up responsibility for the performance of this process as a separate issue.

## **2. THE ROLE OF CSOs IN ACHIEVING GOALS IN THE AREA OF SERBIA'S EUROPEAN INTEGRATION**

All strategic documents doubtlessly define the goals of the RS related to its EU membership as priority goals (GRS, 2008a; GRS, 2008b; GRS, 2010a; GRS, 2011b) and priority goals in international environmental co-operation are clearly defined (Todić and Dimitrijević, 2013). Contrary to the state policy at that time, apart from the opposition leaders, the EU accession policy was advocated during the 1990s also

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<sup>9</sup> In addition to this document, several other legal acts should be considered including the following: Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment; Directive 96/61/EC on Integrated Pollution Prevention and Control Directive and the European Parliament and Directive 2001/42/EC on the impact assessment of certain plans and programs on the environment. Given the importance of information as a prerequisite for the active participation in decision-making, the specific importance for public participation has also Directive 2003/4/EC on the public access to information concerning the environment. "Regarding horizontal legislation, Serbia has achieved a high level of alignment. ... Particular attention needs to be given to enforcing the Environmental Liability Directive. In particular, EIAs need to be properly carried out wherever legally required and proper coordination between different authorities and with all stakeholders needs to be ensured" (EC, 2012, p. 116). "Although the alignment with the Environmental Impact Assessment Directive is fully achieved, the implementation needs to be improved, in particular the public consultation process and the quality of the dialogue with the NGOs" (EC, 2012, p. 57).

by newly established CSOs and a part of the intellectual elite in Serbia.<sup>10</sup> Thus, it was expected that after the democratic changes and making the EU integration a priority their role would be even greater and more significant. However, the “new authorities” showed unexpected hesitation, so that, for example, the early-established Council for European Integration (established in 2002 as a consultative body to the Government) that gathered representatives of different social groups and prominent CSOs, was mostly marginalized via irregular sessions and thus, caused absence of a wider consultative process at a strategic level. The only document, the Resolution on EU accession that was adopted by the National Assembly of the Republic of Serbia in 2004, with the support of European Movement in Serbia, also called among others, non-governmental organisations, trade unions, employers’ associations, religious communities, media “to join in the common effort to accelerate the accession process at all levels of law-making, executive and judicial performance as well any other free, social activity” (NARS, 2004, point 9).

### ***2.1. Participation of CSOs in preparation and harmonization of national regulation and policies with EU regulation and policies***

a) While considering CSOs participation in accomplishing the goals in the area of European integration one of the key elements is the CSOs participation in the preparation and harmonisation of national regulations and policies with the EU ones, having in mind that the approximation of national legislation with the EU legislation is one of the most important formal segments of the process of European integration.<sup>11</sup> From the normative perspective, the participation of CSOs in preparing and harmonising of the national legislation and policies with

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<sup>10</sup> It is estimated that the CSOs sector in Serbia is “relatively young because most of the organisations were established after 2000, while about one quarter had been established before 1990. Most of CSOs are involved in the provision of social services, in culture, media and recreation, and the environment (among which there are some hunting associations established more than 100 years ago)”. (Velat, 2012, p. 8). Environmental issues dominate among youth organisations that were established after 2010 (24%), with up to 5 activists (22%), without any budget (26%), from Eastern Serbia (30%). It is interesting that only 5% of the organisations with the budget over 100, 000 EUR have stated that the environment is their primary area (Velat, 2012, p. 24).

<sup>11</sup> From the perspective of international law, it should be noticed that in its Article 1 the Stabilisation and Association Agreement (Official Journal of RS“, br. 83/2008) stipulates that the goal of Serbia’s EU accession is ‘to support efforts of Serbia in developing economic and international cooperation, among other things, through its legislation harmonization with the EU *acquis*’. Besides, this obligation is explicitly proscribed in Article 72 of the SAA which obliges Serbia ‘to strive to secure gradual harmonization of the existing legislation and future legislation with the *acquis communautaire*’ (NARS, 2008).

the EU ones could be seen through the possibility of public participation in different activities, having in mind that legislations that regulate the preparation or harmonisation of the national legislation with the EU legislations do not contain special instruction on CSOs participation.<sup>12</sup> The importance of public participation is best viewed as a set of problems that appear when there is a lack of appropriate public participation in the law implementation including the discrepancy between rules and the reality (European Movement in Serbia, 2010).

b) Besides the Constitution of the RS that defines general rules including competencies, there are several laws and by-laws that are being implemented (OSCE, 2011). Related to the existing procedures and practice there are several questions that deserve to be addressed. According to the National Convention on the EU conclusions, the inconsistent practice and narrowing down of possibilities for “public” participation is especially important in the procedures and development of the regulations (European Movement in Serbia, 2010). While transposition of environmental *acquis* has progressed well, the legislative challenge remains significant. “The legislative practice should change in order to separate policy making from drafting of legal texts, to ensure for inclusion of stakeholders and civil society in the process and to lead to a coherent set of environmental legislation that provides for full transposition of the *acquis* and at the same time is clear, unambiguous, not over-prescriptive and straight forward” (GRS, 2011b, p. 10; See also EPTISA, PM Group, 2011). Although this question is strongly and particularly emphasized in the provisions of the Aarhus Convention, which is ratified by the RS (OJ of RS – International treaties, No. 38/09), the Rules of Procedure of the Government prescribe that public participation remains within the discretion powers of the administrator or proponent. The scope of the discretion is best described by the interpretation of the obligation of the proponent to “conduct public consultations” only during the “preparations of laws that will significantly alter certain issue or the ones that regulate issues that are of special interest to the public” (Art. 41. par.1). Only the latest amendments of the Rules of Procedure of the Government (March 2013) provide in detail the prescribed procedure for public hearings and contents of the public debate. Disputable is also Article 42 of the Rules of Procedure of the Government that is entitled “accessibility of the material to the public”, which states that “if public consultations are not obligatory, the material becomes accessible to the public at the moment when the relevant committee concludes and proposes to the

<sup>12</sup> Public is defined as “one or more persons or legal bodies, their associations, organizations and groups” while interested public as “the public that is influenced by or might be influenced by decision-making of the relevant body or the one that has interest in it, including associations of citizens and other social groups that are involved in the environment and recorded with the relevant organ” (Art. 3 point 26 and 28 of the Law on Environmental Protection) (See also: GRS, 2011c, p. 108).

government to enact the act or decides upon the proposal of the act at the latest.” Thus, the public is deprived of the opportunity to participate in rule making until the competent committee reaches a conclusion that the Government proposes to adopt an act or to make a draft document. If we take into consideration the notes on the discretion rights of authorities and the provisions of the Rules relating to the “confidential material” (Articles 43-45) it seems that the ability to deny the participation of the public in making a significant part of regulations is almost endless (European Movement in Serbia, 2010, p 26). Besides general rules on law preparation procedures that relate to public participation, special provisions on national harmonization with the EU regulations are defined in the Rules of Procedure of the Government. However, these do not provide public participation in the course of preparation of the regulation which is to be harmonized with the EU one.

c) The results of the research conducted by the European Movement in Serbia<sup>13</sup> revealed several important impediments to a greater involvement of CSOs in the preparation and implementation of regulations in the area of environment at the local level. Within the total of 49% of respondents which are stated as impediments that prevent them from being more involved in the preparation and implementation of regulations in their city/municipality the following are: the lack of support and indifference manifested by the city administration, political will, interests of powerful social, unequal position of CSOs and the government, corruption, the lack of human resources and knowledge, the lack of sufficient experts for concrete areas, the lack of financial resources, insufficient number coordinators for CSOs and representatives of municipalities/cities, dismissal of the opinion of citizen associations, technical issues etc. 25% of the respondents agreed that there were numerous impediments preventing them to get involved in the preparation and implementation of the regulation in the area of environment, while 20% stated there were no significant impediments for this (Todić *et al.*, pp. 379-380).

The data on the CSO participation in preparation of regulations and policies show that the participation is relatively modest. The research shows that most of the respondents (51%) did not participate in any discussion (or presented their opinion) in the last three years about any draft legislation in the environment area that was in the process of preparation or adoption either at the local, provincial or national level. When it comes to the consultations about strategic documents, programmes or plans the research shows that 31% did not participate, while 33%

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<sup>13</sup> This is a study conducted through making surveys and interviews in 2012 as part of a larger study related to the capacity of local self-governments, CSOs and companies in the field of environment. As samples there were taken two NGOs in 24 districts (excluding Kosovo and Metohija, under 1244 Resolution of UN Security Council), i.e. municipalities that have their seat districts (Todić *et al.*, 2012).

participated 2 to 5 times in the last three years. (Todić *et al.*, p. 359). Regular participation in the public discussions on adoption of the new legislation, plans, programmes or studies in the environment was reported by 44% of respondents. 24% of representatives of CSOs said that they were not informed of public consultations/discussions, and 13% said they did not participate in the discussions about these topics. The fact that only 22% of respondents said they were consulted and involved at an early phase when “all options are open”, and that 42% considered that CSOs were “mainly not involved” (Todić *et al.*, p. 364) points out to the need to reconsider the existing practice on public participation with the necessity to increase CSOs participation at an early phase of the procedures.

## 2.2. CSOs participation in the environmental decision-making process

a) The connection between the participation of CSOs in the environmental decision-making process and the process of the European integration is observed through the fact that the legal basis for CSOs participation in these activities is established by the laws and regulations adopted in the process of the harmonization of the national legislation with the EU legislation. Thus, it is considered fully or mostly in agreement with the EU procedure.

b) The participation of the public concerned is governed by Art. 10, 11, 14, 15, 20, 25, 27, 29, 32 of the Law on Environmental Impact Assessment (Official Journal of RS, No. 135/04, 36/09) which up to now, has been the most recognizable form of public participation in decision-making activities in the environmental field. Public participation in terms of the strategic impact assessment is provided in the presentation of the spatial and urban plan or any other plan or programme to the public and it is regulated by the Law on Strategic Environmental Impact Assessment. In several of its provisions, the Law on Integrated Prevention and Control of the Environmental Pollution determines the duties of competent authorities relating to the public participation at various stages of the so-called issuing of the integrated permit.

c) Different mechanisms of public participation in decision-making are laid down in the legal system including environmental legislation (Law on Waste Management, Law on Nature Protection, Law on Air Protection in the Environment, Law on the Protection of the Noise in the Environment, Law on Waters, Law on Forestry, Law on Planning and Construction). One of the key assumptions for public participation in the decision-making process is the existence of a transparent and simple mechanism to access the information relating to the environment. Although this issue is basically regulated by the Law on Free Access to the Information of Public Importance (Official Journal of RS, No. 120/2004, 54/2007, 104/2009 and 36/2010) regulations in the environmental field (especially laws passed in recent years) contain, in a relatively uneven manner, defined rules on access to information.

d) The research shows that CSOs participate in various activities on the basis of regulations in the field of environment, but the level of participation of CSOs can be considered modest. So, for example, 31% of respondents said that over the last five years they requested information on the environment 2-5 times (from the competent authority, the local, provincial and central government), but 24% did not seek any information (Todić *et al.*, p. 348).

Most respondents (51%) said that in the last 3 years, they had not participated in any decision-making concerning the environment related to the impact assessment (EIA), the strategic environmental assessment (SEA), or in conjunction with the integrated permit (IPPC) (Todić *et al.*, p. 355). 25% of respondents said that they had participated 2-5 times. An equal number of respondents (9%) reported that they had participated only once and a few times, respectively, but do not know exactly how many times and 4% of respondents had participated 6-10 times. Only 2% of respondents said that they had participated more than 10 times. Overall, nearly three-quarters of respondents (73%) responded that CSOs “are not sufficiently involved” in the decision-making process and creating of local policies in the field of the environmental protection in their municipality/city and 7% as “not sufficiently involved.” “Involved sufficiently only in the implementation of local development policies” is the statement reported by 5% (Todić *et al.*, p. 363; Velkavrh *et al.*, p. 41.).

### 3. CSO CAPACITIES

The capacity for the implementation of the Aarhus Convention is usually considered a general framework for this discussion. Generally, “it is estimated that the current state of the institutional capacities and certain financial problems may affect the complete and consistent implementation of the Aarhus Convention” (MESP, 2010, p. 4). In the light of the assessment of human, technical and financial capacities of CSOs, the research conducted within the European Movement in Serbia basically confirmed the estimates made in the analysed strategic and other documents (Todić *et al.*, p. 121-166). The equal number of respondents, a quarter, said that their organization had human resources (members, employees, etc.), and enjoyed the support of the public to be active participants in the implementation of environmental policies at the local level. Also, the same number, or slightly less than one-fifth of respondents provided that they had technical capacities (space, equipment, etc.) and the support of local governments to actively participate in the implementation of policies in the field of environmental protection at the local level. Only slightly more than one-eighteenth of organizations stated that they had the financial capacity to be active participants in the implementation of environmental policies at the local level (Todić *et al.*, p. 346, 347).

As for funding one of the elements relevant for the capacity of CSOs, for more than one quarter of the CSO representatives the most numerous sources of funding are local donors and sponsors. Otherwise, when it comes to funding CSOs as a whole, regardless of the field of the activity, it was noticed that the size of budget which CSOs disposed with in 2010 “varied more among individual CSOs than among the main areas they dealt with. In 2010, a large majority of CSOs had a budget of less than 20,000 Euros, while only 5% of over 100,000 Euros” (Velat, 2012, p. 102).<sup>14</sup> Besides that, “in the last few years there has been a downward trend in funding CSOs from the funds of international donors and an increase in funding from the EU budget, as well as the budgets on national, provincial and local levels. Additionally, changes in the CSO funding strategy are also noticeable in funding from the business sector” (GRS, 2011a, p. 4). In the part relating to the biodiversity, it is estimated that “in situations in which a non-governmental organization is formed because of a local problem, erratic funding sources and dependence on foreign donor funds often result in changes in the focus of the organization’s action. Support that comes from the official institutions or the private sector is still insufficient, although increasing from year to year”. (GRS, 2010b, p. 26).

Slightly more than one-fifth specified international funds and organizations as a source of financing. Slightly less than one-quarter of respondents said that budget of municipality, province and the republic was the source of funding, and similar to them, a little more than one-fifth specified international funds and organizations as a source. Multiple sources of funding were reported by slightly less than one-sixth of respondents, while one-ninth reported that dues were the sources of funding for the organization. It can be concluded that for more than 50% of domestic CSOs the main funders are local donors and sponsors (budget of municipality, province and the Republic) (Todić *et al.*, p. 344, 345).

When it comes to the need for additional training, the research has shown that all respondents agreed that it was necessary to undertake additional training for the EU environmental legislation or a group of the EU environmental legislation, out of which 44% specified rules, regulations or a group of provisions in need of additional training, while 53% of respondents could not specify the particular area that needed training. Among these EU regulations that require additional training the specified regulations were in the area of nature protection, water, waste management, the Aarhus Convention, planning documents, all the fields, and so on. In view of the need for training in relation to the participation in the implementation and monitoring of legislation, the majority of respondents (51%) said they need additional training in learning and participating in the

<sup>14</sup> CSO’s high dependence on donors and uncertainty of “sustainability of the current level of engagement” was ascertained in 2007 as a problem by the UNDP (UNDP, 2007, p. 77).

implementation and monitoring of the implementation of regulations. About 2% of respondents reported that they did not need additional training (Todić *et al.*, p. 366, 367).

#### 4. CONCLUSION

The analysis of the existing literature, which is relevant for understanding of the role of the civil society, shows that in a broader context (democratization, public participation, public administration, etc.) it is relatively well observed. This also includes various aspects of public participation in decision-making on issues related to the environment and the European integration process. However, although in some studies the issue of capacity of civil society organizations is mentioned in an indirect way, the importance of the issue of capacity of the civil society has not been overviewed in a proper manner. It seems that a detailed theoretical analysis of the issue of capacity of civil society organizations could contribute to a better understanding of the position and opportunities that civil society organizations have in achieving the goals related to the European integration and democratization in general. Such an analysis could be based on the criteria of functionality and defined objectives with respect to all of specific circumstances prevailing in individual countries. The correlation between the states of the elements that are necessary to assess the capacity of civil the society, on the one hand, and the results of their activities, on the other, could be viewed in the light of the goals of each organization and the specific conditions that exist in the society. Although this would require a special methodology, in particular, it could be significant to examine the impact of normative provisions contained in the national legislation on capacities and activities of some civil society organizations.

The analysis of the role of the civil society organizations in the process of the European integration of the RS confirms in part the need for further development of theory of (optimal) capacity of civil society organizations. The analysis shows that the European integration has contributed to the improvement of the legislative framework and creating of conditions for improving the contribution of CSOs in the democratization and European integration. At the same time, it is estimated that there is room for improvement in the normative framework, but the significant limiting factor lays in the capacity of the civil society.

In terms of CSOs participation in the preparation and harmonization of the national laws and policies with the EU ones there are certain gaps in the regulatory definition of the position of CSO and the research shows that the CSOs participation in these activities is relatively modest. Another aspect of this discussion is related to the absence of regulatory impact assessment as a tool for the preparation of legislation. The CSOs participation in the decision-making process on issues related to the environment is regulated by a number of national



regulations, but the CSOs participation in practical activities in this area is not satisfactory.

From a normative point of view, one of the obstacles for a more intensive involvement of CSOs in decision-making lies in the fact that the national legislation in the field of public administration has not prescribed the participation of CSOs (the public) as a rule. Rather, it is treated as an exception. When it comes to public participation in decision- and policy making as well as a limited openness of the public administration at all levels the restrictive nature of public procedures need to be additionally analysed. In general, the research shows that in the field of the environment civil society organizations do not actively participate in the decision making process, even though some of regulations in the environmental field contain provisions which prescribe mandatory public consultation. The analysis unambiguously shows that the capacity of environmental CSOs is not satisfactory and it is necessary to take various measures to strengthen them in order to improve the European integration of RS and reduce the gap between the law and reality.

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**EVROPSKE INTEGRACIJE REPUBLIKE SRBIJE I ULOGA  
I KAPACITETI NEVLADINIH ORGANIZACIJA U OBLASTI  
ŽIVOTNE SREDINE: IZMEĐU NORMATIVNOG I REALNOG**

**Sažetak:** U radu se ukazuje na neke opšte elemente i postojeću literaturu koja je relevantna za razumevanje uloge organizacija civilnog društva u savremenom društvu u kontekstu značaja učešća građana u donošenju odluka, doprinosa demokratizaciji društva, unapređenju odnosa između javnih vlasti i zainteresovane javnosti, jačanja evropskih integracija i rešavanja problema u oblasti životne sredine u celini. Posebno je istaknuto pitanje značaja učešća organizacija civilnog društva u aktivnostima koje se odnose na usklađivanje nacionalne legislative sa EU propisima i donošenje odluka koje se tiču životne sredine. U trećem delu rada daje se procena kapaciteta organizacija civilnog društva u Republici Srbiji. Osnovna teza koja se razmatra u radu je da je uloga organizacija civilnog društva u evropskim integracijama delimično regulisana, ali pitanje njihovih kapaciteta da učestvuju u aktivnostima koje se odnose na ispunjavanje ciljeva evropskih integracija nije na odgovarajući način sagledano.

**Ključne reči:** organizacije civilnog društva, evropske integracije, učešće javnosti, kapaciteti, životna sredina, usklađivanje propisa

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### NEW CIRCUMSTANCES FOR CHINA'S INVESTMENT IN CENTRAL AND EASTERN EUROPE ABSTRACT

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**Abstract:** With the fast growth of economic and trade cooperation between China and CEE<sup>2</sup>, flourishing Chinese investment in CEE has given a boost to the further development of bilateral relations. This article will concentrate on the investment opportunities brought to China by the CEECs, the main characteristics of the Chinese investment in CEE, and the problems and challenges faced by China against this background. Besides, it will also offer some relative policy suggestions on the investment in the region for China.

**Key words:** Pragmatic Cooperation between China and the CEE; Investment Relations; Window Period; Policy Suggestions.

#### 1. THE APPEARANCE OF “A WINDOW OF OPPORTUNITY” FOR CHINA'S INVESTMENT IN CEE

The improvement of a country's investment environment can greatly boost the inflow of foreign direct investment (FDI). However, important investment

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<sup>2</sup> According to statistics of the Ministry of Commerce of the PRC (MOC), from 2008 to 2011, the total trade volume between China and the EU new members (eight CEECs plus Cyprus and Malta) continued to steadily grow, from more than 38 billion U.S. dollars to more than 54 billion U.S. dollars. The total trade volume between China and the six Western Balkans countries also showed a rising trend, from over 7,000 million U.S. dollars in 2008, to more than 2.4 billion U.S. dollars in 2010, and to over 2.9 billion U.S. dollars in 2011. According to the statistics of the Department of European Affairs of the MOC: <http://ozs.mofcom.gov.cn/date/date.html>.

opportunities often appear when a country or region is undergoing a significant transformation or reform, or a country with resource endowment is reshuffling due to social instability, such as the post-war redesigning of the energy structure of Libya by Western countries. In fact, after the drastic change of the Soviet Union and Eastern Europe, CEE offered a comparatively big investment opportunity to China – the transformation period in the 1990s, when all countries in CEE were carrying out the privatization reform and the market opening policy, offering preferential policies to foreign investors and encouraging the private economy to various extents. Later, with the acceleration of integrating into the EU, the opportunity disappeared gradually. Unfortunately, restricted by its investment capacity, China failed to issue relevant investment strategies then. It only encouraged migrants to actively participate in the market development of the CEECs (Minghuan, 2003), mainly through short-term investment. From 2005 to 2011, although the investment stock of China in some CEECs had been rising (*see table 1*), the base number was comparatively low (Ministry of Commerce, National Bureau of Statistics of China, State Administration of Foreign Exchange of PRC, 2012, pp. 37-8),<sup>3</sup> and China has yet to fully exploit the investment potential of CEE.

With China's opening-up policy in full swing and the launch of the "Going Global" strategy in the 10th Five-Year Plan period (2000-2005), China began to seek investment opportunities in global markets. But the CEECs always regarded EU countries as their main prospective investors. Due to China's unfamiliarity with

**Table 1: The Investment Stock of China in Major CEECs from 2005 to 2011**  
(Unit: Million US Dollar)

Country	Year						
	2005	2006	2007	2008	2009	2010	2011
Hungary	2.81	53.65	78.17	88.75	97.41	465.70	475.35
Poland	12.39	87.18	98.93	109.93	120.30	140.31	201.26
The Czech Republic	1.38	14.67	19.64	32.43	49.34	52.33	66.83
Bulgaria	2.99	4.74	4.74	4.74	2.31	18.60	72.56
Romania	39.43	65.63	72.88	85.66	93.34	124.95	125.83

Source: 2011 *Statistical Bulletin of China's Outward Foreign Direct Investment*.

<sup>3</sup> According to statistics of the MOC, as of 2011, the investment stock of China in the 16 CEECs totaled 1.00877 billion U.S. dollars, far less than the investment to Sweden (1.53122 billion U.S. dollars). And the gaps between Chinese major investment countries in Europe are even larger: France (about 3.7 billion), Germany (about 2.4 billion), and Russia (3.8 billion). The investment stock of Luxembourg, the largest investment from China in EU members was about 7.1 billion, and that of Netherlands, the second largest was about 6.6 billion, which were more 6 to 7 times than the investment in the 16 CEECs. Data sources as the above.

the rules of the big EU market and the ambiguous positioning of the CEECs, it has been difficult for China to find suitable investment opportunities in this region. However, in the 11th Five-Year Plan period (2005-2010), the investment regions of China were obviously transferred from Hong Kong, Macao, North America, and Western Europe to Asia Pacific, Africa, Latin America, and CEE. Chinese investors began to realize the investment potential of the CEE region (Ministry of Commerce, National Bureau of Statistics of China, State Administration of Foreign Exchange of PRC, 2012).

In 2010, the Greek sovereign debt crisis triggered a continuous turmoil in the euro zone, and exerted significant influence on the economic development of CEE. In terms of investment opportunities, CEE offered “a window of opportunity” to China. The details are as follows:

First, the debt crisis has contributed to the change of the investment environment of the CEECs. In 2010, the debt crisis in the euro zone took a heavy toll on the CEE, leading to a slowdown in the economic growth of the countries in the region. The World Investment Report 2012 released by the United Nations Conference on Trade and Development (UNCTAD) pointed out that against the background of sustained uncertain prospects of economic development in Europe, continued instability in global financial markets and the slowdown of economic growth in most emerging economies, many countries adopted FDI as a way to promote economic growth, making the investment environment of some countries in 2011 very conducive to foreign investors.

According to statistics, the proportion of countries adopting restrictive policies to FDI decreased from about 32% in 2010 to 22% in 2011, and the policies for investment liberalization and promotion are increasingly aimed at some specific industries, such as electric power, gas and water supply, transportation and communications (UNCTAD, 2012, p.xix). The CEECs using investment promotion as a means of stimulating economic growth has been particularly evident. Affected by this, foreign investors have shown a growing interest in investing in the region. A 2012 survey of multinational corporations by UNCTAD showed that the new EU-12 countries (10 CEECs plus Cyprus and Malta) have become one of the top investment destinations immediately following Southeast Asia, the EU-15, North America and Latin America, and followed by Southeastern Europe and members of the Commonwealth of Independent States, which include six CEECs that have not joined the EU. The new EU-12 countries are ahead of West Asia, North Africa, sub-Saharan Africa and some developing countries.

Second, due to the impact of the debt crisis, euro zone countries such as Greece and Italy were hard to keep their investment sustainable in the CEECs, resulting in a large number of poorly managed assets, which provided



opportunities for foreign investors to step in. Meanwhile, the spillover of the euro zone crisis has seriously affected the economic growth and social stability of the CEECs, which used to “go westward” but now they are “looking both eastward and westward,” seeking closer cooperation with Eastern countries such as Russia and China to promote economic growth. The CEECs manage to improve transportation infrastructure, promote the construction of energy facilities, vigorously develop information and communications technology, and make them as the main industries with preferential policies to attract investment. In light of China's good investment foundation in these industries, first-mover advantage, and abundant foreign exchange reserves, some CEECs vied to attract investment from China. Various investment forums and investment promotion activities were held in China and CEE. Their investment interactions have reached an unprecedented level.

It should be emphasized that the major factor affecting the changes of the investment environment in CEE is the European debt crisis, and the judgment of the outlook of the crisis will directly affect Chinese investment in the region. In fact, the crisis does not pose a fundamental challenge to the capitalist system; it is just a structural crisis within the euro zone. Despite the ongoing crisis, the grimness of the situation is expected to ease in the near future due to the internal structural adjustment and suit each other between different members within euro zone. If the situation is improved, the interaction with and even control over CEE by euro zone countries would restore again, CEE's dependence on the euro zone would increase again correspondingly, and investment opportunities for external countries would gradually disappear. Therefore we can say that this round of investment opportunities in CEE is just “a window of opportunity” against the backdrop of the European debt crisis.

To seize “the window of opportunity” is very important for China and Sino-EU economic and trade relations. Currently, investing in CEE is an important opportunity for China to upgrade export products and extend its investment value chain. Losing the chance, China will miss not only the opportunity to occupy the CEE market, but also the opportunity to realize the transformation of its industrial development model and the upgrading of its value chain with the help of the European market. The European debt crisis has led to the shrinking of the real economy of EU countries and the decline in import demand, and directly affected the EU's imports from China. Since mid-2010, the growth rate of Chinese exports to the EU has continued to decline. What's worse, negative growth occurred in 2012, -1.8% in the first quarter and -0.8% in the second quarter, according to China's Ministry of Commerce (<http://ozs.mofcom.gov.cn/date/date.html>). In the first quarter of 2012, the non-energy product import growth of the EU was 0.8%, while the growth of China's non-energy product exports to the EU is -2.28%. The decline in the share of non-energy

product exports from China in the EU market is the main reason for the negative growth in China's exports to the EU in the first quarter. Miscellaneous products (labor-intensive products mainly including furniture, garments and accessories, and footwear), as well as machinery and equipment are the two major categories of Chinese exports to the EU. The growth of the shares of these two types of Chinese exports in the EU market began to have a declining trend from 2004 to 2005, and the absolute value of the market share of miscellaneous products from China began to decline in 2011. Despite the fact that the absolute value of the market share of Chinese machinery and equipment products is still growing slowly, the growth rate has been close to zero,<sup>4</sup> according to EU statistics.

All these show that the slowdown in the growth rate of China's exports to the EU has accumulated for some time, and is the result of the decline in the competitive advantage of China's exports. The competitiveness of labor-intensive exports in the EU market has long been in decline, and even the competitive advantage of capital-intensive machinery and equipment exports barely exists now. To change this downward trend, China cannot expect or wait for the recovery of the EU economy to compensate the loss. On the contrary, it should focus on enhancing the competitiveness of its exports in the EU market and moving the products to the upstream of the value chain. Speeding up the upgrading of the export industry so as to increase investment in Europe has become a new way to compensate the negative growth of China's largest export market, as well as to drive China's economic growth. With its good investment foundation in terms of labor, capital and industry and convenience to access the EU technology and market, CEE is quite a good investment place that can produce lots of added value.

## **2. THE MAIN CHARACTERISTICS OF INVESTMENT FROM CHINA TO CEE**

### *2.1. China focuses on the integrity of investment distribution, and strengthens the overall transfer of the chain of production, processing and marketing*

Currently, more and more Chinese investors can be seen in construction fields from transportation (ports, airports, and roads) to local assembly and distribution networks (the construction of industrial parks), and even to logistics facilities (investment in sea transportation and the construction of container companies and telecommunications networks) in the CEECs. Chinese investment in CEE has already possessed the characteristic of integrity. It has been developed from

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<sup>4</sup> Data from Eurostat and refer to the collated data of the World Economic Forecasting and Policy Simulation Laboratory of the World Economics and Politics Research Institute of the Chinese Academy of Social Sciences.

the trade towns and trade centers focusing only on the concentration of labor and on fixed stalls selling to the diversification of investment industries and the development of the value chain. With the increase of green field investment, mergers and acquisitions, and joint ventures in CEE, Chinese enterprises have attempted to introduce specific production models, such as infrastructure construction, machinery manufacturing, information and service industries as well as the development of chemical and agricultural products, to CEE. They also regard CEE as a center for product upgrading, sales and distribution to realize the localization and even “Europeanization” of the production, circulation, sales and branding of Chinese products, and use CEE as a springboard to enter the markets of the EU, Russia and Turkey. This is one of the main characteristics of Chinese investment in CEE at present, and will remain so in the foreseeable future. .

## *2.2 Characteristic investment industries have gradually emerged*

Currently, China's characteristic investment industries in CEE have been gradually emerged. Largely centering on China's comparative advantages in technology and human capital, as well as its first-mover advantage, Chinese investment is implemented in keeping with the actual investment needs of the CEECs. Investment industries mainly include infrastructure construction, the development of information and communications technology, investment in clean energy (mainly technological investment) and machinery processing and manufacturing.

China Road and Bridge Corp. signed the Zemun-Borca Danube River Bridge project contract with the Serbian government in Belgrade in April 2010. This is a landmark project for bilateral cooperation. Although a Chinese company withdrew from Poland's A2 highway project after incurring heavy losses, China's investment in infrastructure construction in CEE has a sound momentum of development and has covered many countries and regions in CEE. Chinese information and communications technology companies Huawei and ZTE have invested across CEE. With a wide business scope, the companies have exerted a relatively large impact. China has also made achievements in making investment in clean energy in the CEECs, and accelerated capital and technological investment in hydropower stations, nuclear power plants and thermal power stations. In terms of machinery processing and manufacturing, China has invested in the production lines of electrical appliances, automobiles and heavy machinery in many CEECs including Hungary, Poland, Bulgaria and Serbia. For example, at the end of January 2012, Liuzhou-based Liugong Machinery Corp. acquired the Polish construction machinery enterprise HSW, one of the largest construction machinery manufacturers in CEE with a very high position in the heavy engineering equipment field whose products are exported to more than 80

countries. After acquiring HSW, Liugong can get all its intellectual property rights and trademarks, and establish a manufacturing as well as research and development base in Poland. Based on its operations in Poland, Liugong can radiate its influence to the whole European market. As part of its efforts to integrate the above-mentioned competitive industries, China has also strengthened the construction of industrial parks in CEE so as to encourage and attract investors from China, and expand the influence of Chinese investment in CEE.

### *2.3 China focuses on cooperation with the major countries of CEE and expands investment from key countries to the whole region*

China does not invest in all CEECs indiscriminately, but to pay more attention to countries that have prominent investment advantages and hold more balanced composite indicators, especially to the CEECs having advantages in geography, industrial bases, resource endowment and labor force quality. What China values most is the function of a “springboard” and “bridgehead” of some CEECs. For example, Hungary and Poland have become important choices for China. Hungary has attracted more Chinese-funded institutions and Chinese businessmen than any other country in CEE. Chinese investment in Hungary covers industries such as trade, finance, aviation, chemicals, logistics, real estate, consulting services, communications and electronics manufacturing (<http://hu.mofcom.gov.cn/aarticle/zxhz/hzjj/201103/20110307426966.html>). In 2010 and 2011, Wanhua Industrial Group Co. Ltd., the controlling shareholder of Yantai Wanhua Polyurethanes Co. Ltd., invested a total amount of 1.263 billion euros for two consecutive years and acquired a 96% stake in Hungarian chemical company BorsodChem. It is the largest Chinese investment in CEE. China’s direct investment in Poland had always been small for many years until 2007 when Chinese investors began to notice the Polish economy’s strong development. Chinese investment in Poland has since experienced rapid growth, involving areas such as machinery manufacturing, communications technology, mineral exploration, real estate, and infrastructure construction (PMG, 2011, pp.5-6). Statistics of the Chinese government show that China’s investment in CEE primarily went to Hungary, Poland, Romania, Bulgaria and the Czech Republic in 2010 and 2011. Hungary attracted the highest investment stocks, which were \$ 465.7 million in 2010 and \$ 475.35 million in 2011. It was followed by Poland, \$ 140.31 million in 2010 and \$ 201.26 million in 2011; Romania, \$ 124.95 million in 2010 and \$ 125.83 million in 2011; Bulgaria, \$ 18.60 million in 2010 and \$ 72.56 million in 2011; and the Czech Republic, \$ 52.33 million in 2010 and \$ 66.83 million in 2011 (Ministry of Commerce, National Bureau of Statistics of China, State Administration of Foreign Exchange of PRC, 2012, pp.37-8). To a certain extent, investment in these countries will drive investment in the entire region of CEE.

#### *2.4. The soft environment of investment in CEE is improved*

The Chinese government vigorously promotes cultural exchanges between China and CEE, holds various investment forums, dispatches “investment promotion delegations” to the CEECs to promote investment and strengthens the exchange of information and sharing of experience. Especially, it invites officials in charge from the CEECs to China for exchanges and training, so as to help them understand China's economic situation and foreign investment policies in CEE.<sup>5</sup> Besides, China has also set up a cultural exchange mechanism between China and CEE and founded a research fund to promote mutual understanding.

### **3. THE MAIN CHALLENGES OF CHINESE INVESTMENT IN CEE**

China's main investment approach in CEE is to move the whole industrial chain to the region and build it into a product upgrading center as well as a sales center, so as to realize the localization of production, flow and sales of Chinese goods, and further to enter EU, Russian and Turkish markets. However, there are certain investment risks. Some EU member states have realized the investment tendency of China. Some members of the European Parliament clearly express that China will be welcomed if its investment can provide employment opportunities and bring profits and will meet with strong opposition if it only wants to use the CEECs as its export bases or sales centers. The competition caused by the convergence of some kinds of industries between China and some CEECs cannot be ignored either. For example, both Poland and Hungary feature the processing industries to meet the demand of the European market and they are regarded as the miniatures of China in the EU market.<sup>6</sup>

Chinese investors have been concerned about the investment value and the market capacities of the CEECs for a long time. Most of the high-quality assets of the CEECs have been absorbed by Western countries due to privatization in the transformation period in the 1990s. So currently, most of the high-quality assets are still being controlled by those “sooners.” What Chinese enterprises gained from the CEECs are mainly poorly managed businesses.<sup>7</sup> Meanwhile, most of the CEECs' market capacities are comparatively limited, which makes it difficult for Chinese investors to receive high profits. Besides, the integration of

<sup>5</sup> As far as the author knows, the trainings of the officials of the CEECs in China mainly funded by MOC and led by Ministry of Foreign Affairs, have produced comparative good effects.

<sup>6</sup> Marek Belka, the Governor of the Central Bank of Poland, mentioned this point in the speech in the Institute of World Economics and Politics at the Chinese Academy of Social Science on July 12, 2012.

the market rules of the CEECs with the EU also makes it more difficult for Chinese enterprises to step in the region. Worse still, in some CEECs, especially in Southeastern European countries, grey economies and corruption are rampant, and sometimes, laws and regulations cannot be put in place, all of which bring risks for Chinese investors.

Stakeholders, mainly including some influential commercial interest groups in the EU, Russia and CEE, are concerned about China's entry into the CEE market and try to curb it. Since the outbreak of the European debt crisis, China's involvement in CEE has triggered high concern from the EU's institutions, Germany and other EU members, which speculate that China is trying to divide the EU and establish a "CEE group." In 2012, the joint communiqué to be publicized during the meeting between China and CEE was submitted to EU institutions for review in advance. The EU strongly opposed the proposal of developing long-term China-CEE relations and institutionalizing these relations. German Chancellor Angela Merkel expressed her concern about the closed, exclusive discussions between China and CEE.<sup>8</sup> Along with their deepening cooperation, EU institutions and member states concerned might set up obstructions. Russia, another great power keeping close relations with CEE, also suspects of China, worrying that the Chinese will gradually enter its "backyard" and take over its trade opportunities and political clout. Apart from this, the commercial interest groups of the CEECs are also important forces that hinder China's efforts to step in the CEE market. Due to competitive relations in purchasing and bidding with China, these groups will be certainly threatened if Chinese enterprises enter their dominated territories. Therefore, they often ask their government to impose various restrictions in market access, terms of tender, visa, residency, etc. with the excuse of protecting the enterprises of their own country.

Moreover, the negative campaigning of media and think tanks pose pressure on Chinese investment. When entering CEE, China was criticized by some local media of abusing fair trade rules and using the price dumping to compete unfairly. Some think tanks suggest that, the CEECs need to unite together to conduct economic diplomacy and bargain with China, so as to prevent China from gaining more profits by virtue of the conflicts among the CEECs. They claim only by uniting together can CEE properly cope with economic "invasion" from China (Golonka, Nowak, Timoner, ed., 2012). Some think tanks believe that the Chinese investment policies are driven by political interests. China needs the support of the CEECs to exert its clout on the great powers in EU, they argue, adding the formation of a CEE alliance may push the EU to make decisions beneficial to

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<sup>7</sup> Of course Chinese enterprises still have comparatively good opportunities to step in such state-owned enterprises that are not completely privatized in CEECs.

<sup>8</sup> The above materials are from the interview of relative Chinese decision makers by the author.

China (The European Council on Foreign Relations, 2012). Some other think tanks even think that China adopt different diplomatic criteria toward the CEECs based on their economic potential and political attitudes. For example, Poland and the Czech Republic, whose state leaders often meet with the Dalai Lama and criticize China's human rights records, usually get Chinese investment in disproportion to their economic scale. While Hungary, Romania and Bulgaria, thanks to their full support for China, get much Chinese investment in return. The negative campaign of media, the ignorance of China by people in the CEECs, and their non-recognition of China's political system lead to an unfavorable public opinion environment for Chinese investment in some CEECs.

Finally, China is not familiar with the CEECs after their transition. After drastic changes took place in the Soviet Union and Eastern Europe, the priority of the CEECs is to consolidate democracy, integrate with the West and join the EU. China is mainly engaged in developing its economy and maintaining social stability. China and the CEECs used to be close with each other; however, they get estranged due to their different strategic development orientations after the Cold War. There are different kinds of languages, cultures, ethnic groups, religions and histories in CEE. The CEECs are geographically far from China and have changed a lot. All these factors make them more difficult for China to understand.

#### **4. CHINESE INVESTMENT IN CEE: A CASE STUDY AND LESSONS LEARNED**

In September 2009, Poland's A2 highway opened invitation for bids. Directly connecting Warsaw, Poland with Berlin, Germany, the highway was an important project for the Euro 2012 Football Championship jointly hosted by Poland and Ukraine. China Overseas Engineering Group Co. Ltd. (COVEC), as a subsidiary of China Railway Group Ltd., responded to the tender quickly. Finally, the bidding consortium headed by COVEC won the contract with 1.3 billion zlotys (\$ 472 million, 3.049 billion yuan) to build sections A and C. The highway was Chinese companies' first large-scale infrastructure project in EU countries. COVEC had been trying to enter the European infrastructure market, and undoubtedly, the A2 highway provided a good opportunity for the company to demonstrate itself. However, this project eventually ended with the Polish government terminating the contract with COVEC in June 2011, and Chinese infrastructure companies' "first bid" in CEE ended up in failure. For COVEC's investment in Poland, the domestic media concluded that COVEC got clobbered due to its blind entry. In fact, we should analyze COVEC's investment in an objective and comprehensive way. Only by this, can the case provide rich and comprehensive references for Chinese companies' investment in CEE in the future.

#### *4.1. Some unpredictable risks should be considered in the investment by COVEC in Poland*

4.1.1. It happened to encounter the financial crisis in 2009 when raw material prices were relatively low. After winning the bid, the schedule was put off due to cold weather. Meanwhile, the Polish economy recovered quickly and Poland began to extensively build infrastructure projects for Euro 2012. Prices of various raw materials for infrastructure rose so sharply that the rental prices of some raw materials and excavating equipment went up more than five times in just one year. Given soaring costs of infrastructure construction, the Chinese investor suffered losses at the very start.

4.1.2. China gained explicit support from Polish authorities to invest in the project. On the one hand, the Polish Peasants' Party, one of the ruling parties, was eager to create achievements and strongly believed in the "Chinese speed" of Chinese enterprises. On the other hand, European and American contractors had been charging too high. In order to drive down prices, the Polish government tended to have Chinese companies involved, and Polish Peasants' Party representatives were sent to China to lobby.<sup>9</sup> The Chinese took it for granted that they could win the contract first and then ask the Polish government for help when troubles occurred. So they proposed an extremely low offer, which didn't arouse suspicions from the government officials of Poland. In fact, things didn't work out as expected when the Chinese contractor encountered difficulties. In June 2011, Donald Tusk, Polish Prime Minister, firmly refused China's request for adjusting the bid and terminated the contract with China.

4.1.3. Poland's highway authority operated irregularly in the bidding process and deliberately concealed some difficulties of the construction. In addition, the bidding procedure was not fair and transparent either. Given all the above-mentioned factors, there were particular reasons for the failure of investing in Poland by COVEC.

#### *4.2. COVEC's own carelessness or ill-preparedness should also be noticed*

4.2.1. Reckless investment and unfamiliarity with the situation. In the early stage of the investment, the Chinese side relied too heavily on the opinions of several Polish experts. Neither did the Chinese side fully examine the particular local situations for infrastructure, nor did it know the special provisions of the EU, such as provisions that specialized passages for protecting wildlife shall be constructed along the highway and local workers shall be hired. Worse still, the

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<sup>9</sup> Materials were compiled from interviews of relevant Polish figures.



Chinese side was not familiar with local suppliers of raw materials. All these resulted in serious over-budget.

Slack technical check is another problem. Neither did the Chinese party realize that the functional specification provided by Poland was unclear, nor did it comprehend the complex geological conditions of the sections it was contracted to build. The Chinese technical staff made the decision in a hurry without making sufficient preparations before bidding.

4.2.2. Poor internal management. With many disputes existing in the consortium and the working relationship not straighten out, the work efficiency of the Chinese side was seriously affected.

#### *4.3. Chinese companies are seriously in lack of crisis-prevention awareness and public relations capabilities*

When evaluating the investment of COVEC against the larger background of the “Going Global” strategy of China, we can find more in-depth problems that Chinese companies will face when investing overseas, such as unsound supplementary measures for investment. As a highway for Euro 2012, the most widely watched sporting event in the whole Europe, COVEC’s “unfinished project” in Poland was scrutinized by all walks of life ranging from prime ministers and royal families to civilians in European countries, resulting in the negative impact being magnified beyond expectations, which the Chinese side had no preparations at all. It reflected that Chinese companies are seriously in lack of crisis-prevention awareness, public relations capabilities as well as sound supplementary measures in investment.

## **5. RECOMMENDATIONS ON CHINA’S INVESTMENT POLICY IN CEE**

### *5.1. China must clarify its strategic intentions of investing in CEE, namely, further promoting cooperation between China and the EU via cooperation with CEE*

When investing in CEE, China has the intention of upgrading the industrial chain and localizing production in the region, which is basically a kind of economic behavior. It needs to clarify to the EU via policy interpretation that Chinese investors always pursue the principles of mutual benefit and win-win outcomes, and will comply with EU laws and regulations. China’s investment plays an important role in the promotion of economic development in CEE and also is a useful driving force for more balanced development between Eastern Europe and Western Europe within the EU. And this will be a great opportunity to deepen the comprehensive strategic partnership between China and EU.

In view of the close relationship between CEE and the EU, the role and the function of the EU need to be included in the process of promoting bilateral cooperation between China and CEE. And this will be an effective way to make the EU hold more comprehensive understanding and less groundless suspicions to China. On condition that cooperation between China and CEE is not diluted, China ought to partially create conditions for EU institutions and member states to participate in this process, transforming the China-CEE cooperation into a moderately open and inclusive multilateral cooperation platform.

*5.2. China should properly address the issues of risk aversion and crisis management when investing in CEE*

The support of local governments and non-governmental organizations is indispensable to investing in the economic development of the CEECs. So sound supplementary work will be necessary, and China ought to make use of investment opportunities to extensively contact local institutions for deeper understanding and cooperation. For the purpose of risk aversion and improving crisis management capabilities, China needs to create conditions for the establishment of analysis teams of investment risks and local foundations formed by local elites and relevant agencies. The main purpose of the analysis teams of investment risks is to gather information, conduct in-depth investigations into investment risks, and avoid walking into unfamiliar territories blindly. The principal objective of establishing local foundations will be for crisis prevention and crisis management. At first, enterprises ought to engage some of the local elites in their investment activities. Once Chinese enterprises suffer losses or obstructions in investment in host countries, the foundations can come forward to do public relations work to help defuse the crisis.

*5.3. The Chinese government ought to strengthen the guidance and support of investment behavior*

The government needs to guide enterprises to flexibly choose the right model of investment according to the specific characteristics of a project. In addition to green field investment, enterprises can explore and adopt models like joint ventures, mergers and acquisitions and participating in privatization. They may also seek the possibility of cooperating with multinational companies on projects that call for huge investment and draw public attention.

The government ought to take the initiative in resolving specific technical barriers set by some CEECs. Firstly, it is difficult for Chinese workers to get labor visas, work permits, and take up residence, which affects the expansion of investment in CEE. Secondly, social security poses a problem. There are not social

security agreements between China and CEECs. Chinese workers need to pay pensions and unemployment insurance in the CEECs. However, when they return to China, the insurance premiums paid cannot be returned and that will be an additional burden to Chinese enterprises. Thirdly, in order to attract investment, the CEECs will generally promise to provide some preferential policies; nevertheless, it is difficult to put them into practice due to systemic constraints in the actual implementation process. The Chinese government ought to come forward and urge the governments of the CEECs to strengthen policy implementation on these issues.

#### *5.4. China needs to explore a new model on developing relations with the CEECs*

The 12 initiatives proposed by the Chinese government need to be implemented as a core policy for deepening bilateral friendly cooperation. Meanwhile China ought to actively sum up experience and amend some existing problems of the 12 measures. Drawing on its practice in other regions, China needs to explore a new model on developing relations the CEECs. In addition to China-Africa cooperation, China-CEE cooperation can be another good example of country-to-region cooperation. To this end, the research fund on relations between China and the CEECs proposed by the Chinese government ought to concentrate upon this dimension for some useful exploration, extensively absorb the opinions of political, academic and business elites to agree on a new model of cooperation between China and CEE and help make it prevail.

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Liu ZUOKUI

### **NOVI USLOVI ZA KINESKA ULAGANJA U CENTRALNU I ISTOCNU EVROPU**

**Apstrakt:** Usled brzog rasta ekonomske i trgovinske saradnje između Kine i zemalja Centralne i Istočne Evrope procvat kineskih investicija u tim zemljama dao je dalji podstrek razvoju bilateralnih odnosa. U članku je u središtu pažnje mogućnost investiranja Kine u zemljama Centralne i Istočne Evrope, glavne karakteristike kineskih investicija u Centralnoj i Istočnoj Evropi i problemi i izazovi sa kojima se Kina suočava u ovim okolnostima. Pored toga, u članku će biti ponuđeni određeni predlozi vezani za investiranje Kine u ovom regionu.

**Ključne reči:** pragmatična saradnja kine i zemalja Centralna i Istočne Evrope, investicioni odnosi, optimalno vreme, politički predlozi.

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## CONCEPT OF SERVICES OF GENERAL ECONOMIC INTEREST IN THE EU MEMBER STATES AND THE POSSIBILITIES OF ITS APPLICATION IN THE REPUBLIC OF SERBIA

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**Abstract:** Topic of this paper is contemporary European concept of services of general economic interest and its application in two member states of European Union- Germany and England. Contemporary European Union concept of services of general economic interest is characterized by introduction of market mechanisms, competition and treatment of citizens as consumers of services. On the basis of chosen examples, aim of this paper is to point at strategic commitment of the EU member states to strengthen the market competition in the field of services of general economic interest. The review of the current regulatory framework in the field of public services in the Republic of Serbia aims to show the level at which the principles defined by the concept of services of general economic interest are integrated into national legislation.

**Key words:** services of general economic interest, European Union, Republic of Serbia

### 1. THE CONCEPT OF SERVICES OF GENERAL ECONOMIC INTEREST IN THE EUROPEAN UNION

In terms of the concept of public services in the European Union, since the year 2000 it is opted for substantive and terminological delineation of public services into two groups: services of general interest (SGI) and services of general economic interest (SGEI). The division was based on whether the nature of public service activities are predominantly economic or non-economic. Services of general economic interest are those public services which are characterized by the dominance of economic criteria in their provision (postal services, electricity,

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public transport, and telecommunications). The public services whose nature is largely non-economic are put into the group of services of general interest (SGI-judiciary, police, security). Two different concepts of development and management for both groups of public services are defined at the level of European Union. As far as the terminology is concerned, the decision of the European Commission to replace the terms public services and public sector with the new terms stems from a need to overcome the inequality of definitions of public services in member states. Although the term services of general economic interest has been mentioned in the official documents of the European Commission since the year 1990, the subsequent use of old and new terminology is still in force. The term public services is usually used at the national level, and the term services of general economic interest is used at the supranational level.

Contemporary European concept of services of general economic interest is characterized by the fusion of elements from two different economic traditions-European continental and Anglo-Saxon. The elements such as the universal access to public services for all citizens and fostering social policy in terms of programme design assistance for certain categories of the population are taken from traditional continental economic tradition while the elements such as the competition, treating citizens as users of public services (the concept of consumerism) and the professionalization of management of public companies are taken from the Anglo-Saxon economic tradition. Specific symbiosis of the continental and Anglo-Saxon tradition in the modern concept of services of general economic interest in the European Union is reflected in the opening of the market of public services and fostering competition (Anglo-Saxon approach), along with the ongoing presence of state which role in direct provision of services is reduced but the role in the selection of adequate direct providers and control over the whole process of service provision is strengthened. Although the market-oriented approach in the field of public services is increasingly present in the member states of the European Union, public services in Europe however are not entirely left exclusively to market forces. Taking the market imperfections and important role of public services for the national economy into account, the application of state intervention in order to prevent or minimize the market failure continues to be an inherent part of the policy of public services across the European Union.

The basic principles of the European concept of services of general economic interest are defined in the White document on services of general economic interest in the year 2004 and include: enabling public authorities to operate as close as possible to the citizens, defining the objectives of public services in the competitive open market, ensuring cohesion and universal access, maintaining high levels of quality, safety and security, ensuring the rights of users and consumers, monitoring and evaluation of performance, respecting the diversity of circumstances and services, increasing transparency and ensuring legal

certainty (Commission of the European Communities, 2004, p. 7-11). The European Union member states should incorporate these key principles into their national legislation in the field of public services, although not as a substitute but rather as a complement to existing national legislation. However, in terms of ownership structure in public companies that provide services of general economic interest, the European Union takes a neutral stance (Freedland, 1998, p. 3-13). In other words, the elements of liberalization and deregulation are included in the contemporary European policy of services of general economic interest, but the privatization and ownership structure issues are left outside of its scope as a voluntary decision of the member states.

The Universal Service Obligation and State Aid Policy are inherent parts of the European concept of services of general economic interest. The obligation to provide services is defined as a set of specific requirements that the national authority sets for the suppliers and service providers in order to ensure the achievement of the objectives of general interest, that are clearly set in advance (Krajewski, 2006, p. 11). Universal Service Obligation is subject to telecommunications, media public service, water supply, electricity, gas, railways, postal services. It applies at the supranational, national and regional levels.

By emphasizing the Universal Service Obligation, the European Union seeks to ensure that all citizens have access to services of general economic interest. In other words, if the services are ceded exclusively to market forces, it could have led to the situation where certain subgroups of the population, although having a need for a service, would not be able to afford the same. In this case, public intervention, which is put into Universal Service Obligation, guarantees that even these population subgroups will have access to basic services. Given that companies providing services of general economic interest in this case may have a loss, according to State Aid Policy they can have adequate compensation and subsidies, but only if these compensations do not result in a distortion of fair competition in the internal market. The reason for compensations lies in the fact that a company which is chosen to provide services of general economic interest can increase its efficiency as well as any other company, but it will always be burdened with additional costs that its competitors do not have, because of the obligatory commitment to the Universal Service Obligation and serving cost expensive market (Eekhoff, 2004, p. 224). Despite the general prohibition of the state aid in market activities, the European Commission nevertheless left a certain space for additional policy under which state aid may be considered appropriate, primarily because of the fact that in certain situations slight government intervention is necessary for smooth, fair functioning of advanced European economies. Application of an exception to the general rule prohibiting state aid falls within the competence of the European Commission, which in this respect has a strong decision-making power and control functions, and Member States are generally required to follow its notification. State

Aid Policy measures can be implemented only with the approval of the European Commission. Precise definition of the goals, objectives and the conditions under which compensation for services of general economic interest can be granted is discussed in detail within the State Aid Policy published in the year 2005 (EC, 2005). Complementing general rule by series of laws on exceptions to the general rule, the European Commission has established a unique system of rules for monitoring and evaluation of state aid in the European Union. This legal framework is periodically reviewed in order to improve its efficiency and made State Aid Policy more appropriate instrument for the promotion of the European economy.

Services of general economic interest are subject to the rules of competition in the internal European market. The implementation of competition in the field of services of general economic interest is significant for two reasons: first, competition can ensure that the company selected through the public tender to provide certain public service indeed has the capacity to perform that task the most efficiently, and second, the market competition ensures that companies do not receive excessive compensation under the State Aid Policy (EAGCP, 2006). The transparent public tender is the tool by which the competition in the area of services of general economic interest is introduced. It enables the national public authorities to choose those companies that have the real capacity to provide citizens with high-quality services at more favorable terms along with the achievement of positive financial performance. Mandatory public tender procedure encourages competition in the services of general economic interest, and apart from public companies it gives the opportunity for private and mixed public-private providers (domestic and foreign) to join the certain network supply. Thus, the competition by tender represents a model of institutional competition, whose objective is reflected in the selection of the best possible offers for the provision of services of general economic interest. Institutional competition provide benefits for users of services by enabling them to compare the offers and react in the cases of promised but not fulfilled level of service quality provided and delivered (appeals, leaving suppliers). Additionally, by conducting business within competitive environment, service providers are motivated to be more innovative when it comes to the provision and delivery process of services of general economic interest. Therefore, institutional competition acts as a mechanism of control and sanctions, and encourages the companies, regardless of ownership structure, to correct their inefficient operations and establish a competitive, high quality and efficient service offers that match real needs and preferences of citizens. Therefore, at the level of European Union the elements such as market orientation and competition in the services of general economic interest are mostly considered to be useful mechanisms which contribute to the improvement of overall quality and efficiency of public services in European internal market.



## **2. IMPLEMENTATION OF THE EUROPEAN CONCEPT OF SERVICES OF GENERAL ECONOMIC INTEREST IN THE REPUBLIC OF GERMANY**

The current situation in the market of public services in Germany has been characterized by implementation of basic principles of the European concept of services of general economic interest, legally and within economic practice. The adoption and implementation of the European Union new public services policy resulted in the abolition of monopolies first in the telecommunications field, and then gradually in other public services. The development and consolidation of the European internal market, among other things, affected certain aspects of public services functioning in Germany. Although the European Union takes a neutral stance towards ownership structures in enterprises, it nevertheless emphasizes that public and private companies should be treated the same way. According to that attitude, the competition law in Germany first applied to large network systems such as telecommunications, rail transport, electricity. Although the infrastructure and the network continue to operate as a monopoly, opening the access to the network to other parties has allowed a parallel competition, both, on or in the existing network (Cox, 2008, p. 536).

Application of European concept of services of general economic interest in Germany has led to the intensification of competition in this area. Adapting national law to community law, markets of public services such as telecommunications, electric power and gas and railways have been gradually opened up to the competition. Thanks to partial privatization, many public companies in Germany had received mixed economic character. In the field of electricity and gas, large energy suppliers and network owners, such as RWE, Eon, Vattenfall, and Energie Baden-Württemberg have a strategic shares in the communal companies (Cox, 2008, p. 539). Regulation of fair competition and equal access to networks is performed by regulatory authorities within the state apparatus. Various communal services in Germany are provided by 500 communal companies and there is an intention to provide these services also by public competitive tender (Cox, 2008, p. 537). So far several tenders have been realized, especially for storage and garbage disposal and local public transport, in the form of special lines of railways and buses, which have been attractive to private bidders. Occasionally, public companies have also hired the private sector partners to perform certain activities in the provision of public services (Cox, 2008, p. 542).

Given the relatively recent trend of strengthening competition in the area of services of general economic interest in Germany, as well as in other member states, it is still not possible to make an accurate assessment of the results achieved by introducing market mechanisms and tender procedures. However, a positive result of market opening have been recorded in the telecommunications sector, in which,

after deregulation and partial privatization of the German Telekom (Deutsche Telekom AG) certain decrease in the price of services has occurred. In addition, the positive effects were noted in increasing efficiency in service delivery and customer orientation (Braunig, Greiling, 2007, p. 123). In this sense, the positive results of market orientation can be expected from deregulation and intensifying competition in the field of water supply and waste disposal (currently 90% of the public and only 10% of private providers), as well as public transportation and gas supply. Private providers of electricity in Germany, which at the end of the year 1990 had only 10% of market share, had since then doubled its involvement (Reichard, 2002, p. 66). According to a survey conducted by the German Institute of Urban Studies, only 30% of municipal energy companies are still owned by cities, more than 70% have an external shareholders (Wollmann, Marcou, 2010, p. 52).

Within the actual trends of public services marketization in Germany, two distinct types of competition can be identified (Reichard, 2002, p. 64):

1. non-market competition, which includes benchmarking activities, comparison of performances, and the formation of internal administrative “quasi-market”;
2. market competition, which is related to the competition between the public / public and public / private or public / private companies, including cross-border competition of different public services providers.

The forms of strengthening competition in the field of public services in Germany include benchmarking and performance comparison, development of the internal market for administrative services, market testing, contracting out of certain public services for a limited period of time, privatization and transfer of the certain public service activities to non-profit organizations (Reichard, 2002, p. 64).

The first step towards opening the market of public services in Germany is considered to be a process of obtaining autonomy for government organizations (in the fields of infrastructure, water supply and energy). Their status changed from being an integral part of the state administration into autonomous, self-managed status, which also resulted in the change of their treatment, not as public but as private economic subjects. Conducting the business with separate legal status has given these subjects the opportunity to professionalize the management and enter the financial market. After the change of legal status, many organizations have started with the introduction of some forms of competition, such as market testing and hiring private expertise and capital in order to create public-private partnerships. In recent years, particularly at the local level, there are activities such as benchmarking and comparison of the public service performances among different local areas.

The German Association of local communities for improvement of management in the public sector (Kommunale Gemeinschaftsstelle KGSt) has

specially contributed to development of indicators for performance comparison. This association is centralized institution with the mission to assist local authorities in Germany in modernizing local public services system, mostly by training, exchange of experiences, development of benchmarking projects, web portals, manuals. The Association has 40 full-time professionals and consultants from various fields, and Administrative Council, composed of elected representatives-members of the Association, acts as a general agenda and decision body (Vogel, Frost, 2009, p. 5). In terms of purpose and functioning, the German Association KGSt is equivalent to the Association for Public Management and Policy in England (Public Management and Policy Association-PMPA). When it comes to the modernization of the public sector in Germany during the 1990s, KGSt was a key player in detailed elaboration of the new doctrine of the management of local authorities, known as the New Steering Model-NSM (*Neue Steuerungsmodell*), which represents the continental European counterpart to the Anglo-Saxon model known as New Public Management NPM (Reichard, 2003, p. 349). The German model of reform and modernization of local government and the public sector was created by considering the foundations of successful model in the Netherlands, specifically in the city of Tilburg, where in the early 1980s, corporate-managerial approach was introduced in the city management, public administration and organizations. Thus, the initial phase of designing the German model NSM and defining its elements was marked by the transfer of knowledge and skills from effective “Tilburg” model. Unlike the NPM model in the UK, designing and implementation of the German NSM model is within the exclusive responsibility of the local community and administration, with relatively little support from the government, which is reflected in the remuneration of successfully implemented innovation and reform.

The implementation of the NSM model in the German communities marked a big progress in the period from 1996. until the year 2000. It comprised 86% of the local community during 1996, 89% in 1998 and 92% in the year 2000 (Reichard, 2003, p. 354). Almost every community in Germany during the 1990s, with more than 10 000 people (92% of local communities) took some measures in order to modernize the way of public services management, of which 80% were driven by the concept of NSM. The application of the NSM elements was either complete or partial (Wollmann, Marcou, 2010, p. 58).

A special feature of the German model of reforming local government and public services is characterized by pilot projects and experimental approach. If a certain approach in one local municipality successfully passed market testing and showed good results in practice, it is further elaborated and its implementation is spread throughout the other local municipalities. The modernization of the local administration in Germany is not only marked with cost reduction but rather with efforts to improve the quality and efficiency of public services in order to meet

citizens' expectations (Pitschas, 2005, p. 187). The provision of high quality public services at the level of German local communities involves not only public organizations, but also partners from private sector (contracting out) and partners from a third, non profit sector.

### **3. EUROPEAN PRINCIPLES OF SERVICES OF GENERAL ECONOMIC INTEREST IN THE PUBLIC SERVICE SYSTEM OF ENGLAND**

The neoliberal doctrine based on the withdrawal of the state from the economic sphere and diminishing state intervention in the market, as well as on strengthening private sector initiatives, have become the foundation of Anglo-Saxon approach in the formulation of modern public services. The public sector in England from 1980s has been experienced a variety of changes, both in terms of structure, processes and the role of the different actors. Some of the key changes are (Ferlie, Ashburner, Fitzgerald, Pettigrew, 1996, p. 3-6):

- large privatization programs in the sphere of economic activity, with the result that public sector in the field of direct economic activity almost ceased to exist;
- social activities, remained in charge of public authorities, have also been subjected to processes of managerialism and marketization, with the introduction of the “quasi-market” systems, where the relationships between the various units of the public sector have been based on the contract rather than hierarchy. For example, the central government created the quasi-autonomous agencies known as the Next Steps agencies. Although this quasi-market system is funded by public resources, the possibility for the participation of independent service providers on the basis of competition for the contract has been opened up as well;
- emphasis has been put on the economic rather than political logic in managing the public services. The elements such as the efficiency, effectiveness of resources management, the use of indicators for comparative benchmarking and cost control has become very important. The relative performance of public services has been subjected to a solid centralized monitoring;
- in the field of management, focus has been turned from perserving the existing system to management of necessary changes which has implied new forms of active leadership and a new approach to the management and development of human resources in the public sector.

In the year 1987. central government decided that local authorities can autonomously carry out tendering and privatization at the local level and passed the Law on the so-called Compulsory Competitive Tendering (CCT), which was initially included services such as waste collection, street cleaning, and over time

other public services as well. The government also established an Audit Commission, which is responsible directly to the central government, with the task to assess the effectiveness of managing public services at local level. However, this policy did not receive a good response from the local authorities, so that in the year 2000, CCT was replaced by a new legislative solution known as Best Value. This new solution aims to encourage local authorities to actively participate in the implementation of innovation in the provision and delivery of public services. However, even within this new legislative initiative, the central government still plays a major role in the organization of public services at the local level, insisting on greater involvement of the private and voluntary sectors in the provision of public services, and emphasizing the importance of public-private partnerships.

The advantage of public-private partnerships is reflected in the expansion of access to financial resources and professional expertise, which can significantly enhance local capacity to improve public services. In addition, private and voluntary sector can contribute to the development of more flexible approaches for delivery of public services. By legal establishment of Best Value, the improvement of quality and standards in provision and delivery of public services, instead of the emphasis exclusively on cost reduction, has become integral parts of contemporary public services management in England. Strategic orientation to the quality improvement of public services in the UK was confirmed by Open Public Services White Paper, announced by central government in July 2011 years, with the primary goal to enable every citizen the access to the best possible public services (HM Government, 2012, p. 3).

Public-private partnerships represent the most frequent forms of public services supply and provision in England. There were at least 450 contracts made for different areas: roads, schools, fire services, building on the local level and traffic (CEMR, EPSU, 2008, p. 59). From the year 1992, when central government launched the development of the policy of public-private partnerships as a way of public services financing and provision, this approach has been systematically applied in almost all important government capital investments. Public-private partnerships relate to long-term contractual relationships between public sector organizations and private companies (15-30 years), as well as to the specific Private Finance Initiatives (PFI), most frequently in areas such as construction, finance and infrastructure. Public-private partnerships in England can be realized in different ways (Shah, 2005, p. 140).

Public-private partnership is characterized by specification of the final output and the precise definition of performance criteria, without detailed regulation of labor and delivery issues. Special category of public-private partnerships are projects of contracting-out, where the private sector partners are hired to be directly involved in delivery of certain public service at the local level. The role of public authorities is to control the resources needed for the delivery of public

services. Private sector bears all risks regarding delays or cost overruns. The public sector does not provide financial support during the design and construction phases. The publicly funded payments agreed in contract starts after the private sector was provided with necessary resources. However, during the contracted cooperation payments may be reduced by public authority if the defined standards are not met (Grimsey, Lewsi, 2004, p. 6).

Apart from public-private partnerships, in the English system of public services there is also another form of public services provision and delivery known as shared services. It is an arrangement that allows local authorities to save money by taking advantage of economies of scale by providing certain public services together with other local authorities. Joint provision of public services in various local authorities contributes to the reduction of costs, improvement of quality and efficiency, as well as to the realization of higher degree of standardization and automation in public services provision and delivery.

Principles of public sector reform in England became the crucial elements of well known New Public Management model, which is oriented toward results and efficiency through better management of the public budget. This model emphasizes the principle of competition in the area of public services, as well as the introduction of management style similar to that in the private sector. Issue of satisfaction of citizens-consumers of services with the quality and efficiency of public services became intensively present. Apart from German New Steering Model, English New Public Management became the best known and most dominant European paradigm of public management and public services.

#### **4. INTEGRATION OF EUROPEAN PRINCIPLES OF SERVICES OF GENERAL ECONOMIC INTEREST IN THE REGULATORY FRAMEWORK FOR PUBLIC SERVICES IN THE REPUBLIC OF SERBIA**

The relevant legislation in the field of public services in the Republic of Serbia includes: Law on public authorities (“Official Gazette of RS”, no. 42/91 and 71/94 (Article 190) of the Act – 79/2005-12), the Law on public enterprises and activities of general interest (“Official Gazette of RS”, no. 25/2000, 25/2002 107/2005 and 108/2005 – corr.), the Law on public procurement (“Official Gazette” No. 116/08), the Law on consumer protection (“Official Gazette of RS”, no. 73/2010), the Law on public-private partnership and concessions (“Official Gazette of RS”, no. 88/2011).

The Law on public authorities, (Articles 2 and 6), provides for the possibility of involvement of various stakeholders in the provision of public services (business resources in all forms of ownership). However, since the terms such as competition and open market are not explicitly outlined it can be only indirectly

concluded that there is an intention to achieve goals of public services within the competitive open market environment.

The Law on public enterprises and activities of general interest, (Article 2, paragraph, 1) explicitly specifies the activities that fall within the sphere of general interest. However, apart from referring to the services of general economic interest, certain services of general interest are put into the same group (issuing the official gazette Republic of Serbia, information, publishing textbooks). According to the contemporary European concept, only the group of services of general economic interest is subject to competition rules. They can not be mixed with the services of general interest that do not subject to competition rules. Hence, there is a certain level of imprecision in the grouping of public services in comparison with the grouping made at supranational level.

The Law on public procurement (Article 8) outlines the principle of cost-effectiveness and efficient use of public funds. In Article 9 it is stated that competition among the bidders has to be enabled. Article 10 of this Law defines the principle of transparency in the use of public funds, whereas Article 11 defines the principle of equality of bidders. On the basis of the principles defined in the Law on public procurement it can be concluded that there is an intention to arrange public services system in the Republic of Serbia by introducing the principles from European concept of services of general economic interest.

The Law on Consumer Protection Act, especially its part IX titled Services of general economic interest and consisted of the ten Articles (Article 83 - Article 92), contributes significantly not only to the harmonization of the terminology but also to the intrinsic compatibility of the national regulatory framework for public services with the principles of services of general economic interest in the European Union. This Law essentially reflects the concept of consumerism in the area of public services, which is fully consistent with the contemporary European concept.

The Law on public-private partnerships offers the possibility for the development and realization of future cooperation between the state and private enterprises in the Republic of Serbia. In order to provide technical assistance in the implementation of public-private partnerships the government also decided to form a Commission for the public-private partnership, which consists of nine members ( "Official Gazette of RS", no. 13 / 2012).

Based on the above mentioned Laws it is possible to conclude that in the Republic of Serbia there is a certain level of commitment to the integration of the principles of European concept of services of general economic interest. In this sense, the greatest progress was made with the Law on Consumer Protection, which unambiguously refers to the importance of focus and orientation on service users. The term open market of public services is not explicitly stated in the regulatory framework of public services in the Republic of Serbia, but the

ensuring the fair competition among different bidders in the proces of public tender is clearly outlined in the Law on Public Procurement.

## 5. CONCLUSION

Modernization of the public services in the member states of the European Union launched have been accelerated by the implementation of the contemporary European concept of services of general economic interest which includes telecommunications, postal services, public transport, electricity and gas. According to this concept, this group of services should be provided and delivered within the open internal european market, where the competative rules are applied. Principles of the common european concept are defined in the White paper on services of general economic interest and their integration into the national legislation and economic practice still represents a relatively new topic in a number of member countries of the European Union. However, based on the examples of public services organization in developed European economies, such as Germany and England, it is possible to conclude that the future national systems of public services with dominantly economic features will be gradually aligned with the concept of services of general economic interest defined at the level of the European Union. Based on the analysis of a set of laws that regulate public services in the Republic of Serbia, it is possible to make conclusion, although only indirectly, about the commitment of the Republic of Serbia to align its public services system with the principles defined at the supranational level.

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Daliborka PETROVIĆ

### **KONCEPT USLUGA OD OPŠTEG EKONOMSKOG INTERESA U ZEMLJAMA ČLANICAMA EVROPSKE UNIJE I MOGUĆNOSTI NJEGOVE PRIMENE U REPUBLICI SRBIJI**

**Apstrakt:** Predmet rada je savremeni evropski koncept usluga od opšteg ekonomskog interesa i njegova primena u dve zemlje članice Evropske unije - u Nemačkoj i Engleskoj. Savremeni koncept usluga od opšteg ekonomskog interesa u Evropskoj uniji karakteriše uvođenje tržišnih mehanizama, konkurencije i tretiranja građana kao korisnika usluga. Na osnovu odabranih primera, cilj rada je da ukaže na stratešku opredeljenost zemalja članica Evropske Unije ka jačanju tržišne konkurencije u oblasti usluga od opšteg ekonomskog interesa. Pregled aktuelnog regulatornog okvira u oblasti javnih usluga u Republici Srbiji ima za cilj da ukaže u kom stepenu su principi definisani konceptom usluga od opšteg ekonomskog interesa integrisani u nacionalnu legislativu.

**Ključne reči:** usluge od opšteg ekonomskog interesa, Evropska unija, Republika Srbija

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## THE IMPACT OF MONETARY INNOVATIONS ON THE FINANCIAL CRISIS

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**Abstract:** Monetary effects have an impact on the financial aspect of creativity and innovation in financial markets, particularly in terms of financial crises. Money is not just an economic phenomenon than the total social facts, which chooses the way of life almost all people. Long monetary policy defined as a set of rules, regulations, measures and instruments which in the monetary sphere of social reproduction regulate the level, structure and dynamics of money supply and circulation of money in busy channels reprodukcije. Pošto monetary policy is the applied science area, which consists of emission, credit and foreign exchange policy, and is closely linked to fiscal policy, a financial or macroeconomic policy, is necessary to consider the financial effects of monetary and financial creativity, innovation, long-term strategic management in the context of these changes. The essence of financial innovation consists in a strong action to strengthen the market mechanism in the financial sector of the economy. There has been escalating money market instruments, provided that these instruments represent the substitute transaction of money. The process of financial innovation and creativity go three phases. At least three interrelated, phases.

**Key words:** Monetary policy effects, creativity, innovation, money, financial instruments.

### 1. INTRODUCTION

Financial theory suggests that in addition to the many factors that directly initiate the process of financial innovation, there are two key factors: high interest rates and restrictive monetary policy. Undoubtedly, the base for higher interest rates and restrictive monetary policy measures were relatively high rates of

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inflation. Financial instruments in terms of high inflation are irreversible processes; therefore financial innovations are becoming permanent characteristics of changes in the structure of developed market economies, even when the initial factors that started these processes cease to exist (high inflation rate, etc.). Some task of monetary theory is to show how and why monetary impacts directly disrupt economic activity. For example, Hayek believed that the market economy is adapting to changes spontaneously without the occurrence of the crisis, if there were no money creation through credit expansion by the banking system, while conversely Keynes believed that the activity of the banking system (through credit expansion), should maintain a stable economy. Keynesianism is the professional and general public, “won the battle”- 30s of XX century, and that the Austrian understanding of economic cycles and crises other alternative theoretical understanding. The current financial crisis requires completely different solutions. Contemporariness monetary policy in many countries resort to the introduction of many financial and monetary innovations in order to find possible ways out of the financial crisis.

The financial innovation processes can be interpreted as a result of the struggle between aggressive market factors and the traditional elements of the monetary system structure, which acted as counter factors. Monetary system in the traditional sense rests on the fact that the Central Bank controls, in principle, only commercial banks to avoid excessive creation of money supply with inflationary consequences or to avoid bankruptcy of individual commercial banks as a result of insolvency, which would result in mistrust in domestic currency. On the other hand, the increased intensity of activity of market principles in the financial sector of the economy comes into conflict with the traditional concept of the monetary system. Under pressure from the stronger effects of market factors in the financial sphere, in particular, began to crack the dual regulatory system of financial institutions, which put the focus of interest rate controls and credit potentials on the commercial banks system, which, among other things, affected the emergence and strengthening of the overall financial crisis in the world (Pomerleano, p.3). By monetarist understanding of the economic system is inherently stable, but it is a system in which the monetary shocks sources of cyclical fluctuations. There is a strong link which says M. Friedman, the variability between the money supply and nominal income variability. In the short term can be asymmetry impact of changes in money supply on real variables, while in the long-run changes in money supply largely reflects the change in the general price level (Stojanovic, pp.243-329). Monetarist distinction between short and long term is very important for their explanation of cyclical fluctuations, with particular emphasis on the money supply is a key source of fluctuations.

## 2. FORMS OF FINANCIAL INNOVATION

A number of economic factors that acted in the direction of creating innovation in the financial structure directly enabled much faster expansion of various types of financial institutions and securities markets at the expense of commercial banks. On the other hand, commercial banks have also suffered a reduction of the quality of their lending. The reason was simple: first-rate loan seekers have been increasingly using forms of financing through securities. According to traditional economic theory, capital is the main driving force of economic development (Petrovic, p. 114).

The result was the response of commercial banks in the form of creating financial instruments that were the subject of traffic operations in the money market. However, these instruments of money market were not real transaction money, but they contained the combined elements of the transaction money and savings instruments. Therefore, the traditional system had to be revised in the direction of abolition or substantial easing of regulatory barriers that hinder competition between different categories of financial institutions. It is particularly significant deregulation of interest rates which meant that commercial banks and other financial institutions may establish rates based on market criteria, with the exception of institutions holding non-interest bearing transaction deposits (Petrovic, Zivkovic, pp.585-601).

The emergence of major financial crises has intensified the need for an integrated financial sector reform. The crisis has revealed that the private and public prudential frameworks have not kept pace with the development of numerous financial innovations, and that the compliance of activities is necessary (moreover, the tendency of new financial products to exploit gaps in prudential frameworks can prove problematic, and should be addressed with increased attention.. Financial innovation has been and remains an important source of improving economic performance over the medium term and must be encouraged. However, a balanced review of prudential arrangements, financial safety nets, and a mechanism for resolving the crisis is necessary to strengthen their overall effectiveness.

Financial innovations can be classified in six categories (Burrows, Jenifer, pp. 2-4).

Certificates of deposits, CDs, are securities that are broadcasted by commercial banks to increase their lending potential. Introduction of CDs introduces a new qualitative dimension in business of commercial banks, which are no longer just passive institutions that form their credit potential by receiving deposits, but which can also lead an active policy of credit growth potential through increased borrowing on the series CD-based emissions. Among the customers are mostly corporations. The reason for buying CDs is higher interest

rate banks pay on CDs in relation to the regulated interest rates on savings bank deposits.

NOW accounts (negotiable order of withdrawal) are also a new form of deposit methods that combine checking account and savings account. An important feature is that commercial banks and savings banks pay interest on NOW deposits due to which these deposits are attractive to non-banking translators.

Arrangement of repurchase of bonds (repurchase agreements) consists in the fact that banks sell first and then buy some securities. In doing so, the repurchase price is fixed at the time of their sale. Thus AoRB is, in fact, a loan that a transactor gives to the bank provided that the loan is covered with securities.

Sweep deposits (cash sweep accounts) are arrangements between translators and the bank where transactor predetermines maximum and minimum limit for his checking account (transaction deposits). If transaction account balance of the respective transactor exceeds the upper limit to an individual arrangement with the bank, then the bank automatically transfers on a daily or weekly basis, any surplus of assets placing them in certain interest-bearing securities. If funds in transaction deposit fall below the agreed lower limit, the bank automatically transfers the missing funds from the account of securities of the concerned transactor;

A joint money market funds (money market mutual funds, MMMFs) represent new money market instrument that is formed on the basis of small individual funds in banks with the funds invested in securities that are liquid and interest bearing. Interest on MMMF belongs to investors in the form of monthly dividends.

Overdraft accounts and credit cards are transaction (check) accounts that can be exceeded provided that the amount of the overdraft is limited and that interest at a penalty rate is paid on the amount. With credit cards it is a fact that people can buy goods and services at home and abroad with no cash and pay later. There is a certain limit of use of funds based on a credit card which is determined by the balance of deposit on checking account.

An important direction of financial innovations consists in the use of flexible interest rates on bank loans and bond issues in the financial markets. In this way, the bank introduced a roll over loans or medium term loans with variable interest rates.

The monetary effects of financial innovations can be systematized in the following seven points:

Emphasize the role of exchange rates and interest rates as the transmission mechanism of monetary policy;

Financial innovations increase the volatility of relationships of monetary variables and economic activity. Velocity of money circulation considered as a relation between the nominal gross domestic product and the transaction money

shows in the long run tendency to accelerate due to the fact that various elements of the money market (monetary substitutes) suppress non-interest bearing transaction money in carrying out the functions of secondary reserves;

The trend of increased use of variable (flexible) interest rates, which significantly erodes transmission mechanism of monetary policy through interest rates;

The relative strengthening of securities markets, trend of the relative strengthening the participation of securities, securitization, actually means to strengthen the direct relationship between the final loan debtors and final creditors. Financial innovations act in the way that significant part of the instruments in the financial market securities has an increased degree of liquidity;

Financial innovations work in direction that commercial banks and savings banks enter the securities market through the placement of credit resources in money market instruments as well as via emission of certificates of deposits;

The creation of financial supermarkets;

Acceleration of globalization process of financial markets.

Monetarism marked the return of liberal economic policies and re-emphasized the role and importance of the market. Although monetarists believe that the economic system is stable, shocks resulting from activities undertaken by monetary authorities increase the money supply cause fluctuations in economic activity and inflation (Soskic, pp.115-131). Because monetarists reject discretion in the conduct of economic policy and give priority to monetary policy, which is based on a constant rate of monetary growth.

### **3. ELECTRONIC MONEY**

Electronic money is a set of specific innovations related to technology of payment system. The main role of electronic money is to apply it in the payment mechanism. In this way there is a gradual transformation of the payment system that is in the developed economies largely based on payments by checks issued by the transaction parties at the expense of their checking bank accounts. Thus, the huge volume of check payments, with the existence of commercial techniques, has led to the efforts to replace part of that check payments with payments based on electronic impulses through computerized payment system (The Economist, January 24, 2012). The e-money is specific “monetary information” that is by using electronic impulses being currently transmitted between translators who do the payments. However, in developed market economies, forms of electronic money are mostly related to the payment of the population. For example, a form of electronic money consists of an electronic funds transfer at point of sale.

Another form of use of electronic money is to install vending machines for the payment of money to which citizens can withdraw a limited amount of cash from their transaction account with the use of plastic cards and personal identification number. Processes in the development of electronic money have effects in reducing the demand for money and increasing velocity of money transaction. It should be noted that there are two main effects of electronic money on reducing the demand for money. According to one ground, money demand decreases due to the introduction of new technology and faster payments. The second ground derives from limited and predetermined credit lines for the population. The development of electronic money in the future is undeniable and results from computer technology in the monetary system as an field of the integral application of computer technology in all areas of economic and social activities. On the other hand, the costs of introducing electronic money based on computerized payments and transfers between various financial forms should be taken into account. It is normal to assume that innovation in computer systems transfer of funds have a higher priority in developed countries compared to developing countries. However, the processes in further creation and the development of electronic money represent the historical turn on the basis of the third scientific-technological revolution that will act with different intensity in all regions of the world.

#### **4. FINANCIAL EFFECTS OF TURBULENCE ON ECONOMIC GROWTH**

Despite the relatively large external vulnerabilities the developing economies, which seek European integrations, have so far largely remained intact by impacts of financial turbulences, due to its limited reliance on the interbank markets and the complexes and innovative financial products. However, the risks for these economies have grown, especially for those countries that have been financing its large current account imbalances by borrowing from foreign banks. In this respect, the financial turbulence may indicate a healthy correction in relation to the previous enthusiasm, and closer the range of risks to economic foundations, improve credit discipline, and help reduce external imbalances in countries aspiring to European integration. Unexpected uncertainty related to the disruption on credit markets has complicated to the economic policy makers the task of keeping their economies towards maintaining growth without overheating, especially those in more developed economies. However, although so far their response was mainly effective, central banks will have to continue to maintain its readiness in placing at the disposal liquidity to cope with systemic risks (For example, in the euro area, as well as in other advanced economies, monetary policy has been stopped as it was right, because of the negative risks associated with financial distress).



It is anticipated that, due to among other things, the financial effects of monetary and financial creativity and organizational innovation, and these risks will gradually disappear, and perhaps there will be necessary further tightening. Of course, this approach is necessary going to be examined if the risks realize, and slowing down takes longer. In economies that are developing (and aspiring to European integrations) inflationary pressures and external vulnerabilities will then require further increases in interest rates in the central scenario. In cases where the instruments of monetary policy are ineffective, or where they are not available, the tightening would have to be achieved by fiscal constraints. Therefore, a strong banking supervision will be critical for these countries. Undoubtedly, rapid financial deepening, innovation and financial integration have quickly transformed the financial prospects of countries that are including in the European integration processes. However, rapid financial innovation and integration accumulate risks as shown by the current financial crisis, and negative financial shocks tend to rapidly expand beyond the borders. Competitive and diversified financial systems distribute risk better and allocate resources to sectors with high growth potential (Another type of financial innovations (which had the strongest penetration in the 80s of the last century) consists of financial instruments and arrangements for the transfer of risk. The demand for financial innovations that perform the transfer of risk has been particularly high in the financial markets of developed countries due to the instability of prices, financial assets, especially foreign exchange rates and interest rates. There are four basic types of transactions through which, based on the business arrangements, is performed allocation of risk that arise from changes in interest rates and exchange rates: swaps, options, futures and forwards).

Countries that have made the most progress in the use of complementary banking and market financing are generally considered the most benefited. However, in most economies, such as Serbian, further reforms are necessary in order to equalize the initial conditions for various forms of financial intermediation and take advantage of their synergies.

## **5. IMPACT OF FINANCIAL CRISIS ON FINANCIAL INNOVATION AND CREATIVITY**

The global economic crisis has led to a different approach to economic policies in most economies. The change is in the abandonment of free market and the increasing role of the state intervention in the economy. Simultaneously, the change has caused the discussion of the validity of the dominant view in macroeconomic theory and its capability to explain the causes of the crisis and the ways out within the existing the cortical frameworks. The discussion has not been finished yet within the Neo classical and Keynesian views existing parallels for decades in macroeconomic theories (Krugman, pp. 43-54).

The global financial crisis and financial turmoil's are warning that financial innovation can increase the risks that arise from gaps in prudential frameworks. However, one should bear in mind that all traditional forms of financial intermediation have gone through similar tests and came back from them: their utility is no longer questioned. In response to financial shocks, participants in the financial market and economic policy makers will need to rapidly develop protective measures to enable that the benefits add up without causing undue risk. From this perspective, it will be very important to improve risk assessment models, market and liquidity risk management, review of business (due diligence), and transparency in the process of creation of loans and risk exposure to customers. On the other hand, for economies that aspire European integration, the main challenge is how to effectively manage rapid financial deepening in the context of convergence. The rapid pace of credit growth and the rapid increase of private debt in many of these economies have increased the risks and asked questions about sustainability. Economic policy measures have not been able to stop this flooding, which underlines the importance of reducing financial vulnerability and creating safety zones. These goals can be achieved by removing fiscal and other distortions that exist in bank lending, by better enforcement of prudential and supervisory measures and promoting a better understanding of risks and disclosures (Anderson: p.16). However, where the convergence was in conjunction with large external imbalances, the challenge in the medium term will be correcting these imbalances without painful adjustments. This will require a smooth flow of funds towards productive investments, particularly in the sector of tradable financial instruments. However, to expedite the process, the economic policy makers will have to strengthen their financial systems and introduce more flexibility into their labor and capital. So that all economies that aspire to financial and economic integration, could gain significant benefits from the continued development of its financial system in terms of efficiency, risk diversification, and resistance to potentially volatile external capital flows. The financial innovations processes certainly increase micro-efficiency of financial markets but also mean increased risk and volatility (Economic Policy and Global Recession, pp. 1-12).

The process of demarcation line between money and other assets could jeopardize macro-stability, especially if the financial crisis deepens, and if the quantitative high-grown cash substitutes become insolvent in the money transaction. Certainly, overcoming of the economic crisis (i.e. reduced production and the world trade as well as drastically reduced liquidity on the world financial markets) will be long-lasting process, requiring to set in time a number of economic policy measures. Primarily, the financial system should be reformed (Petrovic, pp. 54-68.).

## 6. CONCLUSION

Monetarism marked the return of liberal economic policies and re-emphasized the role and importance of the market. Although monetarists believe that the economic system is stable, shocks resulting from activities undertaken by monetary authorities increase the money supply cause fluctuations in economic activity and inflation. Because monetarists reject discretion in the conduct of economic policy and give priority to monetary policy, which is based on a constant rate of monetary growth.

A stable economic foundations should enable developing economies to cope relatively well with current financial and monetary turbulence. When the turbulence is withdrawn, the impact on the economy growth should be controlled within limits. Active global economy, primarily in conjunction with solid macroeconomic policies and growing trade and financial integration, created active regional economy. However, the continued tightening of credit markets is a key negative risk to this outlook. Although the broader financial system continued to function relatively well, money and credit markets remain tight. Direct exposure and the interconnection of money markets have led that the financial turmoil quickly spread to all European countries. Lack of information on exposure and difficulties in valuation of assets led to a reluctance to trade on the financial markets, and this has caused difficulties for banks that rely on short-term wholesale resources for funding long-term assets. The continued tightening of credit would have negative consequences for the real economy. Forming of mitigated regulatory measures in the integrated monetary system in financial plan was aimed to provide much stronger competition between financial institutions of all categories. In contrast to the goals of monetary policy, where EU legislation limits the discretion of the supreme monetary authority establishing the obligation to preserve price stability, the question of determining and conducting monetary policy is the exclusive competence of the European System of Central Banks. The European Central Bank may issue decrees on matters relating to the provision of quality control operations of credit and other financial institutions. Therefore, economies that seek European integrations should focus on the strengthening of the foundations of financial development: low and stable inflation, a good quality of institutions and rule of law. Creating well-functioning markets to government securities, the establishment of strong corporate governance and protection of creditor rights, and improving the appearance of institutional investors, too, would be of great benefit in reducing the level of the financial crisis.

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Dr Pero PETROVIĆ,  
Željko JOVIĆ, MA

### UTICAJ MONETARNIH INOVACIJA NA FINANSIJSKU KRIZU

**Apstrakt:** Pojava globalne ekonomske krize izazvala je promenu pristupa u vođenju ekonomske politike u većini privreda. Ta promena znači odustajanje od slobodnog tržišta i sve veću intervenciju države u privredi. Istovremeno, ta promena je izazvala raspravu o validnosti dominirajuće makroekonomske teorije i njene mogućnosti da postojećim teorijskim stavovima objasni uzroke nastanka i puteve izlaska iz krize. Rasprava još uvek nije završena u okviru neoklasičnog i kejnzijanskog pravca koji paralelno egzistiraju više decenija u makroekonomskim teorijama. Monetarizam je označio povratak liberalnoj ekonomskoj politici i ponovo ukazao na ulogu i značaj tržišta. Iako monetaristi smatraju da je ekonomski

sistem stabilan, šokovi su posledica aktivnosti koje preduzimaju monetarne vlasti koje povećavanjem novčane mase izazivaju fluktuacije ekonomske aktivnosti i inflaciju. Zato monetaristi odbacuju diskreciono pravo u vođenju ekonomske politike i prednost daju monetarnoj politici koja se bazira na konstantnoj stopi monetarnog rasta. Monetarni efekti imaju uticaj na finansijske efekte kreativnosti i inovacija na finansijskim tržištima posebno u uslovima finansijskih kriza. Novac nije samo ekonomska pojava nego totalna društvena činjenica koja opredeljuje način života gotovo svih ljudi. Dugo se monetarna politika definiše kao skup pravila, propisa, mera i instrumenata kojima se u monetarnoj sferi društvene reprodukcije reguliše nivo, struktura i dinamika novčane mase, kao i cirkulacija novca u prometnim kanalima reprodukcije. Pošto monetarna politika predstavlja primenjenu naučnu oblast koja se sastoji iz emisione, kreditne i devizne politike, a usko je povezana sa fiskalnom politikom, u sklopu finansijske, odnosno makroekonomske politike, neophodno je sagledati monetarne efekte finansijske kreativnosti i finansijskih inovacija, na duži rok u kontekstu strategijskog upravljanja ovim promenama. Suština finansijskih inovacija sastoji se u snažnom jačanju delovanja tržišnog mehanizma u finansijskom sektoru ekonomije. Naročito je došlo do eskalacije instrumenata novčanog tržišta, s tim što ovi instrumenti predstavljaju supstitute transakcionog novca. Procesi finansijske kreativnosti i primene inovacija prolaze najmanje tri, međuzavisne, faze.

**Ključne reči:** Monetarna politika, efekti, kreativnost, inovacije, novac, finansijski instrumenti.

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### THE CHANGING NATURE OF SECURITY: FROM NATIONAL TO GLOBAL AND TO HUMAN SECURITY

Anton GRIZOLD, Bojko BUČAR<sup>1</sup>

**Abstract:** The article deals with the possibility of the fundamental shift of traditional state behaviour from national to global security and ultimately to human security. The article departs from the genesis of the security concept, subsequently it deals with some new elements of the content of contemporary security and deliberates on issues of global security. It continues with human security and its origins, especially also with some theoretical and practical dimensions of the concept of human security. At the end the article summarizes the challenges and the dilemmas of contemporary security and brings concluding remarks. The authors believe it is time that the principles on which human security is based become an integral part of contemporary national as well as world security policies.

**Key words:** National security, International security, Human security, Globalisation, Global Civil Society. Security policy

#### 1. INTRODUCTION

The purpose of the present article is to define the fundamental characteristics of the changing nature of contemporary security in the context of globalisation processes and fundamental changes to the security environment during the period following the end of the Cold War. In this context we are going to discuss the issue

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of the response of both theory and practice to this fundamental shift of traditional engagement by the state and the international community from national to global and, most recently, human security. The article deals with globalisation as a security challenge using a combination of two basic approaches: (1) a (neo)realistic approach, emphasising the significance of states as key players in the international community, and (2) a liberal-constructivist approach, the central elements of which are the relative decrease in the power of the state and the significance of the emergence of global societal values. Our primary point of departure is the genesis of the concept of security. This is followed by certain new emphases in the substance of contemporary security with a focus on the issue of global security. We then look into human security and the genesis of the concept of human security, particularly certain praxeological and theoretical dimensions of the concept of human security. Finally, some challenges and dilemmas of the states and international system facing with the present security environment will be presented.

We will argue that analysing and understanding the security effects in the present globalizing world requires a conceptual shift from National to Global and to Human security.

## **2. THE GENESIS OF THE CONCEPT OF SECURITY**

Security has been the fundamental feature of human existence and development from the ancient past to present day. The concept of security encompasses the preservation of the individual as a physical, spiritual, mental, cultural and social being, as well as assuring a certain quality to such existence in a social and natural environment. However, from a historical perspective, this development was gradual and slow. The concept of security at first did not focus on the individual but rather on the state and the international system.<sup>2</sup> The emergence of the modern state was conditional mainly on its centralisation and the formal organisation of government that had the legal monopoly on violence. From the Treaty of Westphalia (1648) onward the general conviction was that states were the most important players in international relations and that in an anarchic international system states had the legitimate right to pursue their proper security at

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<sup>2</sup> The study of security paradigms is based on ideas and findings from various historical sources. In terms of significance for the development of modern approaches to the study of the notion of security the following are particularly important: (1) early approaches dealing with the issue of security in the context of war as an instrument of state policy and relations between states, (2) classical political philosophy in those of its segments that deal with the issues of freedom and security as well as war as a socio-historic phenomenon, (3) Christian political thought (mainly the fair war doctrine), and (4) modern political thought in the context of various sciences and studies on the modern security paradigm - defence studies, strategic, peace, development, security and other studies (Dougherty and Pfaltzgraff, 1997, pp. 9-11; Grizold, 2001).

the expense of their neighbours or other states.<sup>3</sup> This traditional (Westphalian) concept of sovereignty meant that the modern state executed comprehensive, supreme, unlimited, absolute and exclusive power and control over all matters on its territory.<sup>4</sup> In this framework the state was at the same time the main object (territory, population and institutions) and subject (executor) of security. It is therefore not surprising that this traditional concept of a state's security was exclusive to the (nation) state, while substantively it was reduced to the military and political dimensions of the existence and functioning of the (nation) state in an international political system. This state-centred concept of national security expressed an irresolvable uncertainty which modern states were trapped in (the so-called security dilemma): in their legitimate pursuit of their own security states were mistrustful of one another. There was namely no mechanism in relations between two sovereign states which could ensure that a state's activity in pursuit of its security did not harbour an intention to achieve supremacy over others.<sup>5</sup>

This traditional concept of security applied *mutatis mutandis* until the end of the Cold War when the traditional concept of national sovereignty was transformed in many aspects by the processes of globalisation and undermined by phenomena such as global multinationals, trade, environmental problems, communications, etc. Such transnational phenomena allowing global links between people and increasing the interdependence of states have led to state sovereignty becoming an increasingly relative category in the present international environment, meaning that a present-day state finds itself not only in an active relationship with other states but also with non-state entities in international relations such as multinationals; non-governmental organisations; civil society special interest groups, etc. There have of course also happened changes within the states. Generally speaking human rights have developed and sub-national aspirations of peoples manifesting it in the devolution of the political nation state form intensified. All in all the fall of the Berlin wall spread democracy horizontally in the world while at the same time the civil society calls for a vertical spread of democracy in societies. The public seems to be on a march. All this makes management of modern societies more difficult and presents new challenges in the balance between security and human rights.

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<sup>3</sup> The international system is allegedly anarchic due to its composition of sovereign states without any higher authority above them capable of subjecting them to its will (Bull, 1977).

<sup>4</sup> Sovereignty was nonetheless limited by international law in relation to other states, which is why we usually refer to so-called relative sovereignty. The substance underlying this term has been changing with the development of international relations and international law.

<sup>5</sup> The idea of a state's security dilemma was first developed in the early 1950s by Herz (Herz, 1950, pp. 157-180).



As we moved from the 20th to the 21st century the security paradigm changed substantially. The broadest framework of change is represented by the new complex (global) security environment and the changed role of the state in assuring modern security. The complexity of the security environment exhibits, *inter alia*, a causal link between the increasing amount of non-military threats (ethnic conflict, organised crime, terrorism, pollution and climate change, famine, contagious disease, drug trafficking and trafficking in human beings, unexpected mass migrations, etc.) on the one hand and political and military conflict on the other. Non-military threats and political and security conflicts exhibit a relationship of cause and effect (Hough, 2004, p. 144; Grizold, 2002, p. 608). In this context the substance of the traditional role of the state in assuring national security has also changed (Baylis, 2001, pp.157-180).<sup>6</sup>

### 3. NEW EMPHASES IN THE SUBSTANCE OF MODERN SECURITY

During the Cold War security issues (in both theory and practice) were limited mainly to the state as the decisive factor in the provision of national and international security. The concepts of national and international security were mainly focused on the military and political aspects of security. The most important means of assuring security were the armed forces and consequently the political strength of the state, while diplomacy was rather an auxiliary means of balancing out the various interests of the state.

Following the end of the Cold War the processes of globalisation only intensified.<sup>7</sup> The geopolitical, geo-economic and geostrategic environment also

<sup>6</sup> The increasing interrelatedness of traditional and non-traditional threats in the new international security environment requires new forms of cooperation among the states as well as between the states and non-state actors of international relations. The common basic starting point of different approaches regarding new forms of cooperation are the questions of (1) restricting the sovereignty of national states, and (2) security governance instead of security government. While the government is focusing to political control within hierarchically structured centralized state, the governance is focused to the coordination of relations among various actors of international relations at subnational, national, regional and international level (Pierre, 2000, pp. 1-10).

<sup>7</sup> We must distinguish at least five dimensions of globalisations. Economic globalisation, the synonym of globalisation to many, means nothing other than globally expanded economic relations on the world market. Political globalisation means the institutionalisation of international political structures. Cultural globalisation refers to the expansion of western individual values to an increasing share of the world population and the acceptance of western institutional practice the world over. Communications globalisation is linked to the power of communication capabilities to move information from one end of the world to the other regardless of the opinion of states. Ecological globalisation concerns global threats to our fragile eco-system (Chase-Dunn, 2000, pp. 121-123).

changed.<sup>8</sup> All of this resulted in the fact that other, non-state actors became involved in the discussion of security (individuals, social groups and civil society organisations, an emerging global society or supranational actors - multinational companies and organisations). In these changed geopolitical, economic, scientific, technological, environmental and other circumstances in the international environment the security paradigm has also acquired a new (global) dimension expressed in two areas: (1) territorial, including individuals, groups and organisations at local, national, regional and global levels, and (2) conceptual, including all aspects of human existence and activity (cultural, economic, political, educational, healthcare, defence, etc.), i.e. those forms of societal/communal living that are deemed to be social values. In the theory and practice of modern security such developments have resurfaced some of the hitherto neglected cultural and civilizational aspects of security. In this sense contemporary debate and policy place greater emphasis on the following dimensions of modern security: environmental degradation and climate change, unequal economic development and an increasing dependence on modern technology, famine, communicable disease, as well as the issue of assuring not only the people's physical survival but also their well-being. In this context the traditional differentiation between national and international security becomes decreasingly applicable to the true security framework. Concepts of global security (Bilgin, 2003) and human security are increasingly becoming centre-stage elements of debates on modern security.

### *3.1. Global Security*

Following the end of the Cold War new relationships emerge between the actors of contemporary security, as well as between military and non-military sources of threat. In this context one can agree with those who believe that the discussion regarding global security under the realistic approach focused excessively on the mere sources of threat. One could easily agree with Goetschel (2000) who believes that the crucial issue regarding security today is related to globalisation which has a greater impact on the formation of common (global)

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<sup>8</sup> The end of the Cold War reduced the probability of a large scale military conflict (Gaddis, 1993, p. 8). The bipolar certainty of the Cold War era is replaced by a multi-polar uncertainty along with an emerging complex structure of risk. The need to seek out new forms of security cooperation and integration has emerged with a view to materialising in a new security structure of the international system (Wallerstein, 1993, p. 5). A new distribution of economic power has occurred due to the liberalisation of trade economic regionalisation, the strengthening of multinational corporations and unequal global economic development, all of which entails both geopolitical (changing centres of gravity) and institutional aspects of change (relativisation of the significance of the nation state) (Wiarda, 1996, p. 5).

values than on the emergence of new sources of threat.<sup>9</sup> According to Goetschel, the greatest challenge brought about by globalisation lies in the ever greater need for collective action, stemming from the increasingly present awareness of global problems in the framework of existing conditions underlying international political divisions.

The development of the concept of global security is linked to the emergence of an international globalised or planetary society. If it may have been possible during the Cold War era to consider international relations primarily through a realistic theoretical paradigm (states were namely the central factors of both internal and the external security environments), then this paradigm is less appropriate for clarifying events and phenomena in an international security context following the end of the Cold War. Why? The concepts of a planetary society and of global security render relative the significance of states and increasingly take account of the significance of supranational and sub-state factors the impact of which on international events has increased. The world today is faced with the following situation: on the one hand there are particular social groups that are able to present their interests and objectives to a global audience thanks to highly developed information and communication technologies.<sup>10</sup>

In history there are numerous instances of anti-globalisation movements (although they were not called like that since the term has not yet been invented, but the trends were the same). Predominantly they were nation based. In modern times we may see the awakening of the global civil society in the late sixties and early seventies due to the resistance of the Vietnam war. True, national politics to some extent instigated the revolt in their respective public, but there was some authentic resistance to national politics as well. The television instigated it and we have to rest aside the traditional dilemma whether the public opinion shapes the media or is it *vice versa*. The same may be said for the condemnation of the war in

<sup>9</sup> The formulation of common (global) values is rendered possible by modern media using information and communication technologies with the purpose of expanding the media space and increasing their *influence*. *Media analysts claim that information (news) today is either local or global, the latter being disseminated by global media and information empires such as CNN*. To this we must add entertainment industry empires which play an extremely important role in the emergence of a global culture. Brzezinski, former US President Carter's national security advisor described these processes using the terms "tittytainment", a combination of the word "entertainment" and the slang terms "tits" referring to female breasts. Brzezinski refers not so much to sex or to mother's milk, but rather to the intoxicating mix of fun and sufficient quantities of food to control the mood of a frustrated world population following the principle of food and games (Martin and Schumann, 1997, p. 12).

<sup>10</sup> In this context a global audience is not understood as a new entity but as national audiences or audiences in individual nation states that are exposed to the actions of the said groups using modern information and communication technologies.

Bosnia, the genocide situation, where western politicians finally had to act and react to the demands of their voters. What has changed was that there was a definite impact of new technologies (cell phones, internet etc.) on the functioning of the civil society. And the process will intensify as shown by developments in the Arab world in the beginning of the 21<sup>st</sup> ct. These are still developments within national societies, but modern communication makes it easier for civil society associations, organizations, movements and the like to not only communicate cross national borders but also to synchronize actions. In this way, besides the global economy manifesting itself in the world market and besides global politics manifested in common management of issues by all states within the family of the United Nations (UN), a global society is emerging as well.

On the other hand there are international institutions and organisations whose interest is mainly focused on overcoming local, regional, national/state, religious and other particularities. The latter represent the fundamental obstacle to a legitimisation of the development of a global or planetary society in which members of a global civil society could exert legitimate pressure on the state as a body politic in a way similar to the pressure exerted by groups and civil society organisations in a national context.

The security aspects of globalisation processes are linked to environmental degradation, refugees and migrations in general, international crime, uncontrolled proliferation of weapons of mass destruction, religious fundamentalism and threats posed to modern societies by their excessive dependence on information and communication technologies. In the context of national security policies these processes and phenomena are most often labelled as new threats that, given the circumstances, could even lead to global chaos and war.

Globalisation processes constitute a serious challenge for the modern world. On the one hand we have an increasingly interconnected world, while on the other the world is being fragmented into ever smaller entities and identities from an economic, political and cultural perspective.<sup>11</sup> In this context, Worthington (2001) presents two main ways in which to effectively respond to the security challenges of globalisation. The first is cosmopolitanism, the other is its antipode, anti-cosmopolitanism. The cosmopolitan alternative emerged as a consequence of the optimism pertaining to the resolution of global problems in the years immediately following the end of the Cold War. The international community as the key instance for the preservation of international peace and security was thus referred to ever more frequently. The number of UN peace keeping operations saw a sharp

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<sup>11</sup> Examples of this being dissolutions of multi-ethnic states or federations in Europe, secessionist tendencies in numerous countries around the world on the basis of language, religion or nationality/ethnicity, as well as ever more frequent fundamentalisms seeking out conflict to legitimise their existence (Martin and Schumann, 1997, p. 12).

rise and it seemed that conflicts that were deemed irresolvable during the Cold War could be quickly ended. The end of the Cold War also meant the end to blockades within the UN Security Council (SC) on issues relating to Chapter 7 of the UN Charter and the use of force in conducting peace keeping operations (Kaldor, 2000, pp. 177-179). In this context it is understandable that many (decision-makers in international politics, analysts and researchers) see the construction of global institutions and organisations as the most effective and probably only response to the problems of globalisation and security challenges. Granted, the advocates of this idea cannot agree as to the extent to which global institutions and organisations are to replace the sovereignty of individual nation states, though the direction of thought has turned away from “international relations” and towards “world politics”.

In spite of the many peace keeping operations and other missions under the auspices of the UN or other regional security organisations after the end of the Cold War the cosmopolitan approach failed to reach positive practical endorsement. Many conflicts throughout the world remain unresolved, assistance to populations in crisis is limited to the distribution of humanitarian aid. UN instruments for the provision of international peace and security have been the target of shaming and disregard (Srebrenica, Somalia, Rwanda). At the same time the prevalent influence of superpowers continues to lead primarily to the resolution of conflicts that are in the sphere of interest of the great powers. There is certainly a multitude of reasons for the failure of the cosmopolitan approach in ensuring international peace and security, the main ones however are a lack of a comprehensive media strategy, short-sighted thinking by politicians, a lack of coordination between the governments of nation states and international organisations, and insufficient support to peacekeeping operations (Kaldor 2000, pp. 178-179).

All of these reasons for an unsuccessful approach to ensuring international peace and security in a new security environment following the end of the Cold War are present in the response to the security challenges of globalisation which we called anti-cosmopolitanism and which is also most resonant. This concept namely does not view globalisation as a threat to national identity, political sovereignty or national economic interests. However, there are diverging opinions within the school of anti-cosmopolitanism itself. In its extreme form anti-cosmopolitanism even includes elements of xenophobia and the theory of a global conspiracy.<sup>12</sup> The more moderate positions within anti-cosmopolitanism are based on the same fears

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<sup>12</sup> The most extreme forms can be found in the allegations by Malaysian President Mohammad, stating that the country's economic plight is the result of an international conspiracy by Jewish bankers. These processes linked to globalisation are also viewed as a particular threat to national interests by extremist political parties in France (Front National), the UK (British National Party), Austria (Freedom Party) and elsewhere (Worthington, 2001).

as the extreme, though they do not resort to racist rhetoric or to the theory of an international conspiracy. Instead of international conspiracy moderate anti-cosmopolitanism supports a protectionist economic policy based on national interests and is suspicious of agreements stipulating international commitments on states. It favours cultural assimilation to racial discrimination as the basis of national identity. Both versions of anti-cosmopolitanism share an understanding of globalisation as a process composed of a host of dangerous and potentially uncontrollable forces that weaken communities by disabling the power of states to manage its national economic and political affairs and protect existing national identities. According to this perception globalisation is a state of being of individuals who feel very much estranged from the ruling economic and political institutions and from civil society at a national level. Instead of anti-cosmopolitanism attempting to limit and gain control of global forces it has withdrawn to within national borders (Worthington, 2001, p. 13).

Alongside security considerations based on cosmopolitanism and anti-cosmopolitanism we must also mention an intermediate level placing emphasis on the global aspects of security while still departing from national security as one of the basic functions of a state. One of the advocates of this approach is Paul (2000), for example, who rejects a dichotomous definition of modern security processes. In his opinion national security remains a key function of the nation state, whereby the scope of security depends on the specific position of a given state. The end of the Cold War, rapid technological change in both civilian and military spheres, and the revival of America's hegemonistic power are all factors introducing new characteristics to the provision of modern security and it is certainly too early to speak of the downfall of states and their role in providing national security. If we are to adequately explain the changes in the security environment after the end of the Cold War we need to take into account the political, economic and broader security context of an individual state as an overlap of the national and of the international.

### *3.2. Genesis and certain praxeological dimensions of the concept of human security*

Along with processes of globalisation today's world is also subject to processes of individualisation emphasising the significance of the individual at a national and international level. There is a general conviction that the loss or lack of human security (socio-economic hardship, severe breaches of human rights, epidemiological threats such as HIV/AIDS, etc.) has a direct effect on peace and stability both within and between states. This is why it is also in the interest of states to provide for comprehensive security (i.e. not merely physical survival but also well-being) for its population as well as for the broader international community.

The Human Security Concept is relatively new in the international community although elements of human security have been the subject of consideration ever since philosophers and rulers (politicians) have begun dealing with societal issues. The true novelty perhaps lies in the fact that the general subject matter of security began to be considered in a different, perhaps more comprehensive manner. In other words, the traditional concept of security of nation states has over time developed into the concept of human security. This was contributed to by changes in individual societies, organised as states, as well as by the aforementioned changes to the environment surrounding these states.

Throughout history the relationship between the state and the individual has been a changing one. In time the concept of God's sovereignty over the universe (top-down) was replaced by the concept of people's sovereignty within states (bottom-up). Truth be told, this process staggered to a halt about half way through, the vertical relationship of a "God given power over subjects" having transformed in the course of history into a more horizontal relationship of "people's power" and the management of social relationships by a mix of public and private actors. The economy and its protagonists the multinationals, in fact the driving force of globalisation, have also played their part. On the other hand social movements became a part of the processes of globalisation as well (favouring a different globalisation), thus representing a counterweight to efforts in favour of economic globalisation. Civil society on the one hand and economic entities on the other have begun to influence the actions of government. The world has changed. At national and consequently international level this has led to a different comprehension of states, their international borders, the autonomy of national jurisdiction and its relationship to international law. One could argue that at national and international level the vantage point has shifted from a state-centred to an anthropocentric one.

The development of human rights has also contributed its share. Nowadays, following the motto of the French revolution of 1789, it is popular to speak of three generations of human rights comprising (1.) liberty (civic and political rights), (2.) equality (economic, social and cultural rights), and (3.) fraternity (solidarity rights). Sometimes we also distinguish between individual and collective (national, minority, etc.) human rights. If we add to this issues of environment then human rights could be categorised as follows: (1.) political, economic and democratic development; (2.) rights of political and cultural communities (nations and minorities); and (3.) prevention of abusive - excessive - exploitation of natural resources and sustainable development. Already prior to the end of the Cold War (around 1990) minimum standards of human rights affected the entire international community, not merely nation states. However, even though attention shifted to freedom following the fall of communist regimes in the Eastern block, it returned to security following the World Trade Centre attacks in

New York City (2001). At times this also occurred at the expense of human rights, even though there probably is no security without human rights.

The 1970s did not only bring a ray of hope for world peace and security (let us remind ourselves of the Helsinki process and the signing of the Helsinki Final Act in 1975), they also brought progress in the development of human rights. Both of the human rights pacts that remain the foundation of all subsequent human rights conventions entered into force.<sup>13</sup> One should also add that the right of nations to self-determination as laid down by the UN Charter and the Universal Declaration of Human Rights (1948) introduced the idea of economic self-determination. In 1974 the UN General Assembly (GA) adopted the Declaration on the Establishment of a New International Economic Order (NIEO, GA Res. 3201 (S-VI) and consecrated two special sessions of the General Assembly (S-VI and S-VII) to this issue. The aim was to redefine relations between states: equality, sovereign equality, interdependence, shared interests and cooperation, balance of power, permanent sovereignty over natural resources and the abolition of inequalities as a threat to peace. The end of the decolonization process brought hope not only for a better world in terms of more just political relations between nations, it started also the idea of a more equitable economic world order. Within this process the very nature of development was challenged and especially limits to economic development were questioned. All in the context of a growing awareness for human rights and human dignity.

In this historic context it is not surprising that issues concerning the future of humanity became an issue of interest for business, science and politics. Let us only mention a think tank that became better known as the Club of Rome. In 1972 it published highly-publicised report entitled *The Limits to Growth* which dealt with the problems of industrialisation, population growth, exploitation of non-renewable resources, environmental degradation, etc. (Meadows et al., 1972). Prominent politicians of the time carried on with this work. In 1977 the so-called Brandt Commission was established. In 1980 it published its report *North-South: A Programme for Survival* (the Brandt report) focusing on the following main issues: famine and food; population - growth, mobility and the environment; disarmament; trade in raw materials; energy; industrialisation and world trade; transnational companies, investments and technology transfer; world monetary order; development financing (Independent Commission on International Development Issues, 1980). In 1982 the so-called Palme Commission published its report *Common Security - A Programme for Disarmament*, which establishes a link between armament and non-development. The report also finds that military security increases the

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<sup>13</sup> International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, including an important optional protocol allowing for individual recourse. They entered into force in 1976.



threat to economic relations and human development (Independent Commission on Disarmament and Security Issues, 1982). GA Resolution 38/161 of 19 December 1983 established to so-called Brundtland Commission which in 1987 published its report *Our Common Future* dealing with issues of the environment and the economy, in essence sustainable development. It discusses the issue of satisfying the needs of present generations without jeopardising the needs of future generations (World Commission on Environment and Development, 1987). This report was the basis for the 1992 World Summit and the adoption of Agenda 21, the Rio Declaration, the establishment of the Sustainable Development Commission, the World Summit in Copenhagen, Cancun etc. Over time the concept of sustainable development included also the notion of social justice alongside the relationship between the economy and the environment.

The debt crisis of the early 1980s temporarily froze the non-aligned states' idea of the NIEO. However, the idea of the right to development as a third generation human right survived. Non-development means not only stagnation but also a slow decline of society and of the individual. Human development can also be measured using the Human Development Index. Alongside the prerequisite of the absence of violence, i.e. peace, it is mainly composed of: (1.) the right to existence (satisfaction of basic needs such as inviolability of life, body and property, assured food and health); (2.) the right to development (access to employment, profit/wages, and education); (3.) quality of housing (adequate accommodation and a healthy environment); and, (4.) quality of life (non-discrimination and political participation).

The fall of the Berlin Wall (1989) on the one hand dispelled fears of a potential nuclear war between the two superpowers, while on the other hand it raised expectations of greater freedom for the individual and communities (self-determination). Quite soon, however, some of the old as well as new threats which states were unable to solve individually became more tangible, for instance environmental issues, ensuring peace and security, economic and social development, etc. As already stated, the aims and values of individual societies are increasingly becoming a matter of international governance (world politics) and less and less a matter of international (classic intergovernmental) relations.

The concept of human security started intensively finding its place in science and political practice as of the end of the Cold War. In 1990 the United Nations Development Programme (UNDP) published its first Human Development Report from which the Human Freedom Index emerged, including categories such as education, health and political freedoms. This, too, linked human rights and development in a way making human rights a prerequisite for the development of a society and consequently for society as a whole. In its 1991 report the UNDP already defined human security as freedom from fear and want which basically corresponds to the requirement of meeting basic needs known to

us from the idea of the NIEO and its aftermath known as the UN development goals. Except that this revised concept was more focused on human security, especially in relation to national authorities. Implicitly it reiterated the age-old question of states indeed protecting (securing) the individual, but from whom? The 1994 report (UNDP 1994) that raised the awareness of and established a different perspective on modern security already cites seven categories which were later further expanded and now comprise at least the following areas of human security: (1.) economic (poverty, homelessness); (2.) financial (employment, making a living); (3.) food (famine); (4.) health (disease, poor healthcare); (5.) environmental (degradation, pollution, natural disasters); (6.) personal (physical violence, crime, traffic accidents); (7.) sexual (gender equality, paedophilia); (8.) community (discrimination, oppression, disintegration); and (9.) political (repression, torture, disappearances, human rights violations). Human security thus became an overlap of discourses concerning human rights, development, and security. This is the concept of comprehensive security that is interconnected and revolving: for example, health security is not possible without the abolition of poverty, poverty leads to violence, violence disables development, etc.

However, the end of the Cold War brought not only a freedom of fear from nuclear war and an end to conflict between states as a function of block divisions (proxy wars). It also brought an increased number of armed conflicts within states, resulting in a surge in civilian casualties.<sup>14</sup> The 1999 Human Development Report pointed out new security dilemmas. Up to 90% of casualties in non-international conflicts are civilians, mainly victims of light arms and, after the end of a conflict, of antipersonnel mines. It also became clear that non-state actors fail to respect and remain unbound by international law governing armed conflict.

Following the war in Rwanda (1990-1994) and particularly in Bosnia-Herzegovina (1992-1995) the concept of protecting victims through the use of force by the international community started emerging. In 2004 the report entitled *A More Secure World: Our Shared Responsibility* (UN 2004) stated that in line with the emerging norm of collective international responsibility the UN SC may approve military action for the protection of the population if it is of the opinion that the situation poses a threat to international peace and security. In approving military force the criterion of the gravity of the threat to individuals or to a state should also be taken into consideration. Such threats include genocide, mass murder, ethnic cleansing, breaches of international humanitarian law. This applies in

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<sup>14</sup> Armed conflict prior to and after the Cold War differ in at least four of their characteristics: (1.) economic basis (organised crime is on the rise); (2.) motive (personal gain is on the rise); (3.) strategy (increasing brutality); (4.) subjects involved (increasing number of warring parties). All of this impacts the difficulty of resolving armed conflict which also why some authors differentiate between “old” and “new” wars (Heupel&Zangl, 2010, pp. 26-58).

addition to the four other requirements which must also be met: (1.) true purpose (stop the threat); (2.) last resort (all peaceful means of conflict resolution exhausted); (3.) proportionate action (use of force); and (4.) balanced consequences (will military action dispel the threat?). The consideration therefore is that the absolute prohibition of intervention which developed from the peace of Westphalia of 1648 onward would evolve into the institute of humanitarian intervention (duty to protect), which never completely disappeared from the map. But sooner or later one stumbles upon the question of criteria and decision-makers, especially as the implementation of the concept of human security is abused at state level for purposes of armed conflict (e.g. Kosovo 1999, Iraq 2003). Concepts can always be used or misused.

The concept of human security could also be understood as a broader International Security Concept.<sup>15</sup> The narrow understanding of security entails dealing with the system of collective security and organised crime (terrorism, drugs, etc.) at an international level, with military security and crime at a national level, and with the rule of law at the level of the individual. However, a comprehensive understanding of security means at an international level dealing also with economic and environmental issues, at national level also with resources (energy, human resources, etc.), and at the level of the individual with human security.

Human security therefore is personal security from violence or harm and access to life's basic material needs. This also includes the protection of the individual from crime and terrorism (and in particular from organised crime, i.e. trafficking in human beings, drugs, arms - from light to nuclear), communicable disease, political and other forms of corruption, mass migrations, etc. The alleged author of the term (Lincoln Chen) believed that "the term human security focuses the concept of security on human survival, well-being and freedom. Human security is the objective, the ultimate end of all security concerns. Other forms of security are simply means for achieving the ultimate objectives of human security." (Vogrin, Bučar & Prezelj, 2008, p. 12)

A particular problem is the implementation of the concept of human security in practice. This would require the collaboration of international, governmental and non-governmental (humanitarian, environmental and other) organisations in preventive diplomacy, better and closer cooperation between states at an international level, including civil society, regional and local authorities at a subnational level. Such implementation requires a restructuring of the

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<sup>15</sup> In the context of security studies (Schultz, Godson, Quester, 1993, pp 1-3; Grizold, 2001, pp. 121-122) one differentiates between four basic approaches to the study of the concept of modern security: (1.) the study of security at nation state level (National Security Concept), (2.) security at an international level (International Security Concept), (3.) regional approach (Regional Security Concept), (4.) global approach (Global Security Concept).

international system (financial, trade, etc.), a different role and cognition of states and/or sovereignty, as well as a different role for people or the individual in decision-making at national (government) and international level (e.g. civil society campaigns for humanitarian causes).

Human security today is not much more than a concept and even as such it is the target of criticism. Some condescendingly claim that it is all-encompassing and that it protects the individual from everything but himself. Many would prefer to continue the distinction of soft vs. hard security, although the notion of human dignity - security being a part thereof - is indivisible. However, even if human security is that weak a concept this only means that it requires further elaboration, for developing this concept means developing human rights. Human security ought to be a right, a third generation human right and a fundamental human right. It is only right for states to discuss both security and human rights.

An important perspective on human security was developed in Canada by its government and certain researchers. The Government of Canada based its foreign policy priorities on this idea and also gave the initiative for the establishment of the Human Security Network.<sup>16</sup> The research agenda of human security was also encouraged by numerous round tables and seminars organised by the Human Security Network and the Commission on Human Security. Human rights issues made it onto the UN agenda as well as onto the agendas and into the political discussions of other international and regional organisations and associations such as G7/G8, the African Union, ASEAN and the European Union. An increasing number of governments (Canada, Japan, etc.) and NGOs included human security in their programmes and political priorities (Vogrin, Bučar & Prezelj, 2008). The media began to increasingly focus on topics and issues exhibiting a high degree of harm and threat to individuals. Various disciplines and sciences became involved in the discussion regarding the various aspects of threat and the ways of ensuring individual security.

The concept of human security brought many new developments in relation to the traditional concept of (national) security, which pertains particularly to the individual as the fundamental referent of security instead of the state. It is through the concept of human security that security as such became closely linked to the concept sustainable human development. Besides, one cannot speak of only a single approach towards human security but rather of several approaches that are

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<sup>16</sup> "The Human Security Network (HSN) is a group of like-minded countries from all regions of the world that, at the level of Foreign Ministers, maintains dialogue on questions pertaining to human security. The Network includes Austria, Canada, Chile, Greece, Ireland, Jordan, Mali, the Netherlands, Norway, Switzerland, Slovenia, Thailand and South Africa as an observer. The Network has a unique inter-regional and multiple agenda perspective with strong links to civil society and academia. The Network emerged from the landmines campaign and was formally launched at a Ministerial meeting in Norway in 1999." (Human Security Report Project, 2004)

rather well elaborated at the scientific and conceptual level as well as in practice. There are many similarities between these approaches but also differences. It is the context of formulating a human security concept or policy that is the main discerning factor between these different approaches.

### *3.3. Theoretical approaches to the human security concept*

There are many perspectives on or approaches to the concept of human security. Newman (2001) points out the four most important ones: basic human need approach, assertive/interventionist approach, social welfare/developmentalist approach, and the concept of new security.

The first approach, emphasising basic human needs, stems from the previously mentioned UNDP Human Development Report which includes basic economic, physical, health, personal, environmental, cultural and political security (UNDP, 1994). It finds that the sentiment of (in)security for most people stems rather from the problems of their everyday lives than from cataclysmic threats at a global scale. The main concerns and sources of threat to human security exist all over the world. They may not be present everywhere to the same extent, they are however interdependent. In this context human well-being is the best indicator of security. The concept of human security according to the UN model is both individual and universal at the same time.

The second approach, which Newman (2001) labels as assertive or interventionist, is one where human security simply has to focus on the individual even if this means it is at odds with national sovereignty. This approach namely assumes that a state's security in the traditional military-political sense does not necessarily provide for an individual's security. The trend in modern conflict, becoming increasingly intrastate in character, shows that the state is not necessarily an individual's guarantor of security. Worse still, it may even pose a threat to an individual's security. Nevertheless, the concept of humanitarian intervention remains mainly dependent on relations within the international community.<sup>17</sup> The greatest problem for contemporary humanitarian interventions undermining their legitimacy is thus linked to the question of who executes such actions and the

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<sup>17</sup> One of the most recent military interventions legitimised in this way was NATO's 1999 intervention in the FRY due to events in Kosovo. Two views clashed in this case: the formalist and the idealist (linked to the concept of human security). While the former pointed mainly to the lack of a sound international legal base for an intervention (no UN SC approval) and to the undermining of the fundamentals of international peace, security and stability (such *ad hoc* interventions risking to become standard practice in conflict resolution), the latter used as its point of departure the very concept of human security as being above state sovereignty and which can be achieved also by way of humanitarian intervention.

definition of where and when force may be used to protect human security (Grizold, 2003, pp. 1-11). This is where international media corporations play an extremely important role as they expose only certain conflicts to public opinion while not doing so with others. The question could well be asked whether global media corporations watch over decisions of international elites or have they become a means of world political elites to manipulate the global public? Also of essence for an intervention are the interests of the big powers (Wheeler, 2000).

The third approach according to Newman (2001) is linked to social welfare and has a developmentalist determinant. Developmentalists namely see social development as the central element for developing other public goods and freedoms of import to the provision of individual security. Although this approach is similar to the one advocating basic human needs, there are still significant differences between the two. Developmentalists go beyond providing for basic human needs and also reject the notion of minimum standards of security or survival. They view development as a means on the path towards the ultimate objective, not as the end itself. It is therefore important that peace, development and democracy be considered jointly as they are highly interconnected, just as the concept of human security and the strategies for its implementation must be integral and comprehensive.

The fourth and final approach according to Newman (2001) is oriented towards non-traditional security and non-civil society: epidemiology (HIV/AIDS, SARS), drugs, terrorism, inhumane weapons (e.g. anti-personnel mines), cyber war and man's destructive nature. Political, economic and technological change which has allowed for globalisation to take place has also paved the way to forces that constitute a serious threat to democracy, development and security. The concept of new security thus in many cases places both the state and the individual in the position of main referent, though their relationship may change. A context where security is compromised is thus always a consequence of weak state institutions, the solution to the problem lying in their strengthening. Herein lies the fundamental difference between the concept of new security and the concepts of basic human needs and social welfare where an individual's security is independent of the sovereignty or security of the state, even though a loss of human security may also represent a challenge to the state. This is why the relationship between human or non-traditional security and the more conventional concepts of security is a complex one and requires serious further study.

Individual approaches and emphases to the consideration of human security reflect the differences in the cognition and comprehension of the notion of security. There is still no consensus among experts or politicians, let alone between these two groups, regarding the definition of human security. While certain approaches are expressly positionalist and preserve the status quo (their point of departure is the state level which, for purposes of legitimacy of its action, also

takes account of the security needs and interests of citizens as individuals, for instance in western-type liberal democracies), others are revisionist and place the individual at the point of departure of security related discussions. Regardless of which of the two approaches just mentioned may be closer to one's thinking it remains obvious that ensuring human security runs quite counter to state sovereignty which is still one of the most important pillars of providing for international peace and security. This applies particularly to the assertive or interventionist approach and humanitarian intervention as related to it.<sup>18</sup>

One of the main issues that arise in relation to human security is linked to the mechanisms of its provision. There are also diverging views as to what human security pertains to. Thomas and Tow (2002) define why it is important to speak of human security today and to expose the relationship between humanitarian intervention as one of the most important mechanisms of ensuring human security and state sovereignty. The state nowadays is namely no longer secure if only its borders and territory are secure without its citizens being secure. Humanitarian interventions as conducted by international security organisations (e.g. NATO, UN) in the Balkans, in Africa or elsewhere around the world lead to the dissemination of the security concept while at the same time requiring a new reflection on the relationship between individual security actors or entities in international relations. The authors therefore suggest that the term human security should be more precisely defined so as to acquire greater political and analytical clout and thus applicability.<sup>19</sup> In this context they suggest an approach based on three fundamental premises. The first assumes that transnational threats to international norms or values stem from unadjusted state structures (unadjusted to the globalisational changes of the international environment) which of course means an additional vulnerability of individuals and groups within such states. The second premise is based on the thesis that states and individuals facing the said vulnerability are unable to manage that vulnerability on their own. This leads to the third premise, namely that vulnerable states and their citizens require a certain form of international intervention, thus providing for their basic needs which in turn constitute the fundamental objectives of human security. This approach to

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<sup>18</sup> The relationship between security concepts, universal human rights, morality and the law is a complex one and, at least for the time being, does not offer a simple answer to whether humanitarian intervention is always justified. In spite of possible moral grounds for humanitarian intervention the existing body of international law also needs to be taken into account as it does not provide for such intervention as yet. In this context humanitarian intervention today is in fact a policy of mitigation of consequences once people's rights have already been violated (Grizold, 2003, p. 10).

<sup>19</sup> McDonald (2002) points out the non-operative nature of human security as its main deficiency which is the consequence of the concept's main dilemma: is human security in its essence a normative or a moral project?

human security as advocated by Thomas and Tow (2002) renders rather relative the notion of national sovereignty through the mobilisation of the international civil society that is to protect international norms and distribute power between the state and non-state actors in a globalised world.

Caroline Thomas broadened the concept of human security by including a more positive dimension of security, that is participation in communal life instead of protection from threats. According to Thomas human security has become a “condition of existence in which basic material needs are met and in which human dignity, including meaningful participation in the life of the community can be realised” (Thomas, 1999, p. 3).

One could summarise the discussion of the concept of human security thus far by stating some of the fundamental advantages and disadvantages of the concept as underscored by its advocates and opponents.

The advocates of the concept of human security mainly point to the following advantages:

- it represents a new paradigm of considering security, focusing on everyday threats to the lives of people (e.g. food, crime, etc.);
- it diverts attention away from the state and towards people;
- it points out the interconnection between security and threat in a modern world;
- it may contribute to the minority (the wealthy) developing a more sensitive and responsible approach towards the majority (the poor) of the world;
- it could encourage a positive global awareness on the part of the people;
- it encourages interdisciplinary research.

The critics of the concept of human security on the other hand emphasise its disadvantages:

- the concept is too broad to be able to serve as a political instrument;
- it is conceptually unclear and ill-suited to precise scientific study;
- it is but another name for human rights;
- it advocates the wrong approach in defining priority threats to modern societies (Booth, 2007, pp. 322-323).

We cannot otherwise but agree with the critics. However, the advocates of the concept point to the fact how important the concept of Human security really is. In the light of this approach the critics do only remind us that much work (intellectual, political, activist, etc.) is still has to be done.



#### 4. CONCLUSION

On the basis of our discussion we can draw the following considerations of import for the further study of the issues at hand:

The changed security environment following the end of the Cold War is more complex, vulnerable, instable and dangerous than in the past. Varied responses to new security challenges, dilemmas and problems faced by states and international system emerge both in theory and in practice (politics). The changes marking the structure and functioning of the international system in this period have made it possible for the theory and practice of security provision today to place greater emphasis on the individual and not, as has been the case in the past, primarily on the state. The logic behind this turnaround is clear: just as every country has the right to a safe existence and development so do individuals (all people), regardless of their citizenship, gender, religion, etc., whereas states bear a duty to uphold this right of the people and to allow for its implementation. People or societies organised in territorial communities (states) undertake this organisation for the very sake of security and prosperity.

Globalisation has not done away with the principal security functions of the nation state despite the fact that many states adapt, restructure and develop new security instruments (such as crisis management) in their national security structures and reduce traditional military spending. In this context states' national security concepts place appropriate emphasis on so-called new security threats such as environmental degradation and the negative impact of climate change, contagious disease, economic and technological regression, etc. Global social and economic forces impact states in different ways, which is why states' responses to new security challenges are primarily a consequence of the different regional contexts of states. Big powers for instance have reduced the rate of conflict after the end of the Cold War, nevertheless their competition for achieving optimum security is transitioning into the field of political influence and innovation in developing new weapons systems.

In this respect we would argue that globalization in the area of security requires from the states as well as from international community a conceptual shift in the emerging post-Cold War world order: a shift from international security policy to global and human security policies.

Therefore, in adopting new solutions for the provision of their own security in a changed (complex) security environment states face the dilemma of ensuring their own optimum security without negatively impacting human rights and civic freedoms. The development of human society and of the international community to date has, inter alia, resulted in the closer connection of the concepts of freedom, security and development. This also means that the relationship between freedom, security and development at a global level today exhibits a

positive correlation in the sense that only free societies can also be safe and development oriented. In this context the dilemma of “security or freedom” is nowadays contained in the fundamental question of how to provide people with freedom and security simultaneously in this new and complex relationship between states, non-state actors, civil society and the international system.

In this new reality of the security paradigm at the beginning of the 21st century it should also be expressed by the new comprehensive approach of security that is slowly but surely, despite various setbacks, finding its way into practice (politics) and which comprises, along with traditional military-political dimensions, also cultural-civilizational dimensions of security mainly expressing concern for modern man as an individual and as a member of communities. In this context one could argue that the fundamental features of the present concept of security are the preservation of human life, the provision of freedom and well-being.

Practice shows that most modern states still fail to take this new approach of security on board in their national security policies. Further still, some of them even forfeit established civic freedoms in their positive law with the aim of providing for their own security in a complex security environment. In this context they allow for unannounced house searches without the need for a court warrant, detention without access to a lawyer for an undetermined period, arrests without an explanation of grounds, legalised torture, etc., all of this on the basis of a mere suspicion of an individual (a person) belonging to a terrorist group or having links to terrorism.

Implementing the new comprehensive concept of security in practice represents a great challenge for the world today and a demanding task for modern states, civil societies and the international system overall. The comprehensive provision of security requires the cooperation of numerous actors at local, national, international and global level. Today we are faced with a situation where responses to complex threats are too slow, fragmented and insufficiently coordinated at international level. A significant portion of experts in this field advocate the notion that only under conditions where human rights and democracy are universally established values can the provision of the security of the state, of individuals and of the international system become comprehensive in the sense that it would enable a balanced coexistence, prosperity and development of all three entities mentioned above: the individual in relation to other individuals, to the state and to the international system; the state in relation to other states, to civil society and to the international system; the international system in relation to state and non-state actors and individuals.

The concept of human security is definitively a result of overall developments in human society, especially of the development in the area of human rights and democratization processes. States as the most powerful actors in the international community are still reluctant to implement this notion in its entirety, claiming *inter*

*alia* that human security is a mere principle and that it is hard to convert it into firm legal rights to be respected worldwide. Be this as it may, it seems that the time has come that the concerned politicians and experts should transfer the debate on human security into the broadest public where the idea of rights and duties could be elaborated from the present day principle of human security. Thus the public could and would exert pressure on political leaders to intensify the process of elaborating and implementing the concept of human security worldwide. This would of course on the other hand contribute to the formation of a global society and consequently a global public.

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### PROMENA PRIRODE BEZBEDNOSTI: OD NACIONALNE KA GLOBALNOJ I LJUDSKOJ BEZBEDNOST

**Apstrakt:** U članku se razmatra o mogućnosti zaokreta tradicionalnog ponašanja države od nacionalne ka globalnoj, i konačno ka ljudskoj bezbednosti. U radu se polazi od geneze koncepta bezbednosti, zatim se govori o novim elementima koje sadrži savremena bezbednost i razmatraju se pitanja opšte bezbednosti. Dalje se nastavlja razmatranjem ljudske bezbednosti i njenog nastanka, posebno kao i nekih teorijskih i praktičnih dimenzija njenog koncepta. Na kraju rada se rezimiraju izazovi i dileme vezani za savremenu bezbednost i donose zaključci. Autori su mišljenja da je vreme da principi na kojima je zasnovana ljudska bezbednost postanu integralni deo savremene nacionalne kao i svetske bezbednosne politike.

**Ključne reči:** nacionalna bezbednost, međunarodna bezbednost, ljudska bezbednost, globalizacija, globalna civilno društvo, bezbednosna politika.

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## EU, NATO AND GLOBAL POWER DYNAMICS: WHAT SHOULD BE IN SERBIA'S FOCUS?<sup>1</sup>

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**Abstract:** In this paper we are concentrating on the issue of global power shifts brought on by financial crisis since 2008, its repercussions on European Union's Common Security and Foreign Policy and its relation to NATO's position of ultimate security underwriter in Europe. This relation is burdened with defense budget cuts in majority of EU countries, stability of European continent that pushes NATO into searching for new and unclear strategic goals within complex environment in Africa, Middle East and Central Asia. Then we are looking at what aspects of this relation should Serbia put emphasis on in the process of EU accession which will last at least until the end of this decade. We argue that the security cooperation offered within CFSP is more suitable for Serbia's needs, capabilities and social specifics than NATO's focus on far-reaching goals outside Europe.

**Keywords:** EU, NATO, CFSP, crisis, economy, Serbia.

### 1. INTRODUCTION

The position of the European Union as an autonomous factor in the modern world is still a topic that is open to theoretical and practical analysis. This is not only a consequence of the specific legal and political structure of the EU and its

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transnational character but also the product of other global political powers and systemic changes that come with their involvement. European Union's fluid position in the global power distribution process in recent years has been additionally shaken by the financial crisis and consequently by the doubt in its institutional and economic model. Centuries of the West's and especially Europe's dominance are currently giving way to a more multipolar and less governable world system. It might not be such a problem if the shift was not combined with diminishing military capabilities, again especially in Europe due to the lack of clear threat and falling military budgets.

Within this 'new reality' European Union is struggling to find its balanced posture towards the other global players. It is being dragged by its financial crisis which gave way to questions about its functionality in the past few years. However, if the sustained upward trend of its main economic indicators is yet to be achieved it might be safe to say that there is no looming crisis that could break the euro or the euro zone, something that a year or two ago didn't seem so farfetched. Serbia is in a similar shape, only on a much lower level; its budgets are strained, unemployment levels are very high, and no foreign investment to boost economic activities or export. In that context smart allocation of resources is of a prime importance.

In this paper we will look at the state military expenditures across Europe and a selected few other countries, the repercussions it has on transatlantic relationship and the issue of sharing and pooling military resources exemplified by the often strained relationship between the architectures of Common Foreign and Security Policy and NATO. We shall then describe Serbia's position vis-à-vis EU and more precisely CFSP and Common Defence and security Policy as a part of it, and NATO. Then we will try to argue what is the best recourse for Serbia in the coming years, having in mind its financial strength, strategic orientation and political specifics.

## **2. NATO AND CSDP**

Ever since 1999, when European Union member states decided to create the European Security and Defense Policy (ESDP, now called CSDP) within the framework of CFSP, both CSDP and NATO have coexisted in the similar institutional space of crisis management. Despite American suspicion of an autonomous European security institution, which was based primarily on the notion that NATO's capabilities should not be doubled nor replicated, EU member states created an alternative to NATO crisis management activities. Since then we could observe a number of overlapping features among those two entities.

First, we can notice a significant membership overlapping, since there are 22 countries that are part of both NATO and EU/CSDP and only a handful of

countries that are members of just one of them. Their respective mandates, as seen in 2010 NATO's strategic concept and 2003 European Security Strategy (revised, but not meaningfully in 2008) have not specified either a functional or geographical division of labor between them.

The two organizations rely on both national and common assets to plan and conduct military operations. Military hardware is primarily a national asset. However, command and control structures are crucial common assets for both institutions: NATO has the common Supreme Headquarters Allied Powers Europe (SHAPE) and CSDP has its Civil-Military Cell and Operation Centre (OpsCen). Their operational capacities do diverge – SHAPE is best suited to plan and conduct high-intensity operations while OpsCen is best equipped to plan and conduct battalion size military operations usually alongside civilian or police missions. If EU countries wanted to conduct a high-intensity military operation through CSDP they would need NATO assets, and a prime example would be intervention in Libya in 2011 under UN Security Resolution 1973.

A significant attempt to smooth out the coexistence of these two organizations was undertaken in 2003 via the so-called Berlin Plus agreement (Reichard, 2006, pp. 126-127). It aimed to regulate how the newer CSDP would have recourse to NATO common assets as well as how confidential information would be shared between NATO and ESDP. But the issue of countries with separate membership not wanting to effectively participate in the cooperative process has rendered the whole agreement useless to a large degree. Turkey, as a NATO member outside the EU, and Cyprus, an EU member outside NATO, have both used their veto powers within their own institution in regards to resource-sharing activities. Ankara does so in the interest of its prolonged accession negotiations with the EU, while Cyprus tends to demonstrate its sovereignty. So far, there have been only two operations done in lines with Berlin Plus - Operation Concordia in the FYR of Macedonia in 2003 and Operation Althea in Bosnia and Herzegovina since 2004. There has also been some limited coordination between NATO and the EU outside the Berlin Plus, e.g. in supporting the African Union in Darfur in 2005 and in Afghanistan since NATO took over command of the International Security Assistance Force (ISAF) in 2003. (Reichard, 2006)

After its creation, CSDP member states also started to invest in civilian crisis-management capabilities that gave CSDP a comparative advantage over NATO. When CSDP started to incorporate civilian crisis management into its planning and operations, building up civilian command structures and a police force, there was an opportunity to develop a division of labor whereby NATO would concentrate on the 'pure' military operations, and CSDP would assume primary responsibility for civilian, civil-military and low-intensity military operations. Some European countries aimed for CSDP to become the primary institution dealing



with crisis management, partly to exclude the United States from influencing European policy, partly to increase their range of action independently from NATO. The American-led invasion of Iraq in March 2003 without UN Security Council consent led to a major rift between NATO allies, and it certainly attributed to endogenous European views on its own security that would curb the American influence in it. France was a main proponent of these ideas but since its return to the NATO's integrated military command in 2009 Paris has somewhat blunted its stance on the matter (Bozo, 2010 and Haglund, 2010). During the 2009 NATO summit in Bratislava the American administration wanted to build on this development and to draw the line between NATO and CSDP. As former US Assistant Secretary of Defense for International Security Affairs, Alexander Vershbow, stated during the summit that '... The ideological debate over whether NATO and the European Union are complementary or competitive has ended. As we've seen in the Balkans and are seeing today in Afghanistan, each institution has distinct capacities that it brings to crisis management, stabilization operations, and responses to threats to our economic and security interests. We support steps that strengthen the EU's capacity to contribute, and we look forward to expanded continued close, results-oriented NATO–EU cooperation in the years ahead' (quoted in Yost, 2010, p. 493). However, at the insistence of the United States and Turkey NATO has followed CSDP in incorporating civilian elements into its doctrine and operations, as seen in its 2010 Strategic Concept (Glišić, 2011).

There were also some views that didn't look at this transatlantic relation as a binary issue, but noticed the multiplicity of interests among European states and different American approach to them (Friedman, May 7<sup>th</sup> 2013). According to George Friedman, the chief strategist at Stratfor, NATO rapidly started to fragment when the United States decided to invade Iraq for the second time. The majority of countries in NATO supported the invasion, but France and Germany did not. This damaged US' relations with Europe, who have a way of getting under the skins of US while appearing oblivious to it. But the greater damage was within Europe-the division between those who wanted to maintain close relations with US, even if they thought the Iraq War was a bad idea, and those who wanted Europe to have its own voice, distinct from the US. The 2008 global financial contagion did not divide US and Europeans nearly as much as it divided Europe. Friedman realized that there is no American relationship with Europe because Europe is no longer an idea but a continent made up of states with diverse interests. There are U.S.-French relations and U.S.-Russian relations and so on (Friedman, May 11<sup>th</sup> 2013).

The current state of relationship between CSDP and NATO cannot be easily characterized as either outright cooperation or clear competition. Instead, the interests that are pursued through different member state strategies have led to an ambiguous relationship. Competition arises through institutional battles as

different states muddle through each organization to promote their specific policies. We should stress that these dynamics alone have weakened NATO's role as Europe's primary security underwriter. Clearly the U.S. would have more influence if NATO were the only collective security institution in Europe. The decade since CSDP's emergence has witnessed important changes in crisis management, as member states alternatively cooperate and compete around CSDP and NATO. This 'duality' can hardly be expected to disappear in a short to intermediate future since Turkey is unlikely to join the EU and will probably persist in impeding formal cooperation where it can.

During the last decade the EU has managed to establish a relatively positive narrative on defense and security issues and practically to cherry-pick the missions it can have the most impact at, even though that in CSDP-NATO division of labor the NATO has the 'right of the first refusal'. Parallel to that and beginning in 2003 with the *Operation Iraqi Freedom* the United States and NATO as a partial tag-along have lost much of the credibility as a superpower combination. Today, with Washington's 'pivot to Asia' and its deep relations (one could call them strategic partnerships) with Australia, New Zealand, Japan, South Korea, and other non-European states we must ask the question what is the significance of NATO for a European continent today? Just recently Swedish defense minister Karin Enstrom publicly opened the debate on EU-only based security guaranties. Referring to Lisbon Treaty's article 42.7, she noted: 'Since the EU is not a military alliance, it's not like article five [Nato's collective security clause], but there is this line which says all EU member states must support any other member state if it's attacked or if it's affected by a natural disaster.' (Rettman, April 22<sup>nd</sup> 2013) Being a minister of a non-NATO country her remarks do not carry that much nominal weight, but she did made a perfect point: there is a common defense normative obligation, and even that it hasn't been tested in practice it stands as an option, a foundation to possibly build upon. Sweden, Austria, Cyprus, Finland, Ireland and Malta are the EU states which are not also NATO members. Historically, Sweden stayed out of NATO in solidarity with its neighbor Finland, which stayed out in order not to antagonize former Soviet Union and today's Russia is not nearly the threat the Soviet Union was perceived to be, yet those two Nordic countries are staying away from NATO. It is safe to say that despite the successful enlargements so far, both NATO and EU seem to suffer from enlargement fatigue and are much more concentrated on internal matters, the European Union much more so due to its substantially broader nature. Countries from the Western Balkans are likely the first and for the foreseeable future the only candidates to be considered for admission into one or both of these organizations (Tassinari, 2010, p. 288).

### 3. CSDP MILITARY CAPABILITIES AND MISSIONS

After the end of the Cold War, EU countries have implemented a number of reforms concerning their military structures and capabilities, trying to adapt to the new international system and its. We can observe a general trend towards smaller, all-professional forces as the new norm. On supranational level these reforms have also coincided with the consolidation of security cooperation within the EU itself via new frameworks of the European External Action Service (EEAS) established in 2010. So far it was the latest institutional novelty in the area of EU's tendency to speak to the world with a single voice, which started two decades ago with the launch of the CFSP and then the CSDP. EU countries have provided troops or military equipment under their own national flags, i.e. as a part of 'coalitions of the willing' like the one in Iraq in 2003, and occasionally within the framework of the United Nations, NATO or CSDP. Geographic coverage of these actions gives a rather speckled image – it includes the Balkans, parts of North Africa and Sahel region further south including the Horn of Africa, through the Middle East onto the Central Asia.

As of May 2013 there are 15 ongoing missions under the auspices of CSDP (CSDP Note, Overview Ongoing CSDP Missions, 2013). These would include:

- EUFOR Althea, a mission in Bosnia, since 2004, providing the security environment;
- EUSEC DR Congo, since 2005, for security sector reform of its military;
- EUJUST LEX Iraq, since 2005, addressing Iraq's judicial system;
- EUBAM Rafah, since 2005, providing a third-party presence in the border check-points, largely suspended since 2007 after Hamas took over the Gaza strip;
- EUPPOL COPPS, since 2006 in the Palestinian territories, for strengthening police capabilities;
- EUPOL DR Congo, since 2007, for security sector reform of police and judicial sector;
- EUPOL Afghanistan, since 2007, for strengthening police capabilities;
- EULEX Kosovo, since 2008, civilian mission focused on judiciary system reform;
- EUMM Georgia, since 2008, monitoring mission launched after the short conflict between Georgia and Russia;
- EUNAVFOR Atalanta, since 2008, naval forces anti-piracy mission off the Horn of Africa;
- EUTM Somalia, since 2010, providing training to Somali National Armed Forces;

- EUCAP Sahel – Niger, since 2012, improving capacities of Niger Security Forces in anti-terrorism duties;
- EUCAP Nestor, since 2012, widening the scope of EUNAVFOR Atalanta, aims to improve maritime security capacities of the 8 Horn of Africa countries;
- EUAVSEC South Sudan, since 2012, civilian mission for enhancing capabilities of security forces at Juba International Airport;
- EUTM Mali, since 2013, providing military assistance and training to Malian Armed Forces.

The EU institutions and procedures connected to the CSDP fall under the aegis of the High Representative for the CFSP and Vice-President of the European Commission, a post now occupied by Catherine Ashton, and within the scope of the European External Action Service (EEAS). The military component of CSDP is still largely distinct since it has its own specialized bodies and specific procedures than those adopted for civilian crisis management. For its part, the common defense and the common defense policy were mentioned in the Lisbon Treaty but haven't received sufficient attention after the treaty was adopted. It created bit of a fragmented field which, by default, does not bode well for cohesive and cost-effective policy making process.

In large part due to the ongoing economic crisis that has reduced defense spending, and due to the wide array of operations, the EU's existing military capabilities are increasingly stretched by the wide scope and volume of operations in conjuncture with flat and falling defense budgets and questionable levels of overseas mobility. The financial crisis, with its long-term consequences, has further complicated this state of affairs. As a result of the subprime bubble and the ensuing euro zone crisis, most European countries (with few exceptions such as United Kingdom and Greece) have considerably reduced their defense budgets. Most importantly, further reductions will inevitably occur due to a mix of demographic pressures and budgetary necessities as a consequence of acquired debt in the current crisis period. National budget cuts were carried out without much coordination and consultation among European countries. As a result, they have generated cascading effects across and throughout the combined military capabilities of the Union. The armed forces will be the most likely target for further cuts, which may be a burden for its deployment capabilities but also reflects the peace and stability that the whole European continent enjoys at the moment, so it remains a matter of point of view whether it should be a major concern for the future. We would argue that the focus should be precisely in the area of inter- and supra-national cooperation and resource sharing and pooling practices, not in a narrow-minded fight to keep the military spending on a given percentage of GDP within its current budgetary structure.

Prior to his departure as US Secretary of Defense, Robert Gates gave a major speech on burden sharing issues within NATO, about the ‘real possibility for a dim, if not dismal future for the transatlantic alliance’. His comment has targeted what he thought to be inadequate and inefficient defense spending by most European members of the Alliance. The problem of burden sharing has been an issue within NATO ever since it was founded and is unlikely to go away. Without a current major threat to European continental security it is hard to make the case that rising military budgets is a necessary measure, especially in a time when austerity measures is a key word. As leading NATO members such as Britain reduce their armed forces, the Alliance’s pool of high quality deployable forces will decline. However, as individual powers reduce their military capabilities, the case for collective security and for maintaining NATO may be strengthened (Michaels, 2012, p. 59). With dwindling financial resources that are committed to the defense budgets, will the European countries have to make a choice on which program to allocate their resources, at what level will the shared resources be located? It is hard to give even a remotely precise answer but we must note that there might be significant dilemmas within European defense communities on resource allocation in the future.

Since the Libyan crisis in the spring of 2011 we could observe three specific issues for the CSDP. First, there is the growing reality of American military disengagement from Europe since the US no longer sees Europe as the centre of its military effort. The January 2012 US *Strategic Guidance* paper makes it clear that henceforth America’s focus will be on the Asia- Pacific region and the Middle East. The Libyan crisis introduced the concept of the United States “leading from behind” and it very well might be the sign of things to come. The second issue is linked to the mentioned operational capabilities of combined EU forces. A number of pooling and sharing projects have already been initiated such as the European Air Transport Command (EATC) which was established at Eindhoven Airbase in the Netherlands in 2010 and offers a joint usage to the air forces of Germany, France, the Netherlands and Belgium. The third issue is the questionable nature of EU’s capacity to autonomously project itself on a global stage. That capacity is, among other things, the product of the way the CSDP and to a larger extent the Common Foreign and Security Policy is being decided upon through the intergovernmental method. While historically being the *conditio sine qua non* of state sovereignty, foreign and defense policies are today stuck in the middle ground between national capitals and Brussels (Howorth, 2012, pp. 2-3). Since it is not within the scope of this paper to review the pros and cons of such arrangements, it must at least be noted that it hinders the motions for European-wide approach toward coherent strategic vision. There is a need for a wider debate on these issues, and a solution should probably arrive in the form of European ‘coalition of the willing’ formed around specific problems, that would have

sufficient military tools at its disposal while leaving the ‘non-willing’ European states temporarily out of the picture and with no specific burden.

On a larger scale several key trends that influence CFSP framework and Europe as a whole are currently visible. The first is accelerated globalisation, which has brought unrest zones closer to European borders and effectively reduced response time for European security establishment. The second and the corollary of the first one is the rise of a multipolar and less governable world system, with new regional players acting as regional powers that are firmly on a way of enhancing their military capabilities through increased expenditures. The third trend is in development of new weapons systems, characterized mostly by the advancements in cyber warfare (EU Institute for Security Studies, 2013, pp. 16-24). As we have seen, adjusting doctrines and setting out technological needs is less of a problem than creating a coherent way of using them and allocating budgetary funds for these purposes. The problem seems to be entrenched within public and political environment, the will of the population to support these policies with limited funds at their disposal being the ultimate argument in the debate.

#### **4. THE DOWNWARD TREND IN EU'S MILITARY EXPENDITURE**

With global economic crisis the downward trend of military expenditure in EU and globally has accelerated. According to Stockholm International Peace Research Institute (SIPRI) by 2012 military expenditure had dropped to less than 2 percent of GDP on global level (SIPRI Military Expenditure Database, 2012).<sup>4</sup> Even in 1995, after the Soviet Union's collapse and before the Asian Financial Crisis, average global military expenditure was hovering on a level of around 2.5 percent of the GDP. While generally it keeps falling as a percentage of GDP, China's and Russia's expenditures are rising. China, the second largest spender in 2012, increased its expenditure by 7.8% (by 11.5 billion dollars) while Russia, the third largest spender, increased its expenditure by 16% (by 12.3 billion dollars) (SIPRI, 2013, April 15<sup>th</sup>). Figures released by SIPRI (15 April 2013) shows that world military expenditure totaled \$1.75 trillion in 2012, a fall of 0.5% in real terms since 2011 (SIPRI, 2012, April 17<sup>th</sup>).

In 2012 the USA's share of world military expenditure went below 40% for the first time since the collapse of the Soviet Union. A declining trend that began in 2011 has accelerated in 2012, with a US drop of 6% in real terms to \$682 billion. The bulk of cuts will begin in 2013. On the other hand, China has introduced a

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<sup>4</sup> E.g. Vietnam has dramatically reduced its military expenditures, to 2.4 percent in 2012, down from 7.1 percent of GDP in 1988; Taiwan's military spending dropped from 5.3 of GDP in 1988 to 2.3 percent in 2012.

170% increase, the Russian defense budget has grown by 79% and US military spending has gone up by 59% since the turn of a century. European spending dropped from 2.9% of GDP in 1988, to 1.7% in 2012 (Kang, 2012). Austerity policies caused falls in military expenditures in most of Europe in 2012. Since the 2008 global financial crisis, 18 of the 31 countries in the European Union or European NATO have cut military expenditure by more than 10% in real terms.

As part of their efforts to save money, governments have been letting go of significant numbers of military personnel. Together, European states have discharged 160,000 soldiers between 2009 and 2011. Despite the cuts, personnel costs still account for more than 50% of the defense budget in many European countries. As many of these troops are not deployable, this is a poor use of resources – particularly at a time of fiscal austerity. The long term global competitiveness of the European defense industry is also being undermined. Since the 1990s, Europeans have been reforming their armed forces from large, immobile militaries designed specifically for territorial defense into deployable units which can be sustained in distant theatres. Even before the economic downturn there was a discrepancy between the speed at which the US and Europeans modernized their military capabilities and introduced new technologies. For many years, some European allies were able to afford modest contributions to NATO or CFSP missions.

In any case, it will not be feasible for most NATO countries to increase their military expenditures in the years to come. But allies can use their limited financial resources much more efficiently. Europeans could secure significant savings if they increased the level of cooperation amongst their armed forces and dismantled many of the remaining barriers in the European defense market. Unless European politicians overhaul the way they spend their military budgets, NATO's level of ambition will quickly lose any semblance of relevance (Mölling, 2012). A continuing reduction in capabilities seems likely if not quite inevitable because Europe no longer faces any serious, let alone existential threats. EU leaders still might talk about creating a continental foreign policy and military and national politicians still might want armed forces capable of doing more than providing an honor guard for foreign dignitaries, but European peoples exhibit little interest in paying the resulting bill (Bandow, May 23<sup>th</sup>, 2013).

At the moment, Germany spends around 1.4% of GDP (Giegerich, 2012) and France has also reduced the amount it spends on its military as a share of GDP. In 1988, France spent 3.6% of its GDP and by 2012 it devoted closer to 2% of GDP. It is possible to outline several potential negative fallouts, among others, of reduced French military spending, especially: to have a free-ride behavior within NATO (like most other Europeans, France risks relying increasingly on the US to address global crises), or abandoning the cause of EU defense cooperation since France would no longer be in a position to sustain its

long standing efforts to turn the EU into a leading player in global security with autonomous military capabilities (Grand, 2012). The French white paper on defense published in April 2013, caps spending at current levels and calls for substantial personnel reductions over the next five years (Ministre de la Défense, 29 avril 2013). According to press reports, (Erlanger, April 29<sup>th</sup> 2013) the military is set to lose as many as twenty-four thousand more employees between 2016 and 2019, on top of cuts initially set in motion by the previous president. In his initial instructions to the white-paper commission, French President Francois Hollande confirmed that he intended for France to maintain a strategic nuclear deterrent (nuclear forces are “the ultimate guarantee of our sovereignty”). It means that the France is unlikely to join the other nuclear powers in negotiations to reduce nuclear forces anytime soon (Klotz, May 8<sup>th</sup> 2013).

According to data of World Bank, in South-East Europe a decreasing military expenditure can be detected since the beginning of the economic crisis in 2008. Military expenditure as share of GDP in the period 2008-2011 has decreased from 2% to 1,5% in Albania, in Croatia from 1,9% to 1,7%, in Hungary from 1,2% to 1%, in Bulgaria from 2% to 1%, in Macedonia from 1,8% to 1,3%, in Romania from 1,5% to 1,1%, in Slovenia from 1,5% to 1,4% in Serbia from 2,3% to 2,1%, while increasing in Montenegro from 1,9% to 2% and in Bosnia and Herzegovina from 1,3% to 1,4% (The World Bank, 2012). Similarly to wider European trend it is being driven both by reduced direct military threats and by worsening of economic situation.

## **5. SERBIA AND CFSP**

Since the general elections in May 2012 and subsequent partial change of Government there was a logical question what sort of foreign policy will Serbia undertake in the future. About a year later we can observe that the trend of aligning foreign policy with the EU's Common Foreign and Security Policy that was started by the previous Government has continued without any visible detour. It seems that the shift from relying on four pillars of foreign policy (EU, USA, Russia and China) towards clearly visible pro-EU stance came as a result of application of Stability and Association Agreement, receiving a candidate status and in conjuncture with negotiations about Kosovo and pressures on Serbia's leadership along these lines.

From the beginning of 2011 Serbia was already prepared to participate actively in the EU civil and military crisis management missions. An agreement establishing a framework for participation of Serbia in EU crisis management operations was signed in June 2011 and it effectively opened the door for Serbia's involvement in CSDP missions. The Serbian Parliament adopted in February 2012 a decision approving the annual plan for participation by the Serbian army in



multinational operations. This plan initially envisaged participation in two EU CSDP operations: EUTM and EU NAVFOR Somalia (Commission Opinion on Serbia's application for membership of the European Union, 2011, pp. 126).

During 2012 both Serbian Governments have followed this path in a number of ways. The first practical step was in April 2012 when EU High Representative for Foreign Policy Catherine Ashton said that the twelve non-EU countries, including Serbia, decided to implement the European Commission's decision to extend the list of officials of the Ivory Coast and Zimbabwe restricting their rights of travel and financial transactions. In mid-July she noted that Serbia was joining the Commission's decision to extend the list of people from Syria and Belarus that were affected by the Commission's sanctions. This particular decision regarding Belarus has caused the public attention, with a reminder about the circumstances of NATO bombing in 1999 when the President of Belarus Lukashenko visited Belgrade and gave public support to Serbia. Then, in early November, nine countries decided to support the measures of the European Commission's sanctions against Iran, associated with the dispute over Iran's nuclear program. (European Union Restrictive measures (sanctions) in force, updated on 5.6.2013). In May 2013 Serbian Government and EU agreed on Serbian involvement in EUTM Mali mission, with 13 non-combatant personnel, medical and training and a budget of 75 million dinars (approximately 700.000€).

Such a trend has led to a favorable position of the European Commission regarding Serbia's accession in its December 2012 Progress Report. The Commission stated that 'as regards the common foreign and security policy (CFSP), Serbia has significantly improved its record of alignment. When invited, Serbia aligned itself with 69 out of 70 relevant EU declarations and Council decisions (99% alignment)' (Serbia 2012 Progress Report, p. 62). Also, the Commission found that 'concerning the common security and defense policy (CSDP), in February 2012 Serbia ratified the June 2011 agreement establishing a framework for Serbia's participation in civil and military crisis management operations. Serbia participates in the EU Navfor-Atalanta Somalia operation and EUTM Somalia operation with one member each. Serbia attended the EU Battlegroups conference in April 2012. Following the granting of candidate status, Serbia started to participate in meetings of the EU Military Committee in March 2012' (Serbia 2012 Progress Report, p. 63). Parallel to that Serbia is in the process of conclusion of an Administrative Arrangement between its Ministry of Defence and European Defence Agency, as mandated by the Ministerial Steering Board in March 2012.

## **6. SERBIA AND NATO**

Since the NATO interventions against Bosnian Serb's positions near the end of the Bosnian War (1992-1995) and especially since 1999 Kosovo War and

bombing of Federal Republic of Yugoslavia, the image of NATO within Serbian public opinion was, and remains, very low. The latest polls shows that only 13% of the respondents are in favor of Serbia's full membership within NATO (TANJUG, 17.07.2013), a number that undoubtedly represents the historical baggage that NATO has in the eyes of the local population.

After the ousting of Slobodan Milošević in October 2000 Serbian (then-Yugoslav, until 2003, and Serbian-Montenegrin, until 2006) official relationship with NATO was additionally burdened by NATO's role in the Kosovo Force (KFOR), which Belgrade usually perceived to be a *de facto* support for Kosovo independence. By the second half of the decade the relationship has gradually increased, first by Transit Agreement in July 2005, by forming Serbia-NATO Defence Reform Group (DRG) in February 2006 and then by gaining momentum mainly through Partnership for Peace program (PfP) since December 2006. Since joining the PfP Serbia has first Planning and Review Process (PARP) in 2007, as a way of identifying capabilities that could be available for multinational training, exercises and operations and as a way of measuring progress in defense and military transformation. In October 2008 Serbia and NATO have signed a Security Agreement which provided a secure way of exchanging data, followed by first Individual Partnership Cooperation Program (IPCP, for 2009-10), which was followed by second (for 2010-11) and third IPCP (for 2011-2012).

The next step came in the form of Individual Partnership Action Plan (IPAP), which started in February 2011 when Serbian Government approved the Presentation Document and its implementation plan which was accepted by NATO in November 2011. The document has laid out four areas of cooperation: political and security environment that stresses out the multilateralism in approach to ongoing challenges, defense and military environment with emphasis on interoperability and involvement in NATO-led missions, and public sector environment and data protection issues. One of the key notions of this development is that IPAP does not envision Serbia's membership in the NATO (excludes the possibility of Serbia's participation in Membership Action Plan), and that stance is based on Serbia's declared military neutrality. The condition for Serbia's participation in NATO-led missions is the approval of UN Security Council and relevant decision of Serbian Parliament (Ministarstvo odbrane Republike Srbije, 2011, p. 30). This action plan lists several challenges to Serbia's security, starting with separatist tendencies (Kosovo is viewed as a part of it) and armed rebellion, and moving onto the global terrorism, proliferation of weapons of mass destruction, ethnic and religious extremism and organized crime. At the moment the new IPAP is being produced by the Serbian Defense Ministry, and according to available information it will put more emphasis on public diplomacy, new security challenges and defense reform financing (Beogradski centar za bezbednosnu politiku, 2013).

As of June 2013 Serbia has several military installations for use as Regional Training Centers within PfP. These are Military-Medical Academy (VMA) and peacekeeping Operations Center, both in Belgrade, Technical Overhaul Facility in Kragujevac and Chemical, Biological, Radiological and Nuclear (CBRN) Training Centre in Kruševac, and also a military base “Jug”, near the Kosovo border (Ministarstvo odbrane Republike Srbije, 2011).

## 7. CONCLUSION

Serbia has been officially neutral country since parliamentary declaration in 2007. Relevant subsequent documents, including IPAP, have acknowledged that fact and have not made any attempts to circumvent it. Therefore, the main obstacle on the road towards Serbia's membership in NATO lies within its political system, its electorate and public opinion domains. Reversing this policy of neutrality for the sake of NATO membership is certainly going to be a difficult task for political actors that choose to undertake it, if they ever do so.

Serbia's military is, broadly speaking, sharing the destiny of its European counterparts: it is now a professional service, still spending a large portion of its budget on payrolls; infrastructure and equipment modernization programs are too few and far between. Serbia's population is heavily interested in economic matters and generally not interested in sending troops abroad, especially in a combative role. Its armed forces have a highest degree of cooperation with Austria, another neutral country and with Norway and Italy, both NATO members but the connection is easily explained by bilateral political interests (Milenković, 2012, p. 21).

The steps of engagement across state borders are so much easier to take within the framework of the CSDP than NATO. The EU has proved particularly good at setting shared medium- to long-term policy goals (ends) and creating the administrative procedures and the institutional and budgetary arrangements required to meet them. It has also been extremely good at reassuring its member states about their say in these matters which plays well with Serbia's particular role as neutral nation and its view on sovereignty issues. The NATO has almost purely negative appeal in this respect within the public, not only because of Serbia's collision with it at the end of the XX century but because NATO is usually perceived as a tool of just one country that has global reach with almost imperialistic goals. The emphasis in the area of European security for the coming decade will be in its relation with its southern neighbourhood (Northern Africa), Middle East and trading routes to Asia. While military capabilities will certainly play its role the main effort will be in the sphere of political influence and diplomatic effort in a multilateral manner, including strong regional players (Russia, China etc) in the process. As we have seen there is in place a sort of ‘division of labor’ between CFSP and NATO. Naturally, being much broader than NATO in terms

of volume of policies it deals with, CFSP has more institutional tools to cope with wider, global challenges that are defined by the specter of economic crisis in the short- and mid-term future. NATO's more limited function as a 'hard' power has shown that it is indispensable at times (eg. intervention in Libya) but its usefulness for Serbia right now is very much in doubt.

If the rationale that stated that no country can join the EU unless it joins NATO has been historically valid so far, its underlying logic belongs to the 1990s with the particular political dynamics of that time. The Cold War was just over, Eastern European countries were in institutional and economic mess while former socialist Yugoslavia was in a civil war, and it was no wonder that security matters came first. Today, with most of these troubles successfully alleviated, Serbia being a fully cooperative country and not being perceived as a pariah state that needs tutoring, with no foreseeable scenario that would replicate Turkey – Cyprus confrontation and mutual blockade that has burdened the EU – NATO relations, and with NATO's slow but certain shift outside of the European theater, there is a significant question of necessity to join NATO, having in mind still dominant resentment among the voters.

With falling and/or stagnating funding for the military and defense sector in general the policies of smarter use of available resources will have to make an impact. Continuing on the path of involvement in CSDP operations and trying to be proactive in its small role within it, is the way to go for Serbia. Questions of European foreign and security issues will most likely be dominated by domestic policy preferences (i.e. budgetary constraints) and by the need for wider political consensus on these issues. So far time has proven that within the context of EU these issues could be managed with much more public appeal than with NATO as a frontrunner. The problem of Kosovo as the main security issue for Serbia is being gradually moved aside within the scope of Serbia's accession to the EU and CFSP scope of interest, and other enumerated issues are falling within these scopes as well. While programs within PfP arrangements present a solid foundation for extended cooperation on various military and civil-military issues, there is no need to make a step further since it would require a major policy shift with no public support for it and no clear benefits in respect to the security challenges that couldn't be achieved on a CFSP level.

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### **EU, NATO I GLOBALNA DINAMIKA MOĆI: ŠTA TREBA DA BUDE U FOKUSU SRBIJE?**

**Sažetak:** U ovom radu autori sekoncentrišu na pitanje izmene tokova globalne moći izazvanih finansijskom krizom od 2008, posledica na Zajedničku spoljnu i bezbednosnu politiku Evropske unije i odnosu prema NATO-u kao krajnjeg pokrovitelja bezbednosti u Evropi. Ovaj odnos je opterećen smanjenjem budžeta odbrane u većini zemalja EU, stabilnošću evropskog kontinenta koji gura NATO u potragu za novim i nejasnim strateškim ciljevima u kompleksnom okruženju u Africi, Bliskom Istoku i Centralnoj Aziji. Potom razmatraju na koje aspekte tog odnosa Srbija treba da stavi naglasak u toku procesa evropskih integracija koji će trajati barem do kraja ove decenije. Njihov argument je da je bezbednosna saradnja u okviru ZSBP pogodnija za potrebe, sposobnosti i društvene specifičnosti Srbije nego što bi to bila saradnja sa NATO-om na dalekosežnim ciljevima izvan Evrope.

**Ključne reči:** EU, NATO, ZSBP, kriza, ekonomija, Srbija.

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## BOOK REVIEWS

### ENVIRONMENTAL LAW IN SERBIA

Vid Vukasović, Dragoljub Todić, *Environmental Law in Serbia*, Kluwer Law International BV, The Netherlands, 2012.

Published by one of the world's most famous publishers of legal literature, this book through its contents covers all fields of legal regulation of the environmental protection in the Republic of Serbia. Besides that, the book contains an overview of provisions which only indirectly impact the environment, with the idea to give a foreign reader a better understanding of the role and position of Serbian legal system of environmental protection. However, this book cannot be looked upon as just a mere collection of regulations in one place, but as well as a theoretically polished study on the state of environmental law in Serbia in the contemporary moment. This can be seen from the manner of its writing, which is grounded in facts and well argued, but also from the reputation of its authors, which stand among leading national academic authorities for questions of environmental law.

The structure of the book is conditioned by the subject matter and its purpose – informing the foreign reader on Serbian legal system of environmental protection. Having in mind that the book is thus of a slight encyclopedic character, an informative and summary approach is justified, with the accent on the ever broader coverage of existing legal regulations and terminology, not only those directly related to the environment, but also indirectly, through laws that regulate questions of liability for damages, spatial planning and others. Critical contemplations are necessarily concise, while the accent is on clear and systematic approach in the commentary of various contained information.

In the introduction a brief overview of general information on Serbia is given, not only on its environmental problems, but on geography and population as well, political history and current political structure, economical, social and cultural parameters. This is followed by a section on the basic principles of environmental law, which mentions the right to a healthy environment as a constitutional right, and constitutional competences of the Republic, regional and local autonomies. Besides this, the authors analyse the strategical framework of the national environmental policy and law, as well as



general principles in various national strategic documents. Further, a short historical account of environmental regulations that have existed in the past is provided, and then, through a legislative overview, a list of competences of the Government and local councils in the formation of environmental law and policy is given. Finally the introduction concludes with a section consecrated to sources of environmental law, both international and national.

First part of the book is dedicated to legal regulations of the environment in various fields. First chapter deals with general concepts, it is split in separate sections which relate to the legislation on pollution, which consists of environmental impact assesment, strategical environmental evaluations, integrated pollution prevention and control and risk management, access to information and public participation in the field of environment, environmental management, enforcement and legal harmonization. At the end of this chapter a concise critical assesment of the existing legal system is given. Other chapters of the first part relate to the environmental ecosystem and parts thereof, including certain domains of environmental protection (water resources, waste, land, noise, harmful emissions, poisonous substances and rational energy usage).

The second part is dedicated to the nature preservation and management. It deals with legal regulations on the protection of natural sites and their ambiantal parts, cultural sites as man-made monuments, passing futher on the landscape protection, national parks and reserves, flora and fauna, agricultural resources. In the course of this chapter regulations on biotechnology, forests, fishing and hunting, including mineral resources are also analysed. The authors continue the analyse in the same manner, by clearing the terminology and defining the contents of related terms through the existing legal regulations.

The third part is dedicated to the land use planning, or spatial planning. It also follows the methodology of previous two parts, where firstly general legal acts are presented, and then regulations on the organization and construction of space are meticulously analysed.

The fourth part is dedicated to the very important but controversial question of the liability for damages to the environment. It is separated into parts on civil, criminal and other forms of liability (corporate crimes and offences).

The fifth part relates to legal proceedings which individuals have at their disposal in the legal system of the Republic of Serbia, such as administrative and judicial, ordinary or extraordinary, as well as some alternative forms of dispute settlement, such as mediation, the institution of ombudsman or the commissioner for information of public importance.

It is important to stress that, although the title of the book mentions the legal system of Serbia, in every relevant passage references on international and regional provisions and environmental treaties can be found. Thus the legal

system of Serbia is positioned in the wider context of general system of environmental protection in Europe (especially in the EU) and wider in the world.

In conclusion, it can be said that the authors have provided a useful work intended primarily for academic and general public abroad, in which is in concise and informative way treated the state of environmental legal protection in the Republic of Serbia. The result is that it is made easier for lawyers from English speaking countries to get to terms with this topic in one place, without the gruelling research of individual laws and acts of which this field is quite plentiful. By positioning all regulations in the context of regional and international environmental law, the vision of their relevancy and position in general hierarchical system of legal provisions is accomplished. Through the overview of procedural rules that offer to citizens possibilities of protection of their proclaimed rights to a healthy environment, this book appears as a manual for every individual on the solution of his problems concerning the environment which directly concern him, or in which he is just interested. Besides that, it will be of use to academic, research and bussiness circles which interest themselves in Serbian enviromental regulations, according to their necessities and preferences.

*Mihajlo VUČIĆ*

## CONFERENCE REVIEW

### STRATEGIC DEVELOPMENTS AND ESTABLISHMENT OF SERBIA'S POSITION IN CONTEMPORARY INTERNATIONAL RELATIONS

*22-23 April 2013, Belgrade*

The international scientific conference “Strategic Developments and Establishment of Serbia’s Position in Contemporary International Relations” was held at Institute of International Politics and Economics (IIPE) on 22 and 23 April 2013. This was one of the series of conferences traditionally organized by IIPE in cooperation with the German foundation *Hanns Seidel*. Support and sponsorships for the conference organisation were provided by the Ministry of Education, Science and Technological development, the Ministry of Interior, the Ministry of Justice as well as by the Ministry of Defence of the Republic of Serbia. The significant and current topic attracted a great number of eminent scholars from numerous universities in Serbia and abroad along with representatives from ministries and young researchers. Over 70 scientific papers were received.

The Conference was opened by Dr. Duško Dimitrijević, Director of IIPE. As a representative of the Ministry of Education Education, Science and Technological development, Prof. Jovan Bazić emphasized the significance of this topic in the articulation of foreign policy of Serbia. After Prof. Bazić, participants were addressed by Mr. Vladimir Božović representing the Ministry of Internal Affairs, Ambassador Miomir Udovički as the representative of the Ministry of Foreign Affairs and Miroslav Jovanović from the Ministry of Defence of the Republic of Serbia.

The conference was divided into 4 thematic panels in which all authors represented their papers.

The first panel was dedicated to foreign policy aspects in determining the position of the Republic of Serbia in contemporary international relations. The discussion was moderated by Dr. Duško Dimitrijević, Director of IIPE and Prof. Dr. Dragoljub Todić, Professorial Fellow at IIPE. The participants presented their views on the current geo-strategic and geopolitical position of Serbia, the most

important priorities of the foreign policy strategy and its possible directions and the influence of the great powers in the process of foreign policy making of the Western Balkan countries. The issue of the Eurozone was discussed as well as the question of European integrations and its possible impact on Serbia's foreign policy. The participants from Bosnia and Herzegovina, Macedonia and Poland presented their own experiences and possible lessons, which may be useful for Serbia.

The second panel was dedicated to economic aspects in determining the position of Serbia in contemporary international relations. Moderators were Professors Dr Predrag Bjelić and Dr Pero Petrović. More than twenty papers were presented covering interesting and current topics. Participants from various foreign countries also took part in this part of conference. At the beginning of the panel, focus was put on the significance of economic reforms, which Serbia should carry out in order to improve its position in contemporary economic relations. The next topic was the evaluation of effects of the global financial crisis and expansionary monetary policy in the Eurozone and the United States on the economy of Serbia. Some scholars paid attention to credit rating. The starting point was the fact that credit rating was one of the crucial indicators of a country's credibility in international economic relations due to the rule that states: „the better the rating, the cheaper the credit“. It was also pointed out that the evaluation of the Republic of Serbia credit rating affected the opportunities for attracting foreign capital and investments. The position of the Republic of Serbia and its perspective in international trade was also analysed. Various opportunities that should be taken by the Republic of Serbia in order to increase its exports were presented. The major attention was given to the economic aspect of the process of European integration and the authors attempted to identify pros and cons of the European Union membership. The analysis of Free Trade Agreement between the Russian Federation and the Republic of Serbia was also discussed. Furthermore, it was pointed out that the Republic of Serbia accomplished 9/10 of foreign trade with the countries with which it had concluded free trade agreements. Accordingly, Free Trade Zone represents “dominant form of trade relations of the Republic of Serbia with foreign countries“. During this panel other important questions were addressed which should also be highlighted and they are as follows: position of the Republic of Serbia in international trade; aspects of intellectual property; greenfield investments as a chance for economic growth; international investment flow in agriculture; facilitation of competition and cooperation in the Danube region; future of world economic relations.

The third panel was dedicated to international legal aspects of establishing the position of Serbia in contemporary international relations. Moderator was Prof. dr Dragoljub Todić. The participants dealt with the issues related to the European Union and possible directions of judiciary and administration reforms,

improvement of agriculture and business environment in the EU accession process. The participants agreed the existing conditions in these areas should be considered in advance establishing prospects for further development. Regarding climate change and environmental policy it was concluded that the Republic of Serbia had no special environmental policy and that no commitments of harmonizing its legislation with EU law should be undertaken without complete analysis of the actual social and agricultural possibilities. The important role of media in the process of European integrations was also emphasized as well as the exigency for media transformation in Serbia.

During the fourth panel, the participants evaluated the issues relating to the security aspects of affirming the position of Serbia in contemporary international relations. The moderator was Dr. Marko Nikolić, Research Fellow of IIPE. The topics covered in this panel induced participants to exchange opinions and ideas. It was pointed out that geopolitical factors in the past and at the present time determined the position of the Republic of Serbia. It was stated the following: "Security of the Republic of Serbia is directly dependent on its geo-strategic position and geo-political interests of the major players on the great chessboard and neighbouring countries". Furthermore, it was presented that the accession of the Republic of Serbia to the European Union was not only important for economic reasons but also for the political and security position of the country. In a significant manner, the authors analysed the concept of military neutrality and attempted to provide an answer to the following question: Is military neutrality sustainable in conditions of high degree of international integration? A comparative analysis of possible opportunities and costs of the potential membership of Serbia in the current security arrangements – the NATO and the Collective Security Treaty Organization – was presented. The conclusions that were made provided recommendations on how the security system could be upgraded with the aim of facilitating the country's position in contemporary international relations. In their presentations, the authors initiated other interesting questions such as the energy security of the Republic of Serbia and new security challenges. Furthermore, the participants discussed the aspects of ecological terrorism and possibilities for spreading of radical ecological ideologies in the Republic of Serbia as well as the dangers of nuclear accidents. Nuclear plants operating in South-Eastern Europe are representing a potential security threat for the whole region, thus, crisis management in this field is of great significance.

After all participants had presented their works, the discussion was initiated and conclusions of the Conference were adopted. In terms of the number of participants, this conference had surpassed earlier international scientific gatherings held by IIPE in previous years, although this was not a surprise considering the importance of the topics discussed. The Conference agenda was characterized by a multidisciplinary approach of the explored topics. Therefore, one could hear a great

number of important recommendations in terms of facilitating the position of Serbia in the particular fields of contemporary international relations. The participants had praised the Conference and expressed hope that contributions and recommendations made by this Conference would be taken into consideration by the decision-makers.

*Jelica GORDANIĆ*

*Dragana DABIĆ*

## DOCUMENTS

### UN GENERAL ASSEMBLY THEMATIC DEBATE ON THE ROLE OF INTERNATIONAL CRIMINAL JUSTICE IN RECONCILIATION\*

*Statement by H.E. mr. Tomislav Nikolić, President of the Republic of  
Serbia, New York, 10 April 2013*

Ladies and Gentlemen,

The question to which we have to give an answer today is essential to many small and unprotected countries, such as Serbia, of which I am the president.

The question is:

Has justice, as epitomized in laws, civilization achievements and equality, disappeared from the face of the Earth? Are those pulling all the strings of power and might on earth behaving justly? Or perhaps they think they do not have to, because the God of the mighty and powerful, whom they worship, has not provided justice for the weak and the poor but “the right of the stronger.”

Is it justice, as Simone Weil would say, a fugitive from the winning camp, because the winner is not the one who is better and more just, more humane and tolerant, but the one who is simply stronger?

I am posing this question today not only in the name of my country but in the name of all countries having reconciliation and life together in forgiveness as one of their countries’ priorities. Has the International Criminal Tribunal for the former Yugoslavia contributed to peace in the Balkans and how far reaching have been the judgments handed down by the Tribunal in the context of the mission of reconciliation and promotion of law and justice in the world? Are we all equal before this Tribunal as we are all equal before God?

Twenty years ago, the United Nations Security Council established by res. 827 (1993), the International Tribunal for the prosecution of those held accountable for

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\* The text of the original speech delivered by Mr. Tomislav Nikolić, President of the Republic of Serbia, at the UN General Assembly in New York on 10 April 2013, is published with the consent, support and assistance of the Office of the President of the Republic and Prof. Oliver Antić. In that regard, the Editorial Board of RIA expresses its deep gratitude for their act of kindness.

serious breaches of international humanitarian law in the territory of the former Yugoslavia after 1991.

The need for establishing such a body was argued by the political position that its establishment “will contribute to reconciliation and return and maintenance of peace” in “special circumstances” of the former Yugoslavia. Desirous of achieving these goals and believing that the purpose of its establishment was justice and reconciliation, and having nothing to hide, Serbia was among the first countries which supported the Tribunal’s establishment and has been cooperating with the Tribunal to the present day.

Serbia now feels that it has unfairly given legitimacy to the Tribunal in the hope that by applying the same benchmarks, justice will be served for all the victims of the conflict. Unfortunately, the sense that justice was not satisfied is now present among the Serbian people. The rulings of the Tribunal have made old wounds open because justice has not been done since the Second World War, when in Croatian infamous camp of Jasenovac 700, 000 Serbs and many Jews, Roma and others, including 50, 000 children, were murdered, thus creating the gap of mistrust that will burden the future generations.

1. The official name of the ICTY contains also the word “prosecution” or “criminal prosecution”, which is absolutely out of character with the European legal tradition. As a matter of fact, the ICTY can not be an instrument of prosecution (that is the role of the prosecutor) but, on the contrary, an independent body which impartially and without any discrimination weighs arguments of both the prosecution and the defendant as the other equal party. The Hague trials have from the very beginning shown that there is no such even-handedness because the prosecution has been favoured at the expense of the defendants in all the cases and in every respect.

The Prosecutor has various advantages over the defendant. For example, the Prosecutor has exclusive access to the media to explain his case and comment the trial from his angle of view; the Prosecutor has much more numerous team and far greater technical and financial resources, using all these to prevent the defendant to answer the charges against him in an appropriate manner; hence, the Prosecutor submits applications to the defendant in a foreign language without a proper translation; the defendant is being deprived of the possibility to defend himself but is imposed a legal counsel against his will.

If the Prosecutor brings an indictment and accompanied documents in hundreds and thousands of pages, even millions of pages, so that it will take an average individual several years just to go through them while the trials are being limited by short periods of time, it becomes clear to any reasonable man that this is an abuse of the trial rights by the prosecution, resulting in the obstruction of the right of the defendant to defence, amounting to the material denial of the right to defence.

If, in addition to it, the defendant is held in detention for years, essentially in prison, whereby a provisional measure has become a penal sanction (Witness the



case of defendant Vojislav Seselj who is being held in detention 11 years without trial, unprecedented in the world's history, because the prosecution was unable to gather evidence for their undocumented indictment issued beforehand), so it would not be highly difficult to deduce and prove that these are the most flagrant violations of human rights of the accused committed both by the prosecution and by the ICTY itself.

On the other hand, the legal fees of defence before the ICTY are very high and not a single defendant is capable of paying them himself. Therefore, the ICTY is paying the attorneys from a roster compiled by it. This means that the defendant's counsels at Hague trials are financially controlled by the ICTY, raising a question of their independence and impartiality. This is all the more so because there were cases where some attorneys have been subsequently taken off the roster.

2. It is not in dispute that all present-day rights and the international legal system insist on the independence of the judiciary (that is why power is divided into executive, legislative and judicial). The ICTY has been financed since its establishment from the budgets of the countries concerned; in other words, its operation and even its very survival has been directly dependant upon the interests of the "countries concerned"!

3. The document establishing the ICTY limits its jurisdiction also in respect of the time: only for events after 31 December 1991. The reason for this is solely of a political nature because in this way crimes against peace have been excluded. Logically, crime against peace precedes all other crimes committed in a conflict. That is why it is more serious and more dangerous. However, the crime against peace committed against the former Yugoslavia, no doubt, implicates also the great powers. Therefore, a trial that would also involve a crime against peace would definitely shed light on the role of the great powers which are mainly responsibly for the establishment of the ICTY.

4. One of the legal civilization rules is that in any event an objective and unconditional impartiality of each and every judge must be ensured. We wonder what kind of impartiality is that when a systematic atmosphere of lynch against everything that is Serbian is being created in an environment where a trial is to take place.

The influential western media have created an image of a presumed Serbian guilt. This is evident in every TV show, article or statement made by public figures. The same is also true of the number of those indicted of war crimes and those arrested or, more precisely, kidnapped indictees.

5. American rules of procedure are strict: on the one hand, unlawful arrest automatically implies release of a suspect; on the other hand, evidence gathered in an unlawful, illegal manner can not be admissible either even though they prove the guilt of the defendant beyond a shadow of a doubt. Glaring examples of unlawful arrest or kidnappings and unlawful gathering of evidence are a rule when Serbs are concerned.

The ICTY has even introduced a totally new institution of trial criminal law, the so-called preventive arrest. Namely, a witness may be brought in without any previous summons, which actually amounts to kidnapping rather than summoning. Many have been arrested without a court warrant, detained, subjected to torture and psychological pressure through interrogations lasting even 20 hours per day. Inhumane treatment continued in the course of the trial; hearings and presenting of evidence have been conducted for extremely long periods, even involving the detainees of seriously damaged health, which resulted in all cases in reduced capacity for defence and in several cases even in death of the accused.

In many instances the evidence has been gathered without a prior consent of a court or other authority and this has been qualified by the Tribunal as only a minor offence. Rules of civilized world do not apply to Serbs and the ICTY does not make inadmissible the evidence gathered in an unlawful way. However, the ICTY deems that the administration of justice would find itself in front of a dangerous obstacle if due to some minor breach of procedural rules whose application is not even binding on the Trial Chamber, the ICTY could not admit as proof a material having relevance and proof value. In this way, the ICTY has given rise to unlawful gathering of evidence, encouraging those resorting to such practices to act illegally.

6. The greatest antinomy concerns the presentation of witness accounts. All evidence against the Serbs is based on witness accounts. Every time a witness is being heard, the basic question is whether he/she has a quarrel with a defendant. In this case it is not a matter of an ordinary quarrel but a war, so that it is possible to prove almost anything by witness accounts. One of the basic rules also includes the possibility of confrontation of the defendant and the witness. This is impossible in the ICTY, since the defendant neither knows the witness nor can he see him behind the screen!

Let me just mention that the inter-American Commission in its report on the human rights situation in Colombia, considering that there was a possibility of basing the judgement on the statements of secret witnesses, was "concerned by the fact that this system is still part of the law of Colombia", and welcomed the decision of the Colombian Constitutional Court by which the decree allowing this was declared unconstitutional. The Commission said that the system was inconsistent with Article 14 of the International Covenant on Civil and Political Rights, in particular its paragraphs 3(b and e).

Cross-examination of a secret witness is essentially impossible, let alone refuting claims that the witness was able to find out and know facts of the case.

7. One of the basic rules of a criminal trial (and law in general) is the rule of legal certainty. The Tribunal Rules of Procedure are being changed even while the trial is ongoing (so far, these rules have been changed more than 20 times!), which is literally unparalleled in the history of legal civilization.

8. Until the ICTY was established no lawyer could even dream of punishments being passed on the basis of 'sub-legal' acts or unilateral decisions not having any legal basis, and even retrospectively! The ICTY hands down sentences on the basis

of its Statute and Rules of Procedure that it adopts itself, the Statute and Rules of Procedure that did not even exist at all at the time of alleged perpetration of crimes!

9. The notion of “joint criminal enterprise” the ICTY introduced six years after it started its work when it realized that the Prosecutor, despite all the advantages given to him at the trial, is unable to prove the responsibility of the highest officials who fought secession and who stood in defence of the people (it should be noted that many of these political and military officials were not Serbs).

To make the parody even greater, the JCE at the Nurnberg Trials held against German political and military leaders was used only in the sense of acts of crime against peace, namely the planning, preparation, starting or conduct of a war of aggression, an act which at the ICTY trials has been excluded from ICTY jurisdiction! The construction of “joint criminal enterprise” has been taken over by the Tribunal from the Anglo-Saxon commercial law (joint enterprise), which is related to financial responsibility and which has no legal basis whatsoever in criminal matters.

10. It should be added that the ICTY has also introduced command responsibility as a kind of objective criminal responsibility, according to which every high-level politician or military leader could be held accountable. Article 7 of the ICTY Statute refers to individual responsibility, and joint criminal enterprise or command responsibility naturally refer to collective responsibility. The purpose is more than obvious: to make the State, or State entity, if not directly, at least indirectly, via implication of the highest government and military officials, responsible, which are, in the case of ICTY trials, only the Republic of Serbia and Bosnian Republic of Srpska. The evidence is simple: these were the grounds on which only Serbian officials have been convicted, while the others, if they were indicted, had been eventually acquitted. Nonetheless, the ICTY has been working and instituted proceedings against more than 160 individuals.

These facts have been known to some extent to the international public. There is no citizen of the Republic of Serbia who has not heard of the ICTY or the Hague Tribunal, as it is commonly referred to according to the city where it is located. As if there were more kinds of justice, the Serbian language has coined an expression “the Hague justice”, for the unjust legal decision based on untruths and rendered under political pressure.

The critical view of the ICTY formed in Serbia is not politically motivated. The cooperation of my country with ICTY has not been politically conditioned either or prompted by the desire to get something out of it. The work of the ICTY has been seen in Serbia as partial, which is viewed by certain international quarters as the result of a nationalist approach and the desire to downplay the seriousness of the crimes committed.

The Republic of Serbia and its leadership – in spite of two decades of the Tribunal practices which were in sharp contrast to the standards applied in the Serbian justice system, more exactly, not meeting those standards – nevertheless believed and continue to believe that criminals should be punished. For this reason

only, the Republic of Serbia handed over to the ICTY 46 indictees, including two former Presidents, members of government, three Chiefs of General Staff of its Army and a number of police and military generals.

Cooperation with ICTY came out of our sincere wish to contribute to the reconciliation in the territory of the former Yugoslavia; it has not been the result of any pressures. For this reason, Serbia, often compromising its own national interests, has fully complied with almost all requests for assistance made by the ICTY Prosecutor Office or by the defendants; none of the requests for access to archives has been denied either. Like almost no other country in the world, Serbia has literally renounced its own sovereignty by granting waivers to 750 witnesses to give evidence in ICTY involving classified information. Serbia even delivered a director of its intelligence service to the ICTY, which is a unique case in the world.

Hague trials are being conducted in the name of highest human values, expressed nowadays through the so called human rights.

The application of law which is actually leading into anti-law has been justified in the past from the church pulpits, and, with the technological advances, through the press, newsreels and film, all the way to TV shows of local or global character. The inquisition burnt at the stake in order to satisfy “divine justice”, which requires that Satan’s followers be purified through fire, because it was for their own good!

The proceedings against Serbs are mainly motivated by punishment and revenge, and revenge, especially in modern law, can never be justified as being fair.

One can not be just to some and unjust to others. In equal cases one must act equally; otherwise not only will justice be lacking, but injustice will take over all the space voided.

How is it otherwise possible to explain that no one, save in one case in Bosnia and one case in Kosovo, has been sentenced for crimes against Serbs? David Harland has been proven right when he wrote in the New York Times in December 2012, and I quote: “It’s not fair that only Serbs bear the responsibility for crimes in the wars of Yugoslavia. The judgements handed down only to Serbs have no sense either in terms of justice or in terms of reality or politics. It’s very bad to be a Serbian victim of a crime committed in the territory of the former Yugoslavia. In the past Balkan wars, Serbs have been displaced or ethically cleansed more than any other community. Most Serbs have remained ethnically displaced even today. Almost no one has been held responsible for it, and as things stand now no one will”.

This will in no way contribute to the truth and to genuine reconciliation in the territory of the former Yugoslavia. Among Croats and Bosniaks such judgements rendered by the ICTY encourage exaltation and triumphalism, threatening that such acts could be repeated some time in the future, whereas among Serbs such judgements cause frustration and depression.

Statistical evidence of the number of those indicted and convicted by the ICTY is another story. Although an official UN expert submitted to the ICTY a finding, an opinion, saying that there is no apparent great disproportion in the

number of killed in the wars, the number of indicted and in particular the number of convicted for crimes where victims were Serbs, is very small.

The total duration of the punishment imposed so far on Serbs is some 1150 years, while the representatives of other nations have been sentenced to a total of 55 years for the crimes against Serbs.

We are talking about true reconciliation, and very often reconciliation, even when it is based on truth, on true facts, can be faked, insincere and hypocritical. Especially when before reconciliation we failed to arrive at real and whole truth. "Hague trials", it seems, will largely fail to come to the real and whole truth, so that reconciliation too will be imposed and insincere.

One can say that truth in general may not lead to reconciliation, even though it is true that reconciliation not based on truth but on delusion, is usually not lasting long and is false and hypocritical.

The truth can also be purifying catharsis, but at the same time a burden for the future. Nevertheless, one can not deny that the wish for the "truth and reconciliation" as well as the desire to establish individual criminal responsibility for war crimes is something which is positive in principle. Putting it simply, it is a question whether or to what extent the ICTY in its work has been objective and impartial, and whether and how much it has succeeded in coming to the "truth" and consequently to "reconciliation" later on.

Has it managed to prevent future crimes and have justice done, justice sought by thousands of victims and their families, but also to contribute to the establishing of an enduring peace in the territory of the former Yugoslavia?

Virtually all ICTY judgements show that the officially identified tasks have not been fulfilled and failure to institute proceedings against some individuals proves that, perhaps, the accomplishment of the mission for which the Tribunal was reportedly created, was not desired after all.

Serbia does not wish to deny that in some cases before the ICTY incontrovertible facts have been established and that those responsible for serious violations of international law have been deservedly punished. Bringing them to justice has really prevented them from committing any further crimes.

The inhabitants of the states which have emerged in the territory of the former Yugoslavia, as well as the inhabitants of Serbia should, taking all this into account, treat their victims with reverence and respect.

Serbia does not deny that Serbs committed crimes in the war and I point out the crime in Srebrenica. Serbia condemns the crimes of its fellow Serbs, but this should also be done by the states in the name of which horrible crimes too have been committed against the Serbian people.

The contribution made by the ICTY is evident in some cases. However, a serious and long shadow has been cast on the work of the whole Tribunal by the fact that political leaders of only one side, the Serbian one, have arrived in The Hague as indictees and left it as guilty ones.

That shadow has been cast over the reputation of the ICTY in particular following the clearing of all charges of Croatian generals Ante Gotovina and Mladen Markac, as well as the commander of the so-called Kosovo Liberation Army Ramus Haradinaj and Bosniak military leader of eastern Bosnia Naser Oric. The work of the ICTY in these cases serves only to support the building of the culture of impunity, of pointing to the criminals at all quarters that, if they enjoy someone's political support, they may freely kill, expel, rape, set fire to, destroy, plunder...

When I said that Serbia believes that criminals should be punished, I had in mind that all perpetrators, organizers and sponsors should stand trial. Regrettably, the ICTY, it is quite clear now, was not of the same view. No Croatian, Bosniak or ethnic-Albanian political figure or any senior officer of the Croatian Army, of the former Bosnia and Herzegovina Army or the so-called KLA have been indicted or convicted of crimes against Serbs.

Serbia has completed its cooperation with the ICTY. We have given the ICTY more than any other country was willing to give, but after the judgements of acquittal of Gotovina, Markac, Oric and Haradinaj, the frustration and indignation of the entire Serbian public, irrespective of their party differences and ethnic or religious affiliation of its citizens, has brought the Serbian Government to decide to cooperate with the ICTY only at the technical level.

In my capacity as President of Serbia, I am bound to defend my people. On the other hand, I do not wish nor am I under the obligation to protect those Serbs who violated the law in the wars in Croatia, Bosnia and Herzegovina or in Serbia. My country, during its glorious past, fought long and hard to defend its own, and not only its own, freedom.

Never has any doubt been cast over its struggle that it was unjust or that Serbian soldiers endangered the lives of innocent people in conflict or that they acted in an undignified manner either towards the enemy or the civilians on the other side. When, for the first time in its history, there has been doubt that crimes have been committed by some members of its army and police or their civilian commanders, Serbia has, as soon as it was possible to do so, arrested them and handed over to the ICTY. Some of them have surrendered voluntarily.

As President of Serbia I do not have the right, however, not to point out that former leaders of Croats, Bosniaks and Kosovo Albanians are also responsible for the suffering of Serbs.

Thousands of those killed, displaced and humiliated seek justice and truth that the ICTY did not want to show to the world.

Croatian generals Markac and Gotovina have been cleared of their responsibility for the killing and expulsion of civilians from the Serbian Krajina, though crimes against them have been proven even in the ICTY itself. If they are not guilty of these crimes who is, the international observers have asked themselves after the Appeals Chamber rendered its judgements.

Croatian troops drove out more than 300,000 Serbs from the territories which their ancestors inhabited for centuries. Reconciliation without the return of those wishing to return to their homes - which are in large measure, unfortunately, destroyed – can not be realized, while impunity and, which is even more dangerous, glorification of criminals does not contribute to reconciliation, a task which the ICTY largely had in mind.

More than 2000 victims from Bratunac, Kravica and other surrounding villages in eastern Bosnia, where the Bosniak forces commanded by Naser Oric operated, are waiting for at least someone to be found guilty of these crimes.

The Serbs of Kosovo and Metohija have been kidnapped in an organized way, their organs have been harvested and sold on the black market. History knows of no such crimes. Instead of prosecuting these crimes, the ICTY destroyed the evidence.

Hundreds of thousands of displaced people, thousands of killed and kidnapped in Kosovo and Metohija have not been reason enough for the ICTY to punish KLA commanders and soldiers, but during his trial allowed Haradinaj, in an unprecedented manner, to be active in politics. In fact, the ICTY allowed him to kill and intimidate witnesses.

The Information on whether Croats have been tried for crimes against Serbs or by and large (only) for crimes against Bosniaks and vice versa, whether Bosniaks have been tried only for crimes against Croats or have they been tried also for crimes against Serbs, and how much and how frequently this has been the case, sounds disastrous. Serbs as victims of crimes tried by the ICTY are almost nonexistent, namely, even when the ICTY tried Croats or Bosniaks, it tried them because Croats killed Bosniak Muslims or because Bosniak Muslims killed Croats. Only in a few cases like Haradin Bala in Kosovo, he was convicted of crimes against Serbs and sentenced to 13 years in prison; Zdravko Mucic was sentenced to 9 years in prison, Hazim Delic, 18 and Esad Landzo 15 years in prison.

These facts can suggest the following conclusion: among the perpetrators of war crimes in the territory of the former Yugoslavia there are almost exclusively Serbs, and, which is particularly interesting, among the victims of war there are almost no Serbs. Someone is trying to buttress the statement that the Serbian side bestially and orgiastically killed and committed genocide, whereas the other side set back and went about daily tasks and did humanitarian work.

In that war that destroyed us all, it was not that some only got killed, and the others did the killing.

Perhaps it all was a prelude to the wresting away of Kosovo and Metohija from Serbia which is now at work, where an organization of the most advanced and, by definition, most just countries is involved. And yes, also the most powerful countries, from which justice has escaped.

It is clear that with regard to victims, the number of killed, even all war crimes, there had been very many exaggerations in the media, and not only in the media, domain. Media demonization of Serbs has been carried out very fast and with an

unparalleled uneven-handedness and uncritical spirit of the western media which has not allowed for full two decades any different opinion or interpretation of events to emerge.

If a future researcher or historian were to make conclusions only on the basis of the number of the accused and convicted Serbs, Croats and Muslims about the war in Bosnia and Herzegovina, he would conclude that only Serbs killed Croats and Muslims (Bosniaks), that there were practically no killed Serbs, that here and there Croats killed Bosniaks and that Bosniaks killed very few Croats.

This very graphically paints the picture of the actual situation as far as the non-objectivity and partiality of the ICTY is concerned.

The ICTY was supposed to play, at least formally, the main role in bringing to justice war criminals in the territory of former Yugoslavia. International participation in this task should have assured impartiality. If the ICTY failed in this task, the Council of Europe was successful in it, to some extent.

The Special Rapporteur of this oldest European organization, Dick Marty, a senator from Switzerland, has proven, and the Parliamentary Assembly of the Council of Europe confirmed that some of the present Albanian leaders of Kosovo and Metohija organized at the end of the 20<sup>th</sup> and the beginning of the 21<sup>st</sup> centuries, kidnappings and killings of Serbs whose organs had been removed and sold. When Serbia, prevented from instituting legal proceedings for those crimes, which have not yet been seen anywhere in the world, requested that the Security Council, founder of the ICTY, be responsible for the investigation, the international community was not sympathetic. Probably because the victims were members of my people, Serbs, and it seems that it is allowed to take out their hearts and kidneys and trade them as if they were merchandise.

I appeal to you, dear friends, to support Serbia in its efforts to unveil the truth about these and other crimes, and that the guilty ones receive just punishment.

It is never too late for reconciliation. Almost 70 years after the end of the Second World War, I have agreed with the President of Hungary, in a symbolic manner, to be the initiators of the historic reconciliation between Serbs and Hungarians, neighbours that have found each other on the opposite sides during that conflict. We will erect monuments for the victims and pass a message to this and future generations to live in peace with their neighbours.

Serbia and I are ready not to wait for 70 years to reconcile with neighbours with whom we once lived in the same country or with whom, and I refer to Kosovo and Metohija, we still live in the same country. I am deeply convinced that the ICTY did nothing to help that process and that it probably delayed it unnecessarily for the future generations. It certainly delayed and made it more difficult, to a large extent. If one side is dissatisfied with the work of ICTY, the real truth and reconciliation will not come.

In order to come to truth and reconciliation, that is, genuine reconciliation, it is necessary for all three sides to be at least equally satisfied and dissatisfied.



With such verdicts, this type of balance, and balance is the basis of justice, has in no way been established. But who in the ICTY cares about all of that? Has the Tribunal, by provoking in one people a feeling of doing injustice and enhancing triumphalism in the other, led to reconciliation and removed the anxiety that the civil war from the 1990s could repeat?

Concealing the historical truth comes to bad fruition. No one is mentioning that on this day, 10 April 1941, pro-Hitler Nazi “Independent State of Croatia” was established. In the turmoil of the Second World War, Croatian fascists, with the help of the Third Reich, created a criminal order that, in four years, killed more than a million Serbs, Jews and Roma. That truth had been concealed for the sake of false brotherhood and unity of the Yugoslav peoples and, 50 years later, history had repeated itself in the Yugoslav wars.

International tribunals should, therefore, establish the truth. Without the truth there is no reconciliation. And, most often, you don’t get to the truth by outvoting, as the judgments and other decisions were passed in the ICTY, as a rule. In that effort, the political pressures, blackmail, intimidation and bribery – regardless of whether it concerns witnesses, accused, prosecutors or judges, it is all the same – help even less.

Maybe it was expected that Serbia, busy with its concerns, devotes less attention to the work of other international judicial institutions such as the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Special Panels of the Dili District Court, Special departments of the Courts of Cambodia, the Special Tribunal for Lebanon and, in particular, the International Criminal Court.

As a responsible member of the United Nations, Serbia is monitoring and supporting the work of the entire international jurisprudence, but, as it has itself experienced the imperfection of the international judiciary, it is also willing to hear the critical arguments presented by our friends from other parts of the world. As a matter of fact, those coming from Africa, with which countries Serbia is bound with decades-long friendship, based on cooperation, understanding and mutual respect. It seems that international justice has decided to overlook the crimes on other continents and to punish only some. It qualifies as discrimination, to which we have been so often exposed.

We hope that there will be no more crimes, but we expect that the investigations will be also continued into crimes so far committed outside Africa or the Balkans, against all offenders, regardless of their nationality, colour, wealth or political position.

I repeat that I sincerely advocate punishing the guilty, not forgetting the crimes and reconciliation, but emphasize that selective justice, which applies only to a few – be they from the former Yugoslavia or from Africa - which bypasses some, does not contribute to peace and stability. Only equal treatment in equal circumstances and punishing all those responsible for breaking the law will show the world public and the citizens of the countries where the crimes were committed that the

international courts were established to help, and not to achieve the interests of the mighty ones.

The Republic of Serbia has confirmed its commitment to respect international law, by signing the Rome Statute of the International Criminal Court as early as 2000. The role of international justice and, in particular, the International Criminal Court, should not be only in taking over jurisdiction of national courts, but also in assisting national courts to prosecute serious violations.

That is why the International Criminal Court, whose work Serbia strongly supports and in whose mission it believes, should bear in mind the needs of different parts of the world, and also the fact that there are criminals among the "enlightened" nations, and - given the many system lapses and structural errors, but also the wilful failures and overlooking made by ad hoc international tribunals - be truly both international and independent, as it should be.

The purpose of punishment, however, should not be retaliation. Enlightened nations have long since ceased to think of punishment as revenge. Revenge, just like mercy, comes from God. The punishment, if just, should prevent the criminal from committing the crime again. And to point out to others that they will face justice if they commit war crimes. But the purpose of punishment is also the re-socialization of offenders. Not pardon, but, to the extent possible, return to normal life.

Serving a prison sentence in a foreign country, away from one's family, in an unfamiliar environment and without knowing the local language, is not conducive to the designated tasks.

My country guarantees that the Serbs convicted by the ICTY, if they are allowed to serve their prison sentences in Serbia, will have no privileged treatment and is willing to accept international supervision. No individual would be released on parole without the decision of the ICTY, the International Residual Mechanism for Criminal Tribunals or some other United Nations body that would be responsible for these issues.

I appeal, therefore, to the ICTY and the Secretary General of the United Nations, to find a formal way and allow convicted Serbs to serve their prison sentences in Serbia.

We did not find full justice in the ICTY for the abused, expelled and killed Serbian victims. And they exist, as do their families without solace and justice, as exist those who have committed crimes against Serbs. There are victims and there are no penalties that we rightly expected the ICTY to impose on these criminals.

Contemporary international relations certainly require international justice. The ICTY did not meet the primary stated goal - reconciliation in the region, and therefore cannot be the future of international justice, but only its ugly past. The benefit of the ICTY exists only insofar as it is now clear that the manner of its establishment, its overall work (the application of substantive and procedural law, measuring and execution of sanctions) shows that it must never do the job in that way again.

International justice is badly needed today, but the one which is legal and legitimate. International justice may be carried out exclusively by the permanent International Court of Justice.

Proof of this is, among other things, also the absence of the President or any representative of the ICTY today. If they do not respect the most ancient legal rule “Audiatur et altera pars” (Let’s hear the other side) how can we expect of them minimum of rights and justice?

Ladies and gentlemen,

The anthem of my country – the Republic of Serbia – is a prayer. Each time we sing it, we turn to the justice of God, to save us and hear our voice of truth.

Serbia is nowadays criticized that it is too dedicated to history and too inclined to patriotism. We do not feel the need to apologize for having history. To justify ourselves for having historically been on the side of the truth, on the side of the allies, defending the homeland? We have nothing to be ashamed of, but we have something to be proud of.

Yes, we were mocked, ridiculed, insulted... We are opposed to such an unfair image as best we can. Our strength is in the truth we are fighting for and we do not want to give up that fight. Justice may be blind, slow and perhaps its cymbals are sometimes up, sometimes down, but it is our duty to constantly add facts and evidence to the cymbal of truth, which will help the truth to be reached.

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EUROPEAN  
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HIGH REPRESENTATIVE OF THE  
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BRUSSELS, 22.4.2013

JOIN (2013) 7 FINAL

## **JOINT REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL\***

**on Serbia's progress in achieving the necessary degree of  
compliance with the membership criteria and notably the key  
priority of taking steps towards a visible and sustainable  
improvement of relations with Kosovo\*\***

### **1. INTRODUCTION**

In its Opinion<sup>1</sup> on Serbia's application for membership of October 2011, the European Commission concluded that "Serbia is well on its way towards sufficiently fulfilling the political criteria set by the Copenhagen European Council in 1993 and the conditions of the Stabilisation and Association process, provided that progress continues and that practical solutions are found to the problems with Kosovo" and recommended that "negotiations for accession to the European Union should be opened with Serbia as soon as it achieves further significant progress in meeting the following key priority [of taking] further steps to normalise relations with Kosovo in line with the conditions of the Stabilisation and Association Process [...]". Further to the Commission's recommendation and on the basis of initial progress in improving relations with Kosovo, the European Council granted Serbia candidate country status in March 2012.

In the light of the progress made in the EU-facilitated dialogue between Serbia and Kosovo, under the auspices of the High Representative of the European Union for Foreign Affairs and Security Policy/Vice-President of the Commission, and with the perspective of further substantial progress being achieved in the first part of 2013, the Council agreed in its conclusions of 11 December 2012 to review during the Irish

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\* [ec.europa.eu/enlargement/pdf/key\\_documents/2013/sr\\_spring\\_report\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/sr_spring_report_2013_en.pdf).

\*\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

<sup>1</sup> COM(2011) 668 final.

Presidency the progress made by Serbia on the basis of a report presented by the Commission and the High Representative in the Spring 2013, with a view to a possible decision of the European Council to open accession negotiations with Serbia.

This report herewith presents the additional progress made by Serbia between 11 December 2012 and 15 April 2013. It assesses steps taken to address the key priority of improving relations with Kosovo, both in terms of latest results achieved in the high level dialogue and in terms of actual implementation of the agreements reached in 2011 and 2012.

The report also presents and assesses recent efforts to step up the EU reform agenda and examines with particular attention the latest developments in the areas of rule of law, particularly judicial reform, anti-corruption policy and the fight against organised crime, independence of key institutions, media freedom, anti-discrimination policy, protection of minorities and improvement of the business environment. The report finally takes stock of recent initiatives by Serbia to play a constructive role in the region and improve relations with its neighbours.

The assessment in this report takes into account information gathered and analysed by the Commission and the High Representative, including inputs provided by the Serbian authorities, findings of expert missions as well as information shared by EU Member States and international organisations and civil society organisations. The final part of the report draws conclusions and makes recommendations.

## **2. IMPROVEMENT OF RELATIONS WITH KOSOVO**

The dialogue between Belgrade and Pristina, following the Serbian elections, was upgraded to a high level political process with the facilitation of the High Representative.

A series of high level meetings between the two prime ministers started in October 2012. The HR was very clear with the two sides from the start on the concept of the process: it would be a step by step process, going from easier to more complicated issues and it would not be open ended. The objective was the gradual normalisation of the two sides' relations, without prejudice to the two parties' positions on status, and achieving progress for both in their respective EU path.

Ten meetings have taken place between October 2012 and the end of April 2013.<sup>2</sup> A meeting also took place on 6 February between Presidents Nikolic and Jahjaga.

In the first part of the high level dialogue until December 2012 the discussions dealt with the set of what was considered easier issues such as completion of IBM implementation, religious and cultural heritage, liaison arrangements. Some first significant results were already achieved in those first months.

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<sup>2</sup> 19 October, 7 November, 4 December and 17 January, 20 February, 4 March, 20 March, 2 April, 17 April and 19 April.

The most important was IBM implementation. By the end of December 2012 four Gates, including the two Gates in northern Kosovo, were operational and, since the end of February all six Gates between Serbia and Kosovo are operational. In the context of the implementation discussions, the two sides also agreed to start customs collection and to establish a Fund for the development of northern Kosovo. Regarding free movement, the ID card travel regime is operational and works well. The agreement on customs stamps continues to be implemented by both sides. There was good progress on civil registry and implementation should be completed by January 2014. Regarding cadastre, both sides are still in the process of taking the necessary preparatory steps. The agreement on acceptance of university diplomas is proceeding smoothly. Serbia's cooperation with EULEX has continued to improve in a number of areas. This will need to intensify as the normalisation between both parties intensifies. Direct high-level contacts and regular contacts at operational level continue to facilitate cooperation, including in the fight against organised crime. Serbia is committed to a full implementation of the police protocol with EULEX.

Other significant results achieved by the two Prime Ministers are the agreement on setting liaison arrangements and the agreement on the improvement of protection of religious and cultural heritage sites (creation of special/multi-ethnic police unit in Kosovo).

In the second part of the high level dialogue, since January 2013, the meetings of the two Prime Ministers focused on northern Kosovo and delivering structures which meet the security and justice needs of the local population in a way that ensures the functionality of a single institutional and administrative set up in Kosovo, in line with the December 2012 Council Conclusions.

During their talks, the two sides agreed that the outcome of their discussions should be a set of principles and arrangements that would give the Kosovo Serb community a new vision of their future, by addressing their concerns and needs but in a way that preserved the functionality of the Kosovo institutions and legal framework.

Throughout the high level process the two sides showed commitment and engagement. The two Prime Ministers in particular established a good working relationship and showed political courage and maturity in discussing issues of great sensitivity and complexity, often with a difficult political atmosphere in the background. They should be commended. In the last phase of the dialogue Deputy Prime Ministers from both sides joined the meetings and their presence brought an additional element of local political legitimacy and expertise to the table.

The discussions on northern Kosovo and the Kosovo Serb community concerns were concluded on 19 April with the initialling of a "First agreement of principles governing the normalisation of relations".

The agreement provides for the establishment of an Association/Community of Serb municipalities in Kosovo which will function/operate within the existing legal framework of Kosovo. The Association/Community will have a statute and its own

bodies on the basis of the other existing Association in Kosovo and will have a representative role to the central government.

On police, the text of the agreement affirms the principle of a single police force in Kosovo and the integration of all police in northern Kosovo to the Kosovo Police. A regional Police commander is appointed for the four northern municipalities. He is nominated by the Ministry of Internal Affairs of Kosovo from a list provided by the four mayors. This means that it was agreed that the four mayors of the northern Serb majority municipalities would consult the Association/Community and submit a list to the Ministry of Internal Affairs who will make the nomination from this list.

On judiciary, the text affirms the principle of integration and functioning of all judicial authorities within the Kosovo legal framework. An Appellate Court in Pristina is established to deal with all Kosovo Serb majority municipalities and a division of this Court will sit permanently in northern Mitrovica.

Municipal elections, according to the agreement will be organised in the northern municipalities in 2013 with the facilitation of the OSCE.

The text of the agreement also provides for concluding the discussions on energy and telecoms by mid-June.

The two parties have agreed that neither side will block, or encourage others to block the other side's progress in their respective EU paths.

As to next steps, the two parties agreed to adopt an implementation plan by 26 April and to establish an implementation committee with the facilitation of the EU.

The EU also expects that the two parties, in the spirit of the new understanding/relation between them and without prejudice to the positions on the status of Kosovo, will continue to work further for the normalisation of relations between them and in this framework will address, among other issues, Kosovo's integration/participation in international bodies.

### **3. RECENT PROGRESS IN COMPLIANCE WITH THE MEMBERSHIP CRITERIA**

#### **3.1. Introduction**

In recent months, Serbia has taken steps to reinvigorate the country's EU reform agenda. In line with its stated objective since it took office in July 2012, the Serbian government has stepped up the *coordination of the EU reform agenda*. It has started to implement the comprehensive Action Plan it adopted in December 2012 to follow up on all findings of the Commission's 2012 Progress Report and intends to publish periodical reports on its execution in April, June and September 2013. An important milestone was the adoption by the government on 28 February 2013 of a National Plan for the Approximation with the *Acquis* (NPAA) for the period 2013-2016. The NPAA is a detailed planning document of all legislation to be adopted by Serbia to implement obligations from the Stabilisation

and Association Agreement (SAA) and prepare itself for further aligning with the *acquis*. The NPAA includes a detailed plan for legislative alignment in 2013 with corresponding budgetary resources. The document also offers a basis to ensure effective scrutiny of related activities and better involvement of relevant stakeholders.

The Serbian government has been committed to improving the rule of law despite the setbacks of 2012, in particular in the areas of judicial reform and the fight against corruption. Draft strategies are in preparation in several key areas and their adoption is foreseen in the first half of 2013. While it agreed to consult widely in certain fields and requested corresponding EU expertise, the Serbian government still needs to improve the consultation process with all stakeholders including by leaving sufficient time in parliament for the necessary scrutiny of draft legislation.

### **3.2. Developments in implementation of reforms**

Regarding the *rule of law*, a first set of legislative changes was adopted in December 2012 upon proposals from the working groups set up in September 2012 with the participation of key stakeholders. The laws on judges and prosecutors were amended to grant permanent tenure to some 900 magistrates that were recruited in 2009 on a probationary basis. Three important changes were introduced in the Criminal Code: criminalisation of facilitators of abuses of the right to asylum in a foreign country; decriminalisation of defamation, together with decriminalisation of “unauthorised public comments on Court proceedings”; and recognition as aggravating circumstance of certain “hate” crimes motivated on grounds such as ethnic origin, religion or sexual orientation. The offence of “abuse of office” was also amended to redefine how it applies to private operators. Open cases under Art. 359 of the Criminal Code need now to be re-qualified, on a case by case basis, under new offences of the economic crime section of the Criminal Code. This part of the Criminal Code is planned to undergo a comprehensive review for further amendments in the future. Implementation of the new Criminal procedure Code needs to be carefully prepared.

Regarding the *judicial reform*, the new Serbian government has been confronted with a formidable challenge following the decision of the Constitutional Court in July 2012 to overturn the reappointment of judges and prosecutors, creating an immediate practical difficulty with the need to reintegrate some 800 magistrates (representing one third of the total number). This situation also meant that the initial focus from the Serbian authorities was to adopt urgent measures in December 2012 before it could start to develop the medium to long term vision including preparation of a comprehensive strategy that would ensure structural and sustainable changes towards an impartial, independent and efficient judiciary.

Following the July 2012 rulings of the Constitutional Court, the High Judicial and State Prosecutorial Councils re-appointed all the previously non-reappointed judges and prosecutors, in line with the 60 days deadline required by the



Constitutional Court. So far, magistrates were re-appointed into the Courts where they were before or into the jurisdictions that replaced them. Adjustments to the Court and Prosecutorial office networks are currently planned and are aimed at ensuring an optimal allocation of the re-appointed magistrates, balancing their individual wishes and constitutional rights not to be moved from one place to another without their consent with the needs of the whole judiciary in terms of access and proximity. There are still major imbalances in the workload of judges and length of proceedings remains excessive in many cases. Further reform of the court network necessitates a comprehensive analysis of the functioning of the current network in terms of cost, efficiency and access to justice. An important issue to ensure sustainability of reform is a medium to long term strategy on the judiciary.

For the period 2013-2018, the Ministry of Justice and Public Administration is drafting a new strategy with the support of working groups meeting on a regular basis and on the basis of a consultative process involving key stakeholders. The government aims to finalise it in the course of the spring. It will take stock of the problems encountered in the implementation of the previous strategy of 2006 and be built around the key principles of independence, impartiality and quality of justice, competence, accountability and efficiency of the judiciary. It should aim to strengthen the High Judicial and State Prosecutorial Councils, as the bodies mandated by the Constitution to guarantee the independence of the judiciary. The strategy also needs to address the lack of real judicial independence seen in many features of the current system. The system of appointment and promotion of judges is not yet independent of either the executive or the legislative. Moreover, the Councils need to become more transparent in their functioning and their members should be accountable. A comprehensive strategy which builds on a full analysis of the gaps in the current framework is a key objective. It should rely on an inclusive process with all stakeholders and make full use of the available assistance.

The strategy should also aim at reinforcing the institutional capacity of the Judicial Academy for merit based recruitments as well as initial and continuous training of judges and prosecutors. The strategy needs to be further developed and include detailed plans for the strengthening of the framework for recruitment, evaluation and discipline as well as for monitoring and measuring progress, identifying responsible institutions, defining adequate financial and human resources and a clear timeline for its implementation.

Another priority goal is to establish a functioning accountability system in the judiciary. In this respect, the State Prosecutorial Council is conducting a consultation process on draft professional evaluation rules issued in February 2013. A consultation process was also launched by the High Judicial Council on draft evaluation rules for judges and Court presidents. Implementation of the draft ethical code for prosecutors issued in March 2012 should start soon. The code of ethics for judges remains to be more systematically applied. Only a few final decisions were taken under disciplinary rules adopted by the High Judicial Council three years ago. Following the adoption of disciplinary rules in July 2012 by the State Prosecutorial Council, first disciplinary proceedings should be launched soon.

The *fight against corruption* has been a central element of the government's activities since its inception, underpinned by a "zero tolerance" message. A number of investigations have been launched, including into high level corruption, in part on the basis of the problematic privatisations cases identified in the past by the Anti-Corruption Council. Serbia has also made certain progress in combating organised crime. Operational coordination and cooperation between law enforcement authorities remains satisfactory. Serbia's track record in effectively investigating, prosecuting and convicting perpetrators of corruption and organised crime needs to be further improved, and additional human and financial resources made available, including in the fields of witness protection, financial intelligence and the special prosecution for organised crime.

A draft strategy is being prepared on the fight against corruption for the period 2013-2018. Its preparation encompasses all involved institutions and relevant stakeholders and is taking into consideration positive examples from the region. It aims at both a structural approach dealing with issues such as good governance, independent institutions, internal and external audit and control, protection of whistle-blowers, and a sectorial one, addressing corruption in sensitive sectors such as urbanism and spatial planning, judiciary, police, education and health. The complementary roles of the Anti-Corruption Agency and Anti-Corruption Council should be better defined for the implementation and monitoring of the strategy and inter-institutional cooperation should be facilitated. The government aims to finalise the strategy in the course of the spring. Preparations of an action plan are to begin following the public consultation on the draft strategy.

Regarding the respect for the role and *independence of key institutions*, there is still room for improvement. Reports and recommendations of independent institutions did not receive sufficient political consideration and appropriate follow-up. Respect for their role and independence also needs to be evidenced with the provision of sufficient and stable resources. The Ombudsman and the Commissioner for free access to information of public importance and data protection have started to cooperate with the recently established parliamentary committee for civilian oversight of security services, and following their recommendations, parliament adopted in February 2013 amendments to the Law on Military Security and Military Intelligence Agencies regarding state security interceptions of communications. Serbia should ensure that its legal framework clearly distinguishes between interception for criminal investigations and interception for state security, in line with European best practices.

Regarding *freedom of the media*, the decriminalisation of defamation (see above) was a significant development. In addition, an *ad hoc* commission, composed of journalists, police and security-information agency representatives was set up in January 2013 and tasked with shedding light on the cases of unsolved murders of journalists. Regarding the implementation of the media strategy, a working group was set up aiming at harmonising the legislative framework in order to eliminate existing contradictions on establishment and financing of the media. Two laws are

under preparation: the law on public information and media, which would cover the fields of public information, media ownership and concentration as well as accreditation of foreign correspondents – and the law on electronic media, which would cover electronic media and public broadcasters. A first step has already been taken with amendments to the law on public companies ending the possibility for public authorities at all levels to establish public companies in the media sector. The draft law on public information and media is currently under public consultation; it should guarantee transparency of funding and regulate media concentration, introduce thresholds and ceilings and give the Commission for Protection of Competition a role in the process. In general, it needs to be noted that media reports continue to be insufficiently analytical and balanced and self-censorship remains widespread.

Some progress can also be noted in the field of *anti-discrimination policies* where the overall legal framework is broadly in place but its implementation as well as enforcement remain to be improved on the basis of consistent efforts of the authorities, including in generating a more favourable climate in the society. The recognition as aggravating circumstance of certain “hate” crimes motivated on grounds such as ethnic origin, religion or sexual orientation (see above) is a welcome development. A comprehensive Strategy on fighting discrimination for the period 2013-2018 is being prepared and actively consulted with stakeholders with a view to an adoption in the second quarter of 2013, to be followed by Action Plans for its implementation. The Commissioner for protection of Equality issued a publication on “Court civil protection from discrimination” and a “Manual for the fight against discrimination at work” aimed to equip legal professionals and other stakeholders with relevant reference materials. A number of provisions of the 2009 Serbian Anti-Discrimination Law are not in line with the EU 2001 Anti-Discrimination Directive and preparations for such alignment have started. Regarding the protection of the Lesbian, Gay, Bisexual and Transsexual (LGBT) population, activities have stepped up. There has been overall a more active processing of discrimination cases against LGBT population, thanks to police training, the development of Court practices and improved cooperation with LGBT population as witnesses. A first ruling from the Novi Sad Appellate Court has been delivered regarding discrimination in the work place based on sexual orientation. The Commissioner for Equality remained particularly active in the promotion of LGBT population rights. Overall, a number of awareness raising activities were organised on anti-discrimination issues and specifically on LGBT rights, targetting particularly law enforcement officers and social workers. A first seminar in the framework of a 2012 Council of Europe LGBT regional project was held in December 2012 in Belgrade. Preparations for the 2013 Belgrade Pride Parade have started. Such efforts need to be further developed and supported by visible political commitment in order to promote a better inclusion and protection of LGBT population and improve tolerance and understanding across the Serbian society.

Regarding the *protection of minorities*, Serbia has undertaken, in preparation of the 2014 elections to the Minority Councils, a revision of the 2009 Law on the National Minority Councils, in order to address some of the shortcomings. This follows the recommendations made by the Ombudsman and the Commissioner for free access to information of public importance in particular regarding the electoral process and the rules governing the constitution of the Councils. Serbia also took steps to improve the implementation of the legal framework throughout its territory. Measures have been implemented to broadcast TV programmes in Romanian in Eastern Serbia and official instructions have introduced an optional Romanian language class with elements of culture as from the next school year, preceded by pilot classes starting in April 2013. The government has called on the Serbian Orthodox Church to engage in a dialogue with the Romanian Orthodox Church but there was still no progress on the issue of access to religious services in Romanian. In the Sandzak area, primary level and high schools have started teaching classes in the Bosniak language. In South Serbia, following the recent tensions surrounding the erection and removal of a monument in Presevo, there have been renewed efforts to restore an effective dialogue between the central government and local authorities in order to tackle all issues on the agenda, including the socio-economic development of the region. Additional textbooks have been provided for classes in Albanian in South Serbia. Internship opportunities in the state administration have been made available as of September 2012 for members of the Albanian, Bosniak and Roma minorities. Serbia needs to continue its efforts to implement more effectively the legal framework across the country. The Commission will closely monitor progress in this area.

Regarding the *Roma*, Serbia continues to actively follow up the operational conclusions of the joint Serbia-Commission Roma seminar of June 2011. A follow-up seminar is being planned to take place later in the spring. On civil documentation, the two necessary laws to ensure the registration or subsequent registration of “legally invisible” persons are now in place and new procedures for their registration have started as of December 2012. Affirmative action measures have increased in the education sector and further development of the pedagogical assistants system - 175 persons so far - is being considered. Measures on supporting employment opportunities for Roma have continued. Regarding health care, 75 Roma women health mediators are working under the Social affairs and Labour Ministry framework and Roma can now register at the social care centre if they do not have a permanent address. With regards to housing and forced evictions, Serbia has started preparations to incorporate into the national legislation the relevant international standards. Further sustained efforts, including financial, are needed to ensure the full implementation of the Serbian Roma Strategy and address the difficult situation of the Roma population who are frequently victims of intolerance, hate speech and even physical attacks.

The Serbian government has also carried on with reforms aimed at improving the economic and *business environment*. A significant and positive development was the adoption of the new Law on Public Procurement at the end of 2012. This law

further aligns Serbian legislation with the *acquis* and generally improves the efficiency of public procurement procedures, for example by centralising public procurement. It strengthens the institutions in charge of the enforcement and monitoring of the public procurement rules. New rules for the prevention of corruption and conflict of interest were introduced. Overall, this law should result in more transparent and efficient procurement procedures, and increased competition. The government has adopted other measures aimed at improving the business environment, including abolition of more than 130 parafiscal charges and fees weighing on business activity, amendment of the VAT law and adoption of a law limiting the deadline for settlement of cash liabilities. A long overdue reform of socially-owned companies was launched in December 2012, imposing an 18-month deadline for completing their restructuring. The amendments to the Law on Internal Trade adopted in January 2013 aim at reducing market entry barriers for retailers.

Serbia started to implement the Interim Agreement on trade and trade-related matters on 1 January 2009. Serbia has built a satisfactory track record in implementing its obligations under the Interim Agreement and is committed to discuss and address any open issues. Serbia is also engaged in good faith in the SAA adaptation exercise ahead of Croatia's accession to the EU. Issues remain in the field of State aid and intellectual property rights. In particular, the independence of the Commission for State aid control must be further demonstrated, confirmation received that all State aid measures are notified to this Commission and approved by it and adjustment of existing aid schemes must be pursued.

### 3.3. Regional cooperation and bilateral relations

Following some difficulties in the first months of its taking office, the Serbian government stepped up high-level contacts with neighbouring countries in recent months in an effort to restore a positive contribution to regional cooperation.

Regarding relations with *Croatia*, a landmark visit of the Croatian Prime Minister to Belgrade took place on 16 January 2013, on which occasion he agreed with the Serbian Prime Minister to work towards further improvement of relations and to enhance cooperation and joint work on a number of issues, including EU integration, economy, refugees, border demarcation, missing persons, and war crimes. A number of meetings also took place at ministerial level, in particular the visit to Zagreb of the Serbian Foreign Affairs Minister in March, and an agreement on cooperation on EU integration is in preparation. Relations with *Bosnia and Herzegovina* (BiH) remained good. The Serbian Prime Minister visited Sarajevo in January 2013 and the Chairman of the BiH Council of Ministers was in Belgrade in February 2013. In December 2012, the Serbian President received the Chair of BiH Presidency in Belgrade. A Memorandum of Understanding for cooperation on EU integration was signed in December 2012 by the two Foreign Affairs Ministers. A Protocol on Cooperation in the prosecution of perpetrators of war crimes, crimes against humanity and genocide was signed in January 2013 between the Serbian war crimes prosecutor and the

Office of the prosecutor of BiH. Relations with *Montenegro* have improved. A visit of the Serbian President took place in January 2013 in a positive atmosphere, where he stressed the respect of Montenegrin sovereignty and territorial integrity. Relations with the *former Yugoslav Republic of Macedonia* have improved and the Serbian Prime minister visited Skopje in January 2013, with a meeting of the Ministers of Justice taking place on the same occasion; it was also agreed to hold a joint session of the two governments in May 2013 in Belgrade. The Serbian Foreign Affairs minister visited Skopje in February 2013 and signed an agreement on cooperation in the EU integration process with his counterpart. In addition, Serbia has made progress in restoring good relations with *Turkey*. The importance of Serbia-Turkey relations for the region was reaffirmed during President Nikolic's visit to Ankara in early February 2013; this trip was preceded by a visit of the Turkish Foreign Affairs Minister to Belgrade.

Serbia's relations with neighbouring EU Member States *Bulgaria*, *Hungary* and *Romania* remained good. On the occasion of the visit of the Bulgarian Foreign Affairs minister to Serbia in December 2012, a social security agreement was finalised and it was also agreed to prepare an agreement on good neighbourly relations. A joint contact centre for police and customs cooperation at the border check-point Kalotina was established. The Serbian and Bulgarian Prime Ministers signed an agreement on the implementation of the gas interconnection between Serbia and Bulgaria. The visit of the Serbian President to *Hungary* in November 2012 took place in a positive atmosphere. Serbia and Hungary have stepped up their cooperation in internal affairs as part of the measures taken to curb the increase of unfounded asylum in the EU. Serbia and *Romania* continued cooperation on the protection of minorities in line with their Joint Protocol of March 2012. Consultations continued under the auspices of the OSCE High Commissioner on National Minorities and conclusions were reached on a number of steps taken or to be taken in the areas of media and education, while the issue of religious services remained pending.

#### 4. CONCLUSIONS AND RECOMMENDATIONS

Serbia has taken very significant steps towards visible and sustainable improvement in relations with Kosovo, in line with the Council conclusions of December 2012. Serbia has actively and constructively engaged in the EU-facilitated dialogue with Pristina and entered discussions on the whole range of issues necessary to achieve visible and sustainable improvement in relations with Kosovo.

The dialogue between Belgrade and Pristina, following the Serbian elections, was upgraded to a high level political process with the facilitation of the High Representative. Ten meetings have taken place between October 2012 and the end of April 2013. A meeting also took place on 6 February between Presidents Nikolic and Jahjaga. Implementation of agreements reached in the dialogue to date has also continued. Implementation of the agreement on representation of Kosovo in regional fora was generally ensured, with the admission of Kosovo as fully-fledged member of the Regional Cooperation Council in February 2013 as

a landmark. On Integrated Border Management, joint interim crossing points were opened on all six gates and they are up and running. The agreement on protection of religious and cultural heritage sites of December 2012 is being implemented. The agreement on customs stamps continues to be implemented by both sides. There was good progress on civil registry and implementation should be completed by January 2014. Regarding cadastre, both sides are still in the process of taking the necessary preparatory steps. The agreement on acceptance of university diplomas is proceeding smoothly. Serbia's cooperation with EULEX has continued to improve in certain areas.

The two sides also agreed to start customs collection and to establish a Fund for the development of northern Kosovo. In the second part of the high level dialogue, since January 2013, the meetings of the two Prime Ministers focused on northern Kosovo leading to the initialling of the agreement of 19 April 2013 on a "First agreement of principles governing the normalisation of relations". This agreement foresees inter alia that discussions on Energy and Telecoms will be intensified by the two sides and completed by June 15 2013.

On this basis, the Commission considers that Serbia has met the key priority of taking steps towards a visible and sustainable improvement of relations with Kosovo.

Serbia has also undertaken to reinvigorate the momentum of reforms in the key areas of the rule of law, particularly judicial reform and anti-corruption policy, independence of key institutions, media freedom, anti-discrimination policy, protection of minorities and business environment. The Serbian authorities have given renewed attention to all these areas for which they have started developing a comprehensive and long term vision. Reforms in these areas are in the making, focusing notably on the preparation of strategies, related action plans and draft legislation. Progress in these areas will have to be sustained over time. This is particularly the case in the judiciary which represents a formidable challenge.

The Serbian government has demonstrated in recent months its commitment to a positive contribution to regional cooperation, which was underpinned by a number of high-level contacts with neighbouring countries.

Recalling its findings and conclusions set out in its Opinion on Serbia's membership application of October 2011, in the Strategy paper of October 2012 and in the 2012 Progress report on Serbia, the Commission concludes that:

Serbia now sufficiently fulfils the political criteria and the conditions of the Stabilisation and Association Process.

The Commission also maintains its assessment regarding the economic criteria, obligations under the Stabilisation and Association Agreement and the Interim Agreement and Serbia's preparedness to take on obligations of membership.

The Commission therefore recommends that negotiations for accession to the European Union should be opened with Serbia.

The Commission will continue to monitor Serbia's progress in complying with the membership criteria and the conditions of the Stabilisation and Association Process. The Commission recalls its recommendation of October 2012 that the steps leading to the normalisation of relations between Belgrade and Pristina should also be addressed in the context of the framework for the conduct of future accession negotiations with Serbia. The Commission will continue during the accession negotiations to closely monitor reforms and their implementation in the area of rule of law and fundamental rights, especially the judicial reform, the fight against corruption and anti-discrimination policy. It will make full use of the tools available at all stages of the accession process, in particular the new approach endorsed by the December 2011 European Council as regards the chapters on judiciary and fundamental rights and justice, freedom and security.



## **COUNCIL OF THE EUROPEAN UNION\***

*Brussels, 28 June 2013*

*(11548/1/13, REV1  
COWEB 95, ELA RG 100)*

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### **ANNEX**

#### **GENERAL AFFAIRS COUNCIL**

#### **COUNCIL CONCLUSIONS ON ENLARGEMENT AND STABILISATION AND ASSOCIATION PROCESS**

##### **Serbia**

1. In line with the Council conclusions of 11 December 2012 and further to the Council discussion of 22 April 2013, the Council examined Serbia's progress in achieving the necessary degree of compliance with the membership criteria, notably the key priority of taking steps towards a visible and sustainable improvement of relations with Kosovo.\*\*
2. The Council commends the leaders of Serbia and Kosovo for the progress achieved in the EU-facilitated dialogue, and welcomes the "First agreement of principles governing the normalisation of relations" of 19 April as a significant milestone, as well as the subsequent implementation agreement and concrete steps taken in recent weeks, as set out in the joint letter of the HR/VP and Commissioner Füle of 21 June 2013.
3. The Council recommends that, following completion of national parliamentary procedures and subject to the endorsement of the June European Council, accession negotiations be opened with Serbia.

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\* <http://register.consilium.europa.eu/pdf/en/13/st11/st11548-re01.en13.pdf>.

\*\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

4. The Council recommends to the June European Council, with a view to holding the first intergovernmental conference with Serbia in January 2014 at the very latest, to invite the Commission to submit without delay a proposal for a framework for negotiations in line with the European Council's December 2006 conclusions and established practice, also incorporating the new approach to the chapters on the judiciary and fundamental rights and justice, freedom and security. The steps leading to the normalisation of relations between Belgrade and Pristina will also be addressed in the framework. Prior to the first intergovernmental conference, this negotiating framework will be adopted by the Council and confirmed by the European Council. The Council also recommends to the June European Council to invite the Commission to carry out the process of analytical examination of the *acquis communautaire* with Serbia, starting with the above-mentioned chapters, in order to facilitate rapid early progress in these negotiations.
5. Recalling its conclusions of December 2012, the Council reiterated that continued visible and sustainable progress in the normalisation of relations, including the implementation of agreements reached so far, remains essential so that Serbia and Kosovo can continue on their respective European paths, while avoiding that either can block the other in these efforts and with the prospect of both being able to fully exercise their rights and fulfil their responsibilities.

#### **Kosovo**

6. In line with the Council conclusions of 11 December 2012 and further to the Council discussion of 22 April 2013, the Council examined Kosovo's progress in addressing issues set out in the December Council conclusions.
7. The Council commends the leaders of Serbia and Kosovo for the progress achieved in the EU-facilitated dialogue, and welcomes the "First agreement of principles governing the normalisation of relations" of 19 April as a significant milestone, as well as the subsequent implementation agreement and concrete steps taken in recent weeks, as set out in the joint letter of the HR/VP and Commissioner Füle of 21 June 2013.
8. The Council notes the assessment of the Commission that Kosovo is ready to open negotiations on a Stabilisation and Association Agreement and the envisaged adoption of the decisions on 28 June 2013 following the necessary procedures. These decisions are without prejudice to Member States' positions on status.
9. Recalling its conclusions of December 2012, the Council reiterated that continued visible and sustainable progress in the normalisation of relations, including the implementation of agreements reached so far, remains essential so that Kosovo and Serbia can continue on their respective European paths, while avoiding that either can block the other in these efforts and with the prospect of both being able to fully exercise their rights and fulfil their responsibilities.

10. As far as the 19 April agreement and associated implementation plans are concerned, the Commission and the HR/VP are invited to continue to report to Council on Serbia and Kosovo's progress in implementation. This will inform the start, the subsequent decisions, including on the negotiating framework, and progress in the respective negotiations.

#### **Annex 1 to the ANNEX**

##### **Statement for the Council Minutes on the conduct of negotiations with Serbia and Kosovo from the Commission and the HR/VP**

The Commission and the High Representative will regularly report to Council on Serbia and Kosovo's progress in implementing the 19 April agreement and its implementation plans. These reports and the Council's assessment will inform the negotiators in determining the pace and conduct of the negotiations.

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#### **Annex 2 to the ANNEX**

##### **Statement by Romania to be inserted in the minutes of the General Affairs Council of 25 June 2013**

Recalling the Council Conclusions of December 2012 and February 2012 and the declarations attached to the latter, Romania wishes to emphasize that in its understanding, nothing in the present Conclusions should be construed as bringing any change, whatsoever, in the importance and relevance that the uniform and nondiscriminatory implementation throughout the territory of Serbia of European compatible legislation in the area of protection of national minorities has for the start and subsequent conduct of their negotiations in all relevant documents.



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Indent paragraphs.

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**Acknowledgments:** Acknowledgments of people, grants, funds, etc. should be placed in footnote on the first page. The names of funding organizations should be written in full.

## **Reference:**

### **A) Citation**

Cite references in the text by name and year in parentheses. **Some examples:** The problems related to the borders with some neighbouring countries ... (Dimitrijević, 2003, p. 33); These effects have been widely studied (Gupta et al. 2010; Petrović and Vesić, 2009); The results were later contradicted by Thompson and Golubović (1999).

When referring to the several works by the same author, provide all the years of publication chronologically after the author's name. If there are several works by the same author published the same year, provide further specification using letters (a, b, c, ...) after the year of publication. **Example:** Confirming the negligence in public sector (Radaković, 2001a, p. 101) ... When referring to the several works by different authors, provide the authors' names in brackets following the alphabetical order, separating authors by semi/colon. **Example:** Several authors emphasised these issues (Miljus, 2009; Novičić, 2006; Vučić, 2011, Young, 1999) ....

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The list of references should only include works that are cited in the text and that have been published or accepted for publication. The references should be listed in accordance with the APA Style. (See: <http://www.apastyle.org/>).

Reference list entries should be alphabetized by the last names of the first author of each work.

The works by the same author should be listed chronologically from the most to the least recent ones.

All references should be in original language. If the reference is not in English translate title of the reference - in square brackets.

### **Journal article:**

One author:

Young, O. R. (1991). Political leadership and regime formation: On the development of institutions in international society. *International Organization*, 45, 281–309.

Vukasović, V. (2005). Ugovor o Zajednici za energiju zemalja Jugoistočne Evrope i Evropske unije [The Treaty on the Energy Community in South East Europe and European Union]. *Evropsko zakonodavstvo*, 14, 25–37.

2-6 authors:

Prost, M., & Clark, P. K. (2006). Unity, diversity and the fragmentation of international law: How much does the multiplication of international organizations really matter? *Chinese Journal of International Law*, 5, 341–370.

Fatić, M., Đukanović, D., & Gajić, D. (2012). Security of Balkans and Serbia in the Context. *Review of International Affairs*, 44(3), 70–83.

More than 6 authors:

Biermann, F., Betsill, M., Gupta, J., Kanie, N., Lebel, L., Liverman, D., et al. (2010). Earth system governance: a research framework, *International Environmental Agreements: Politics, Law & Economics*. 4, 277–298. DOI: 10.1007/s10784-010-9137-3.

### **Book:**

Calfee, R. C., & Valencia, R. R. (1993). *APA guide to preparing manuscripts for journal publication*. Washington, DC: American Psychological Association.

Nikolić, M. (2011). *Ekumenski odnosi Srpske pravoslavne i Rimokatoličke crkve 1962-2000* [Ecumenical Relations of Serbian Orthodox and Roman Catholic Church 1962-2000]. Beograd: Službeni glasnik.

### **Book chapter:**

Jonsson, C., & Tallberg, J. (2008). Institutional Theory in International Relations'. In J. Pierre, B. G. Peters & G. Stoker (Eds.). *Debating institutionalism* (pp. 48–65). Manchester University Press, Manchester, NY.

Petrović, P., Mirković, A. (2011). General characteristics of foreign direct investment in Serbia, in Antevski, M. (Ed.). *Development Potentials of Foreign Direct Investment:*



*International Experiences* (pp. 229–247). Belgrade: Institute of International Politics and Economics.

### **Conference papers:**

Petrović, D. (2010). Interes Srbije u odnosu na carinski savez i druge integracione procese i međunarodne organizacije na postsovjetskom prostoru [The interest of Serbia in relation to customs union and other integration processes and international organizations in the post-Soviet space]. U Đukanović, D., Lađevac, I. (pr.). Zbornik radova sa međunarodne naučne konferencije *Uloga i mesto Srbije u međunarodnim organizacijama*. Beograd, 12-13. Oktobar 2010. (str. 524–540). Beograd: Institut za međunarodnu politiku i privredu.

### **Institutions as authors and legal documents:**

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